

# **Planning Code of Conduct**

## **Copeland Borough Council**

### **Appendix A**

**Revised Draft 20<sup>th</sup> June 2006**

## **Code of Conduct for Members and Officers when dealing with Planning Matters**

### **The Need for a Code of Conduct**

Planning relies on the making of judgements by members and officers within a set Policy framework. Decisions made by the Planning Panel have far-reaching effects on Copeland Borough Council and can engender strong feelings from those involved. As such, it is important that the processes by which decisions are made, including the conduct of members and officers are, as far as possible, developed and followed in such a way as avoid accusations of impropriety. It is for this reason that the Council has developed this Code of Conduct.

#### **1. THE STANDARD OF SERVICE THAT WE WILL ACHIEVE**

- 1.1 The Borough Council is committed to providing a development control and planning service of the highest standard. The service will adhere to the principles of fairness, impartiality, openness and accountability.
- 1.2 The Borough Council will make its planning decisions in an open and transparent manner, based on sound judgement and for justifiable reasons.
- 1.3 All Planning policies will be based firmly on policies contained within the Development Plan, unless other material considerations indicate otherwise.
- 1.4 Members and Officers of the Borough Council will follow the Planning Code of Conduct when involved in planning matters. Planning Matters include the consideration of planning applications, the preparation of Development Plans and other planning policy and the enforcement of planning control.

#### **2 THE ROLE AND CONDUCT OF MEMBERS AND OFFICERS**

- 2.1 Members and Officers have different, but complementary roles. Both serve the public, but Members are responsible to the electorate, while Officers are responsible to the Council as a whole. A successful relationship between Members and Officers can only be based upon mutual trust and understanding of each others' positions. This relationship and the trust that underpins it, must never be abused or compromised.
- 2.2 Members, when taking their declaration of office as a Councillor, undertake to abide by the Member Code of Conduct. Paragraph 2 of the Code says:- "A Member must ... promote equality by not discriminating unlawfully against any person..."
- 2.3 Members' decisions shall not discriminate for or against any individuals or groups and, although they may be influenced by the opinions of others, they alone have the responsibility to decide what view to take. Therefore, Members must represent their constituents as a body and vote in the interests of the whole Borough.

- 2.4 Planning Officers employed by the Borough Council must adhere to the Royal Town Planning Institute's Code of Conduct and provide impartial objective professional advice in the form of recommendations to the Authority and its members.
- 2.5 Whist Members should take account of all views expressed, they shall not discriminate between any individuals, companies, groups or localities, nor put themselves in a position where they appear to do so.
- 2.6 That the Council may not follow the advice of their professional Planning Officers is perfectly proper. The professional Officer too, may have a change of opinion, but this must be on a basis of professional judgement, and not because an Authority, its Members or other Officers, have prevailed upon the Officer to put forward his or her professional view as something other than it really is.
- 2.7 During the course of carrying out these duties, Officers and Members may be offered hospitality from people who have an interest in a planning proposal. If possible, such offers should be declined politely. If receipt of hospitality is unavoidable, Officers and Members should ensure it is of the minimum level and declare its receipt as soon as possible. The Members Code of Conduct requires Members to make written declarations of gifts and hospitality of over £25 and Officers are required to make similar declarations in a separate Register.

### **3 DECLARATIONS OF INTERESTS**

- 3.1 The Member Code gives guidance to Members in deciding whether an interest is either a personal or a prejudicial interest.

Members shall follow the guidance in deciding whether they have any personal and / or prejudicial interest in respect of a particular planning matter they are involved in deciding. If so, they shall declare either a personal and / or prejudicial interest and if prejudicial, leave the meeting.

- 3.2 Officers must always act impartially. An Officer who believes he or she may be seen to have a personal and / or prejudicial interest in a planning matter, shall declare it when the item arises and leave the meeting as above.
- 3.3 Serving Members and Officers shall never act as agents for persons pursuing a planning matter within the Borough.
- 3.4 ***Examples of circumstances in which Members and Officers would be expected to both declare an interest and not participate include:***

- ❑ ***A member or officer's own application made on his/her behalf or in circumstances where a member or officer is representing or acting as agent (in any capacity) for an applicant.***

- ❑ *The involvement of a member or his/her family in a consultancy, agency or company that may potentially be involved in related land or property dealings or construction within the district.*
- ❑ *Close working relationships, friendships or family connections of a member or officer with a consultancy, agency, developer, construction company or land or property owners (other than a member's own home) which operates in the locality and has an interest in a planning application or development generally within the district.*
- ❑ *Close neighbours involved in a planning application.*
- ❑ *Where an elected member is also a member, representative or employee of an organisation, society or club, which has a direct interest though not necessarily a pecuniary interest in a planning application, including a voluntary organisation, development or partnership agency, housing association, etc.*
- ❑ *Where a member has publicly and without qualification expressed a particular course of action on a planning application or other planning matter in advance of it being considered by the Planning Panel.*
- ❑ *Where a member has been lobbied on an application and as a result has expressed a fixed and public position on an application prior to full consideration by the Planning Panel, or has visited an application site outside the Panel's site visit system (other than to view the site from the roadside or from the outside of the site without being involved in any discussion at the site).*
- ❑ *Where a Member has a direct personal or financial interest in land or property subject to discussion as part of the Development Plan process.*
- ❑ *There may be circumstances where a member only becomes aware that she/he has an interest during discussion of the item at the meeting. In these circumstances the Member concerned should bring this to the attention of the chair and leave the meeting room during all subsequent consideration of the item. The legal responsibility lies with individual Members to declare an interest where appropriate. Legal advice should always be sought when in doubt, but generally speaking Members should always err on the side of declaring an interest where there is any uncertainty.*

4. **DEVELOPMENT ON BEHALF OF THE BOROUGH COUNCIL OR BY A MEMBER OR OFFICER**

- 4.1 Planning legislation allows the Borough Council to submit and determine proposals for development that it proposes to carry out itself, to have carried out on its behalf, or on land and property within its control.
- 4.2 Where Members of the Planning Panel have earlier sat on the Committee which has formulated development proposals or submitted a planning application, they would normally be expected to declare a prejudicial interest and withdraw from the meeting.
- 4.3 Proposals for development submitted by Officers or Members will be reported to the Planning Panel for decision and will not be determined by the Head of Regeneration / Development Services Manager under delegated powers. As part of the report the Monitoring Officer should confirm whether it has been processed normally.

## **5. LOBBYING OF AND BY MEMBERS**

- 5.1 Lobbying is a legitimate part of the political process. Those who may be affected by a proposal will often seek to influence the decision by an approach to their local Member or Members of a Planning Panel. Members are asked to submit copies of any lobbying material to the Council's Head of Legal and Democratic Services. However, reacting to lobbying can lead to the impartiality of a Member being called into question and require that Member to declare an interest.
- 5.2 The information provided by lobbyists is likely to represent an incomplete picture of the relevant considerations in respect of a planning matter. The views of consultees, neighbours and the assessments of the case by the Planning Officer all need to be considered before a Member is in a position to make a balanced judgement on the merits of the case.
- 5.3 The time for individual Members of Planning Panel to make a decision on a proposal is at the Panel meeting when all available information is to hand and has been duly considered.
- 5.4 However, it is recognised that it is a severe restriction on Members to not represent the views of the electorate if they agree with a view. It should be possible for a Member to give support to a particular body of opinion whilst waiting until the Planning Panel and hearing all the evidence presented before making a final decision.
- 5.5 A Planning Panel Member shall be free to listen to a point of view about a planning proposal and to provide procedural advice (in particular referring the person to Officers). Even though they agree with a particular view, Planning Panel Members shall take care not to commit themselves to vote for or against a proposal before a decision is to be taken. To do so, without all the relevant information and views, would be unfair and prejudicial. Members should make clear that they reserve their final decision on a proposal until the Panel meeting.

- 5.6 Members of the Planning Panel shall not organise support for or opposition against a proposal, lobby other Members, (other when addressing the Planning Panel), or put pressure on Officers for a particular recommendation.
- 5.7 Members of the Planning Panel must be free to vote as they consider appropriate on planning matters. Political group meetings prior to the Panel meeting shall not be used to decide how Members shall vote.
- 5.8 Members should not put pressure on Officers for a particular recommendation.
- 5.9 Members who are unsure whether an interest should be declared should seek the advice of the Council's Monitoring Officer, although the decision rests with the Member.

6. **PRE AND POST APPLICATION DISCUSSIONS AND NEGOTIATIONS**

- 6.1 Discussions between an applicant and the Planning Authority, prior to submission of an application, can be of considerable benefit to both parties and is encouraged by the Audit Commission. Continued discussions and negotiations between these parties, after the submission of proposals, is a common and important facet of the planning process.
- 6.2 Members need to preserve their role as impartial decision makers and should not take part in pre or post submission discussions and negotiations with applicants regarding development proposals. Should there be occasions where Members are involved, it should be part of a structured arrangement with Officers, including a Senior Planning Officer.
- 6.3 Members may receive information from applicants and give information to applicants and members of the public but, to safeguard their impartiality, they should maintain a clear distinction between receiving information and negotiating.
- 6.4 Pre or post application discussions or negotiations shall be conducted in accordance with the following guidelines:-
  - (i) It should always be made clear at the outset that the discussions shall not bind the Council to making a particular decision and that any views expressed are those of the Officer only.
  - (ii) Advice should be consistent and based upon the Development Plan and other material planning considerations. There should be no significant difference of interpretation of planning policies between Planning Officers.
  - (iii) A written note should be made of the meeting. Two or more Officers should attend potentially contentious meetings.

7. **OFFICERS REPORTS TO A MEETING**

- 7.1 Officers' written reports to the Panel shall be accurate and provide all relevant information. They shall include a precise record of consultations and representations. They shall make a reasoned assessment of the proposal in relation to the Development Plan, site or related history and other material considerations, and a justified written recommendation.
- 7.2 Oral reports (except to update and represent a report) should be extremely rare and carefully minuted when they so occur.
- 7.3 If the report's recommendation is contrary to the provisions of the Development Plan, the material considerations which justify this must be clearly stated.

## 8. **PUBLIC SPEAKING AT PLANNING PANEL**

- 8.1 The Borough Planning Panel consider that their established policy of allowing applicants and objectors to speak at the Panel constitutes good practice.
- 8.2 The arrangements for such presentations shall be equitable to both parties and follow the procedure codified in Minute No C151 (25.4.00) as amended.

## 9. **DECISIONS CONTRARY TO OFFICER RECOMMENDATION**

- 9.1 Members shall recognise that legislation requires that where the Development Plan is relevant, decisions should be taken in accordance with it, unless material considerations indicate otherwise.
- 9.2 Where the Panel is minded to refuse or approve a planning application contrary to the Planning Officer's recommendation, a final decision on the application should be deferred until the next meeting.
- 9.3 This deferral of decision will allow time for further advice to be prepared, including the advice of expert consultants, which might include drafting suitable condition or confirmation that clear and convincing reasons for refusal of the application can be made, based on material planning considerations. This will help guard against cost awards in favour of the applicant. Legal representation to advise Members might also be provided when the application is reconsidered.
- 9.4 In cases where the Panel wishes to approve an application contrary to Development Plan policy based on personal circumstances, the application shall be deferred to the next meeting so as to allow the Head of Legal and Democratic Services to report thereon.
- 9.5 In recording the resolutions on such applications, the minutes must set out a full, clear and convincing statement of the reasons for the departure from policy.

## 10. **PANEL SITE VISITS**

- 10.1 Panel site visits should be seen as a “tour of inspection” by Members accompanied by the Planning Officer, the purpose of which is to provide more information solely on the planning issues concerning the application site and the likely impact of development proposals.
- 10.2 A site visit is only likely to be necessary if:-
- ❑ A proposal is contentious or particularly complex.
  - ❑ A proposal is likely to be significant but it is difficult to visualise or assess it based only on the plans or supporting information.
  - ❑ It is requested by a Parish or Town Council and based on clearly expressed planning issues which need to be seen first hand.
- 10.3 The retrospective nature of a planning application will, in itself, no longer justify a site visit by the Panel.
- 10.4 To minimise delays, Panel approval to a site visit will be sought at the earliest opportunity in respect of applications which most obviously justify a site visit.
- 10.5 All Members of the Panel will be invited to attend every site visit together with other Ward Members, Parish or Town Councillors and the County Councillor for the area in which the application site is located. Where a proposal would have a direct significant impact on an adjacent Ward/Parish, invitations to attend the site visit will be extended to the neighbouring Ward/Parish/County Councillors as appropriate.
- 10.6 The applicant, objectors and other interested parties will not be permitted to participate in the site visit, other than in exceptional circumstances and by approval of the Panel.
- 10.7 Where necessary, Democratic Services personnel will seek the landowners consent to visit the site.
- 10.8 Transport will always be arranged from the Council’s Catherine Street offices. It is the responsibility of individual Members to make their own transport arrangements if they so wish and to inform the Democratic Services personnel of such alternative arrangements.
- 10.9 On assembling at the site at the specified time, the Chairman will explain the purpose of the site visit and introduce the proposed development, stressing that no decision will be taken until the Panel meeting.
- 10.10 The Planning Officer will describe the planning application and outline the relevant policies and planning considerations. Questions will be invited and addressed.



- 10.11 The Chairman will then invite the Ward/Parish/Town/County Councillors present, in turn, to address the meeting on the planning aspects of the proposed development.
- 10.12 At the Chairman's discretion, further discussion on the facts and issues may then be heard.
- 10.13 The Chairman may bring the site to a close and inform those attending of when the application will be determined.
- 10.14 At no time during the site visit should Panel Members or Offices present express an opinion on the outcome of the planning application.
- 10.15 Site visits are not to be constituted as decision-making meetings.

## **11. REVIEW OF DECISIONS**

- 11.1 The Audit Commission's Report, 'Building in Quality', recommended that elected Members should visit a sample of implemented planning permissions to assess the quality of decisions. This can improve the quality and consistency of decision-making and help with reviews of planning policy and is a practice which has been followed at Copeland for several years.
- 11.2 Visits to application sites, previously considered by the Borough Council, shall be organised as appropriate. Briefing notes shall be prepared on each case.
- 11.3 Attendance at the review site visits shall be restricted to Members of the Panel and the local Ward Member.

## **12. PLANNING APPEALS**

- 12.1 In cases where a decision to refuse permission for a planning application is made contrary to the recommendation of the Development Services Manager and a subsequent appeal arises, the following procedures will be followed:-
- 12.2 In cases dealt with by written representations the appeal will be processed on the basis of an objective factual report which will refer to the processing of the application, the views of consultees, the application of policy, the recommendation of the Development Services Manager but in addition explain in detail the views which Members felt to be particularly relevant and of such importance to justify a contrary view to the Planning Officer and the refusal of permission.
- 12.3 In cases of appeals dealt with by informal hearings the same approach will be followed.
- 12.4 In case of major applications involving inquiries the same principles will apply, but the Panel will be invited to consider such cases separately and

decide on the best course of action to take in the particular case (including the giving of evidence by a Member or Members).

- 12.5 Appeal decisions will be reported either for information or as guidance for future policy review as appropriate.

13. **REPORTING DELEGATED DECISIONS**

- 13.1 The Borough Council has delegated a number of planning decisions to the Head of Regeneration / Development Services Manager as set out in Appendix A.
- 13.2 These decisions are made on the basis of a written report covering the same topics as a normal Committee report as set out in 7.1. These reports, including the signatures of the confirming Officers, shall be kept on the application file.
- 13.3 The application file, including its associated report and decision notice, will be available for public inspection for a period of 6 months following the decision.

14. **COMPLAINTS**

- 14.1 The Council has adopted a Comments, Compliments and Complaints procedure as set out in Appendix B.
- 14.2 If the complaint cannot be satisfied locally, it can be referred to the Local Government Ombudsman. Any decisions made by the Ombudsman relating to complaints regarding planning will be reported to the Council as an information item.