

Broads Authority

Code of Conduct for Members on Planning Committee and Officers

The Status of The Code

The aim of the Code of Conduct is to give clear guidance to Broads Authority members and officers who become involved in operating the planning system and to ensure the public have confidence that decision-making is open and fair.

The successful operation of the planning system by the Broads Authority relies on mutual trust and an understanding of Members' and Officers' respective roles. It also relies on each ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so.

This code is supplementary to the Authority's "Code of Conduct for Members" and the rules on the Declaration of Disclosable Pecuniary and Other Interests. (*Other interests relate to membership of lobby groups, clubs and societies, gifts and hospitality and to toll paying. Once declared the member may still speak and vote on the matter. A Disclosable Pecuniary Interest in a matter requires the member to leave the room while it is discussed.)

The code covers:

Part A Members and Officers

- 1 The role and conduct of Members and Officers
- 2 Development proposals submitted by Members and Officers
- 3 Broads Authority's own development
- 4 Predetermination
5. Pre and post application discussions
- 6 Decisions contrary to officer recommendations and/or the development plan

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Failure to follow recommendations contained in this code could be taken into account in investigations into allegations of maladministration and might also indicate a breach of the Members Code of Conduct.

Part A Members and Officers

1 The Role and Conduct of Members and Officers

Members and Officers have different, but complementary, roles:

- All officers and advisors acting on behalf of the Authority are expected to follow their appropriate code of professional conduct.
- Members are expected to follow the Authority's [Code of Conduct for Members](#)
- Members will take due note of officers' recommendations but it is Members of the Authority who take decisions. Members must represent the interests of the Broads as a whole taking decisions based firmly on policies of the development plan unless other material considerations indicate otherwise.

2 Development Proposals Submitted by Members and Officers

The Broads Authority recognises that proposals by serving and former Members and officers and their close friends and relations could easily give rise to suspicion of impropriety. In order to ensure that applications are handled in a way which gives no grounds for accusations of favouritism:

- The Authority's Solicitor will be informed of such proposals.
- Such proposals will be reported to the Planning Committee and not be dealt with under delegated powers. As part of the report, the Solicitor will confirm whether the proposal has been processed normally.
- Serving Members of the Authority who act as paid agents for people pursuing a planning matter or who submit planning proposals in their own right must play no part in the decision making process for that proposal.
- A member has a Disclosable Pecuniary Interest in their own application (and those made by a spouse, civil partner or partner or another local authority of which they are a member and from whom they receive an allowance) and must withdraw from the meeting. The Members Code also provides that they shall not improperly influence the decision, although this does not prevent them from explaining or justifying the proposal to Officers.
- Members of the Planning Committee who serve on bodies which make or initiate or who are otherwise closely associated with applications to the Planning Committee (or who have family members who do or are so) must declare that fact and withdraw from the meeting.

- (For the avoidance of doubt a member does not have a Disclosable Pecuniary Interest in an application submitted by a third party just because an authority of which they are a member has commented on it. Similarly a member does not have a Disclosable Pecuniary Interest in a matter on which the other authority is seeking the Broads Authority's comments.)

3 Broads Authority's Own Development

Proposals for the Broads Authority's own development will be treated in the same way as those of a private developer. In the interests of openness and taking into consideration the environmental sensitivity of the Broads, there is no provision for delegated approval.

4 Consideration by another Committee of the Authority

4.1 Members sitting on another Committee of the Authority at which a planning application is under discussion should avoid unqualified expressions of support or opposition which might lead a fair minded and informed member of the public to think that the member has already made up their mind before the application comes to the Planning Committee. If members do wish to participate and vote at full Authority or the Navigation Committee and at Planning Committee, members must declare at full Authority and the Navigation Committee:

- (a) That they understand that they are considering the proposals within the remit of the full Authority or the Navigation Committee and not coming to a decision on all, nor even necessarily any, of the matters which are material to a planning application.
- (b) Notwithstanding participation in debate or voting at full Authority or the Navigation Committee they will when the matter comes before the Planning Committee considers any planning application afresh and take into account any representations for and against the proposal in the light of up to date circumstances.

4.2 Any member who is unable to consider the proposal afresh at the Planning Committee should withdraw from the item at the Planning Committee.

4.3 More general advice on predetermination and bias is contained in paragraph 14.

5 Pre and Post Application Discussions

5.1 Discussions between developers and the Authority can be of considerable benefit and are encouraged by government. Applicants may also organise their own form of consultation to which Members may be invited. The following guidelines should be followed:

5.2 Where an application has not been submitted:

- (i) Exceptionally, and generally only in the case of major applications raising significant issues, it may be appropriate for Members to be involved in an application prior to its submission. Such involvement will, however, be limited to:
 - (a) Public exhibitions or public meetings.
 - (b) Committee site visits.
 - (c) (Very exceptionally) private meetings between the applicant and the Authority or third parties.
- (ii) In the case of all such meetings:
 - (a) The remit of Members and the purpose of their involvement to identify issues and understand local concerns should be made clear.
 - (b) Members must maintain an impartial listening role and avoid expressing an opinion or giving advice beyond outlining adopted planning policies.
 - (c) Any discussion should not develop into negotiations and it must be made clear that they are not part of the determination process.
 - (d) Discussions should not touch on commercially sensitive or confidential information, bearing in mind the need for transparency and the requirements of the Freedom of Information Act.
 - (e) Officers of appropriate seniority should attend and written notes of the proceedings should be kept on file; and
 - (f) Members involvement should, wherever possible, be authorised by the Planning Committee and their involvement recorded in any subsequent committee report.

5.3 Where an application has been submitted:

- (i) Following the submission of a planning application, Members' involvement prior to consideration at Committee will be limited to public meetings and committee site visits referred to in paragraph 5.2 i) (a) and (b) above.
- (ii) If approached, Members should advise applicants to contact the planning officer for further guidance.

- (iii) In the case of meetings between the developer and planning officer: -
- (a) Officers should clarify at the outset that discussions will not bind the Authority to making a particular decision.
 - (b) No views will be expressed on the outcome of the application since not all information will be to hand, neither will consultation have taken place.
 - (c) Advice should be consistent and based on the development plan and material considerations.
 - (d) Advice should be, and be seen to be, impartial.
 - (e) A written note should be made of all meetings and telephone discussions.
 - (f) Applicants should be met on Authority premises except in exceptional cases and other than for site familiarisation purposes.

5.4 Members should not seek to influence or put pressure on officers to support a particular form of action.

5.5 These guidelines apply also to meetings to discuss planning applications or development proposals called by third parties, including attendance at parish council or other public meetings.

5.6 Generally, Members should not say anything which gives the appearance that they have made up their mind on an application and they should not accept any hospitality offered by the applicant or other interested party at a public meeting or public exhibition unless it is also offered to the public at large.

6 Decisions Contrary to Officer Recommendations and/or the Development Plan

6.1 The law requires that where the development plan is relevant, decisions should be taken in accordance with it unless material considerations indicate otherwise.

6.2 All applications which are not in accordance with the plan must be advertised in accordance with statutory procedures. If it is intended to approve such an application:

- material considerations must be clearly identified;
- reasons for overriding the development plan clearly demonstrated in the committee report;
- referral to the Secretary of State considered.

- 6.3 If the planning committee makes a decision contrary to the officers' recommendation:
- a detailed minute of the reasons should be made and kept on the application file;
 - the officer should have the opportunity to explain the implications of the contrary decision;
 - appropriate conditions or reasons for refusal should be agreed at that committee meeting;
 - the Solicitor or their representative should ensure that procedures have been properly followed.
- 6.4 In the case of applications where there are adverse policy implications, when new issues are raised on the day of the committee, or if Members are under undue pressure the application will be deferred at the discretion of the Chair of the committee. This will allow additional advice to Members to be compiled.

Part B Members

7 Training

- 7.1 All Members of the Authority's Planning Committee are required to participate in training in the planning system as it applies in the Broads either before serving on the committee or as soon as possible after their appointment.
- 7.2 Regular update briefings will be provided as appropriate.

8 Declaration and Registration of Interests

- 8.1 The provisions of the Members Code of Conduct including those relating to Disclosable Pecuniary and Other Interests are [Here](#).
- 8.2 All matters required to be recorded in the Register of Members Interests relating to an agenda item before the Planning Committee must be disclosed to the meeting. There will be an opportunity to declare interests at the start of each meeting.
- 8.3 A member who has a Disclosable Pecuniary Interest must: -
- (a) Withdraw from the room whenever it becomes apparent that the matter is being considered at that meeting unless the member has obtained a dispensation from the Monitoring Officer.
 - (b) Not seek improperly to influence a decision about that matter.
- 8.4 A member who has a disclosable Pecuniary Interest in a matter may, provided that it is in accordance with the public speaking arrangements and provided

that there is no discussion of the matter, make a statement before withdrawing from the room.

9 Delegated Decisions

- 9.1 Members may request within 7 days of the publication of the Authority's weekly list of planning applications that any application with a wider public interest be placed before the committee for decision.

10 Lobbying of and by Members

- 10.1 Lobbying of Members is a normal and perfectly proper part of the political process. However, lobbying can lead to the impartiality and integrity of a Member being called into question. If a Member is approached, they should:

- listen but not express views or opinions on any application nor negotiate;
- refer the lobbyist to a professional officer or meet the lobbyist in the presence of an officer;
- confirm they will only be able to make a decision after having heard all the relevant evidence and arguments at committee;
- in any reply to a letter either supporting or opposing an application, explain their neutral position and pass any relevant written information to officers for the file;
- before speaking at Planning Committee, declare attendance at an informal site visit or a meeting on an application or other planning issue in the company of an applicant or consultee;
- if a member has gone public in support of a particular outcome or campaigned actively for it they may well have pre-determined the issue and should withdraw from discussion of the item. (See para 14).

- 10.2 In addition, Members shall not put pressure on officers for a particular recommendation.

11 Public Speaking at Planning Committee

- 11.1 Public speaking will be allowed in accordance with the agreed protocol.
- 11.2 At the beginning of each meeting the Chair should reiterate the procedures and guidelines to be applied for public speaking.

12 Committee Site Visits

- 12.1 Committee site visits will be held where the expected benefit is substantial. Reasons could include: the impact of the proposed development being difficult to visualise, comments of the applicant and objectors cannot be expressed adequately in writing and a site visit would demonstrate to the public or the applicant that Members have listened to their argument, or the proposal is particularly contentious. The reason for holding a site visit will be minuted.
- 12.2 Site visits will be held in accordance with the agreed protocol.

13 Regular Review of Decisions

The planning committee will regularly review decisions to ensure quality and consistency of decision-making across a range of categories of applications. The committee will subsequently decide whether there is a need to review any policies or practices.

14 Predetermination and Bias

- 14.1 It is not a problem for councillors to be predisposed in respect of a particular planning matter. Predisposition is where a member holds a view in favour of or against an issue, such as an application for planning permission, but they have an open mind to the merits of the argument before they make the final decision at the committee meeting.
- 14.2 This includes having formed a preliminary view about how they will vote before they attend the meeting, and/or expressing that view publicly. They may even have been elected specifically because of their views on this particular issue.
- 14.3 On the other hand, predetermination or bias can lead to problems. It occurs where a member is closed to the merits of any arguments relating to a particular issue, such as an application for planning permission, and makes a decision on the issue without taking them into account.
- 14.4 Members must not even appear to have already decided how they will vote at the meeting, so that nothing will change their mind. This impression can be created in a number of different ways such as quotes given in the press, and what they have said at meetings or written in correspondence.
- 14.5 Rarely will membership of an organisation, such as a national charity, amount to predetermination or bias on its own unless it has a particular vested interest in the outcome of a specific decision that a member is involved in making.
- 14.6 There is an important difference between those members who are involved in making a decision and those members who are seeking to influence it. This is because members who are not involved with making a decision are generally free to speak about how they want that decision to go.
- 14.7 When considering whether there is an appearance of predetermination or bias, members who are responsible for making the decision should apply the following test: Would a fair-minded and informed observer, having considered the facts, decide there is a real possibility that the member had predetermined the issue or was biased?
- 14.8 However, when applying this test, they should remember that it is legitimate for a member to be predisposed towards a particular outcome on the basis of their support of a general policy, even giving a view. This is as long as they are prepared to be open-minded and consider the arguments and points

made about the specific issue under consideration and have not committed themselves to voting a particular way.

14.9 Appendix 3 sets out the different circumstances in which predetermination and bias can arise.

14.10 In conclusion, members are entitled to have and express their own views, as long as they are prepared to reconsider their position in the light of all the evidence and arguments. They must not give the impression that their mind is closed.

15 Gifts and Hospitality (Members)

15.1 The Members of Code of Conduct requires any member receiving any gift or hospitality over the value of £25 in their capacity as members to register the details within 28 days.

15.2 A member should treat with extreme caution any offer or gift, favour or hospitality which is made to a member personally. In this respect the person or organisation making the offer may be doing, or seeking to do, business with the Authority, or may be applying to the Authority for planning permission or some other kind of decision. Gifts or hospitality includes any opportunity to acquire goods or services at a price or on terms at which they are not readily available to the general public.

Part C Officers

16 Officer Reports to Committee

16.1 To ensure adequate consideration of the issues, consistency of decision-making, clarity of reasoning behind the recommendation and public confidence, the following information should be contained in reports:

- accurate information with representations by consultees adequately summarised;
- a clear explanation of the development plan, site or related history and other material considerations;
- a technical appraisal which clearly justifies the recommendation;
- a full justification of material considerations if the recommendation is contrary to the development plan;
- a written recommendation of action.

16.2 Oral reporting (except to update a report) should be extremely rare and carefully minuted when it does occur.

17 Complaints and Record Keeping

17.1 Every planning application file must contain an accurate account of events throughout its life. Particular care needs to be taken with applications determined under officers' delegated powers. The principles of complete and

accurate record keeping apply equally to enforcement and development plan matters.

- 17.2 Complaints will be fully investigated in accordance with the Authority's adopted protocol.

18 Gifts and Hospitality (Officers)

Officers must refuse offers of hospitality from people with an interest in a planning proposal. The only exception is in respect of offers of token hospitality (ie non-alcoholic beverages with or without biscuits) which are part of usual social courtesy. Any offers shall be recorded within 28 days in accordance with arrangements made by the monitoring officer.

The Broads Authority
Public Speaking at Planning Committee
(as amended on 16 March 2012)

The Public Speaking Scheme

1 Introduction

The scheme relates to matters where the Broads Authority is the decision maker and not where it is asked to respond as a consultee to a proposal.

The public speaking scheme does not apply to enforcement matters (because these do not involve any public consultation as such) nor to applications where the proposal is dealt with under delegated powers or if the proposal is refused under delegated powers. The scheme also does not apply to policy matters or consultations eg: Local Development Framework (LDF).

2 Making an Objection

Objectors to applications are encouraged to follow the procedure of making written submissions which can be referred to in reports submitted to the Planning Committee. In addition, the opportunity also to speak in front of the Committee is available if a formal objection has previously been made.

It is important to stress that there will be no disadvantage to objectors who prefer not to, or are unable to, present their objection in person. Planning officers will ensure that objections received are fairly reported and Members will take the matters raised fully into consideration when making a decision.

3 Other Authorities

The views of County and District Councils, Parish Councils and the Highway Authority will be reported to the Planning Committee when received in time for the agenda.

Objectors include individuals and interest groups and organisations. Parish Councils and Ward or Division members of District Councils and the County Council are also able to address the Planning Committee as part of the public speaking procedure.

4 Supporting an Application

The applicant or agent and supporters, will have the opportunity at the meeting to speak. Applicants are however encouraged to work with the Planning Officer to ensure sufficient information has been submitted in advance to enable Planning Committee to make a fully informed decision.

5 Making a Presentation

It is the responsibility of objectors and the applicant to contact the Planning Case Officer to follow the progress of the application and arrange to attend the relevant meeting. Progress on applications, together with the agendas and reports to the Authority's Committees can be viewed on the Authority's website at www.broads-authority.gov.uk

It is helpful if a request to speak is made to the Committee Secretary as soon as possible prior to the commencement of the meeting.

A table will be set aside within the room to enable speakers to address the meeting. At the beginning of the consideration of the planning applications, the Chairman will ask members of the public who wish to speak to come up to the public speaking desk at the beginning of the presentation of the relevant application. Consideration can be given to changing the order of the agenda items if this is helpful in cases of exceptional public interest.

Any person exercising the right to speak under the scheme will have the opportunity to speak immediately **after** full presentation of the relevant planning application by the Planning Officer. Representations will be heard in the following order:

Planning Officer provides description of application, responses received, full assessment with recommendation

Parish Councillor(s) (5 mins)

Objectors (5 mins)

Applicant/agent/Supporter (5 mins)

Ward or Division Councillor (s) (5mins)

Discussion and Consideration of Decision

Objectors and applicants addressing the Committee will be expected to make their presentations within a maximum of five minutes. Extensions of time will be agreed with the Chairman beforehand.

If there are several objectors they should agree beforehand on sharing or delegating their time. The Chairman will try to ensure that points are not repeated. If there are exceptional circumstances of public interest, the Chairman will have the discretion to increase the time allocated.

With the Chairman's permission, Members of the Committee or officers will be allowed to ask questions of the objector and/or applicant to seek clarification about the points raised. This will be additional time to that allocated for public speaking and should only be used to seek clarification on the point being made, not for the purpose of facilitating speaking.

Speakers will not be allowed to question other speakers, officers or members.

6 Deferral

If new evidence is brought to the Committee it may be necessary to defer consideration of the application to a subsequent meeting.

Broads Authority – Planning Committee Site Visits
(as amended 6 December 2013)

1. Selection of Site Visits

Committee site visits are used as one means of ensuring that members have sufficient information about the site and the surrounding area to reach a decision on a particular application. They are used selectively as fact-finding exercises (similar to Planning Inspector site visits) to supplement officer reports and other information. They may not be appropriate where matters of fundamental planning policy are involved and there are no significant other material considerations to take into account. As information gathering exercises, they are not formal Committee meetings and no decisions or recommendations are made.

The decision to hold a site visit is at the Committee's discretion. Site visits may be appropriate where:

- Officers recommend a site visit because of specific aspects of the application;
- The issues are finely balanced and Member assessment and judgement can only be concluded by a site inspection;
- The details are complex or the impacts on neighbour amenity or the wider landscape are difficult to envisage other than by site assessment;
- It is expedient in the interests of local decision-making to demonstrate that all aspects of a proposal have been considered on site.

Determination of the great majority of applications does not involve the holding of a Committee site visit.

2. Member Attendance

All Planning Committee members are invited to attend site visits and are urged to do so wherever possible. Members will be sent details of the visit in advance, including a site location map. Members who are able to attend the Site Visit but are unable to attend the subsequent Committee consideration are invited to send any comments that they may have to the Administrative Officer prior to the Committee meeting.

3. Site Visit Dates

These are published in advance and are normally two weeks before a Planning Committee meeting. The first site visit is normally scheduled for 10.00 am.

4. Invitations to Site Visits

In addition to Committee members, the following are invited to the site meeting in a consultative capacity:

- a representative from the Parish Council;
- the local District Council member;
- a representative from the Broads Society (as an observer).

The applicant's agent is notified of the proposed site visit date and permission is requested for access to the land, informing them of the fact finding nature of the visit.

5. Conduct of Site Visit

The site visit proceeds as follows:

- (i) Chairman welcomes those attending, stressing that the site visit is for fact finding, no decision will be made on site and the application will be considered for determination at a future Committee meeting. The aim is not to debate the issues, but to ensure that all participants are satisfied that Members have seen all the appropriate details of the site and its surroundings. He/she should remind members of the issues in Notes section below.
- (ii) Apologies.
- (iii) Planning Officer describes the application giving details of the site, the development proposed and any updated information. He/she should show and explain any relevant drawings and should pay particular attention to the context of the site in the Broads area.
- (iv) Comments from other officers, where appropriate, including:
 - County Council (Highways) Officer;
 - Other Broads Authority officers if present, e.g. Conservation Officer, or Waterways Officer.
- (v) Questions from Broads Authority members.

Note At the Chairman's discretion, the applicants, other invitees or third parties may be asked to provide factual information concerning the application, but will not be invited to "put their case". Representation in support of or objection to the application should be made in writing to the Authority.

- (vi) Opportunity for members and others to walk around the site as a

group, if considered necessary. At each stop, the Chairman should ask if everyone is satisfied that all appropriate factual matters have been seen:

- (vii) Chairman concludes and closes the meeting by reminding the group when the application will be heard by the Planning Committee (if known) when public speaking will be in operation:

The Chair may wish to ask whether anyone (other than the applicant) wishes to refer to any points which require clarification before the Committee meeting;

A summary note of the site meeting is taken on the day and is included with the agenda papers for the relevant Committee meeting. The note of the site meeting is available on the public record of the application.

Notes for Members

1. In view of the fact-finding nature of the site visit Members should be as impartial as possible before, during and after the site visit.
2. When moving round a site, Members and other participants should keep together as a one group.
3. Members should avoid discussing the application with applicants, objectors etc. before, during or after a site visit. If Members wish to ask questions of any party this should take place when the whole group is present.
4. Members should politely deflect any attempts at lobbying, by suggesting that comments should be put in writing to the Authority or that the points should be made during public speaking at the Planning Committee.
5. Members are encouraged to attend official site visits, but where this is not possible and individuals wish to view a site at another time, they are advised to do so only from public vantage points and not to enter into discussions with applicants within the site.

Predetermination and Bias

Predetermination and bias can arise in a number of ways:

(i) **Connection with someone affected by a decision**

This sort of bias particularly concerns administrative decision-making, where the authority must take a decision which involves balancing the interests of people with opposing views. It is based on the belief that the decision-making body cannot make an unbiased decision, or a decision which objectively looks impartial, if a member serving on it is closely connected with one of the parties involved.

(ii) **Improper involvement of someone with an interest in the outcome**

This sort of bias involves someone who has, or appears to have, inappropriate influence in the decision being made by someone else. It is inappropriate because they have a vested interest in the decision.

(iii) **Prior involvement**

This sort of bias arises because someone is being asked to make a decision about an issue which they have previously been involved with. This may be a problem if the second decision is a formal appeal from the first decision, so that someone is hearing an appeal from their own decision. However, if it is just a case of the person in question being required to reconsider a matter in the light of new evidence or representations, it is unlikely to be unlawful for them to participate.

(iv) **Commenting before a decision is made**

Once a lobby group or advisory body has commented on a matter or application, it is likely that a member involved with that body will still be able to take part in making a decision about it. However, if the member has made comments which suggest that they have already made up their mind, they may not take part in the decision. If the member is merely seeking to lobby the meeting at which the decision is taking place, they are not prevented by the principles of predetermination or bias from doing so. There is no particular reason why the fact that members can do this, in the same way as the public, should lead to successful legal challenges.