

# Code of Practice for members of the Planning Committee and officers

(Adopted September 2021)

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## 1. Introduction

- 1.1. The successful operation of the Broads Authority's planning function relies on mutual trust between its members and officers, and an understanding of each other's respective roles. It also relies on each acting in a way that is fair and impartial, and clearly seen to be so.
- 1.2. The purpose of this Code of Practice is to give clear guidance to Authority members and officers involved in operating the planning function for the Broads executive area, and to give public confidence that the Authority's decision-making on planning matters is informed, open and fair. This Code of Practice is supplementary to the Authority's Member Code of Conduct (see para 1.2 below) and should be read in conjunction with that document.
- 1.3. Members and officers should also refer to the following guidance:
  - Openness and transparency on personal interests (Department for Communities and Local Government, 2013)

- Probity in Planning ( Local Government Association, 2019)
- Code of Practice for Planning Decisions (Broads Authority)
- Code of Practice for Planning Consultations (Broads Authority)

## A. General guidance

### 2. Roles and conduct of members and officers

- 2.1. The Authority's [Protocol on Member and Officer Relations](#) sets out the respective and complementary roles of members and officers, and what they can expect from each other.
- 2.2. Members are expected to follow the Authority's Member [Code of Conduct](#). It is important to note that failure to follow the recommendations in this Code of Practice may be taken into account in any investigation into allegations of maladministration, and may also indicate a breach of the Member Code of Conduct. Officers, and advisors acting on behalf of the Authority, are expected to follow their appropriate code of professional conduct.
- 2.3. While members will take due note of officer recommendations, it is the members who take the decisions (other than where decisions are dealt with under delegated powers). In doing so, they must represent the interests of the Broads executive area as a whole. For planning matters, this means taking decisions based firmly on the policies of the development plan, unless other material considerations indicate otherwise.

### 3. Development proposals submitted by members and officers

- 3.1. The Authority recognises that development proposals submitted by serving or former members and officers and their close friends and relations could give rise to suspicion of impropriety. To avoid this, any such proposals will be dealt with in the following way:
  - The Authority's Monitoring Officer will be informed of the proposal.
  - The proposal will be reported to the Planning Committee and will **not** be dealt with under delegated powers.
  - The Monitoring Officer will confirm whether the proposal has been processed in accordance with the usual practice, with a note made on the application file.
  - Serving Authority members who act as 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.
  - Members should ensure that they declare any disclosable pecuniary and other interests (see Section 9 below).

- Members and officers who have submitted their own planning applications should not contact or correspond with members of the Planning Committee in respect of that application, from the submission of the application until the decision notice has been issued.

#### 4. Development proposals submitted by the Broads Authority

- 4.1. The Authority's scheme of delegated powers does not require that any development proposal by the Broads Authority must be determined by Planning Committee, but for reasons of transparency and openness such applications would usually be referred to the Committee under the Director's discretion provisions in the scheme of delegated powers.

#### 5. Consideration of proposals by another committee

- 5.1. A planning proposal may be discussed at another committee of the Broads Authority, such as the Navigation Committee or the full Authority, before the application comes to the Planning Committee. In such cases, members should avoid unqualified expressions of support or opposition that might lead a fair minded and informed member of the public to think a member has already made up their mind before the application comes to the Planning Committee (see section 14 below on predisposition, predetermination and bias). If a member wishes to participate and vote at another committee and at Planning Committee, they must declare at the other committee that:

- (i) They understand they are considering the proposal within the remit of the other committee and not coming to a decision on all, or necessarily any, of the matters that are material to a planning application.
- (ii) Notwithstanding participating or voting at the other committee they will, when the matter comes before the Planning Committee, consider any planning application afresh, taking account of any representations for and against the proposal in the light of up to date circumstances.

- 5.2. Any member unable to consider the proposal afresh at the Planning Committee should withdraw from the meeting when the item is considered.

#### 6. Pre-application and post-application discussions

- 6.1. 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. In such circumstances, the following guidance should be followed.

- 6.2. Where a planning application has **not** been submitted:

- (i) Members should refer those who approach them for planning, procedural or technical advice to officers.
- (ii) 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. Minutes should be taken of any meeting with a member, and the minutes attached for committee. Such involvement will be limited to:

- a. Public exhibitions or public meetings. Members should not attend a planning presentation without asking an officer to be present
- b. Committee site visits as part of the pre-application process.
- c. (Very exceptionally) private meetings between the applicant and the Authority or third parties. Members should be accompanied by the relevant officer and not attend such meetings alone.

(iii) In the case of all such meetings:

- a. A member's remit and the purpose of their involvement is to identify issues and understand local concerns, and this should be made clear.
- b. A member 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 make written notes of the proceedings to be kept on file; and
- f. A member's involvement should, wherever possible, be authorised by the Planning Committee, and their involvement recorded in any subsequent committee report.

6.3. Where a planning application **has** been submitted:

(i) A member's involvement prior to consideration at Planning Committee will be limited to public meetings and committee site visits (referred to in paragraph 5.2above).

(ii) If approached, a member should advise the applicant(s) to contact the Planning Officer for further guidance.

(iii) In the case of meetings between the applicant and Planning Officer(s):

- a. The officer(s) 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 and consultation will not 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 by the officer(s) of all meetings and telephone discussions.
  - f. The officer(s) should meet applicant(s) on Authority premises, other than in exceptional cases or for site familiarisation purposes.
- 6.4. Members should not seek to influence or put pressure on officers to support a particular form of action.
- 6.5. These guidelines also apply to meetings to discuss planning applications or development proposals called by third parties, including attendance at parish council or other public meetings.
- 6.6. Generally, members should not say anything that gives the appearance they have made up their mind on an application (see section 14 below). 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 (see sections 15 and 18 below).
- 7. Decisions contrary to officer recommendations and/or the development plan**
- 7.1. The law requires that where the development plan is relevant, decisions should be taken in accordance with it unless material considerations indicate otherwise.
- 7.2. All applications that are not in accordance with the development plan must be advertised as a departure in accordance with statutory procedures.
- 7.3. If it is intended to approve such an application, then:
  - material considerations must be clearly identified;
  - reasons for overriding the development plan must be clearly demonstrated in the committee report; and
  - referral to the Secretary of State may be necessary, depending upon the relevant type and scale of the development proposed (section 77 of the Town and Country Planning Act 1990).
- 7.4. If the Planning Committee takes a decision contrary to the officer recommendation:
  - the reasons for the contrary decision should be clearly set out by the committee and agreed at that committee meeting before a vote is taken;
  - the officer should have the opportunity to explain the implications of the contrary decision;

- appropriate conditions should be clearly set out and agreed at that committee meeting, before a vote is taken;
  - the Monitoring Officer or their representative should ensure that procedures have been properly followed; and
  - a detailed minute of the reasons for the contrary decision should be made and kept on the application file.
- 7.5. In the case of applications where new issues of material consideration are raised on the day of the committee meeting, or if there is a concern about the validity of the reasons for a contrary decision, or if members are under undue pressure, the application may be deferred at the Chair’s discretion to allow time to compile additional advice to members.

## B. Guidance for members

### 8. Training

- 8.1. All members of the Planning Committee are required to participate in training on the planning system as it applies in the Broads executive area. This training must be completed as soon as possible after a member’s appointment, and before they serve on the committee.
- 8.2. Regular update training will be undertaken by all members at least once a year.

### 9. Registration and declaration of interests

- 9.1. The [Member Code of Conduct](#) sets out provisions relating to the declaration of disclosable pecuniary interest (DPI) and other interests. All matters required to be recorded in the Register of Interests relating to a matter before the Planning Committee must be disclosed to the meeting. There is an opportunity to declare interests at the start of each meeting.
- 9.2. Probity in Planning (LGA, 2019) also has detailed further guidance on the registration and disclosure of interests, including a flowchart on what to disclose and the extent of any further involvement once a declaration is made.

### 10. Delegated decisions

- 10.1. Any member of the Authority may request, within 21 days of receipt of the schedule of the planning applications, that an application is placed before the Planning Committee for a decision. In such cases, the member must provide appropriate planning reasons in writing.

### 11. Lobbying

- 11.1. Lobbying of and by members is a normal and perfectly proper part of the democratic process. However, lobbying can lead to a member’s impartiality and integrity being called into question. If a member is approached by planning applicants, objectors or supporters, 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;
- notify an officer of the lobbying approach and the summary of any discussions;
- If the member receives any correspondence on an application between the agenda being published and the items being considered at committee, they should forward it to the relevant officers, in case the officers are unaware of the content of the correspondence;
- confirm they will only be able to take a decision after having heard all the relevant evidence and arguments at committee;
- in any reply to correspondence either supporting or opposing an application, explain their neutral position and pass any relevant written information to officers for the file;
- before speaking at committee, declare any lobbying approaches, 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 they have gone public in support of a particular outcome or campaigned actively for it, recognise that they may well have pre-determined the issue and should withdraw from discussion of the item (see section 14).

11.2. Members should not put pressure on officers for a particular recommendation.

11.3. Members should not become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals, unless it is the member's intention to openly campaign on the matter and to step away from consideration of the matter at Planning Committee. This does not prevent members joining general interest groups that reflect their area of interest and that concentrate on issues beyond particular planning proposals (e.g. a Wildlife Trust or local civic society) but they should disclose that interest on the grounds of transparency where the organisation has made representations on a particular proposal.

11.4. If a member speaks on behalf of a lobby group or as a campaigner (for example on a proposal within their ward) at a decision-making committee, they should withdraw from the meeting once the public or ward member speaking opportunities have been completed.

## 12. Public speaking

12.1. Public speaking at Planning Committee is allowed in accordance with the agreed Public Speaking Scheme (Appendix 1). The Scheme does **not** apply to enforcement matters, applications dealt with under delegated powers, consultations or policy matters.



- 12.2. At the start of each meeting, the Chair will outline the public speaking process.
- 12.3. Members should not allow the public to communicate with them during committee proceedings, other than through the agreed protocol, as this may give the appearance of bias. This includes the use of mobile or other electronic devices..

### **13. Committee site visits**

- 13.1. A committee site visit will be held if there is a significant benefit in doing so. Reasons may include where the impact of the proposed development is difficult to visualise, where applicant and objector comments cannot be expressed adequately in writing and a site visit would show that members have listened to the arguments, or where the proposal is particularly contentious. The reason for holding a site visit will be included in the committee minutes.
- 13.2. The decision to hold a site visit is at the committee's discretion, and visits are held in accordance with the agreed protocol (Appendix 2).

### **14. Regular review of decisions**

- 14.1. The Planning Committee will regularly receive a list of delegated decisions, quarterly statistics on performance and results of the annual customer satisfaction survey, as well as the regular updates on appeals and enforcement. Members will also have the opportunity to carry out site visits of implemented planning permissions. This information will assist members to refine their understanding of the impact of their decisions, and to help the discussions on planning policy presented to them, in particular as part of the work for the review of the Local Plan for the Broads.

### **15. Predisposition, predetermination and bias**

- 15.1. 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, giving what they feel is the right weight to those material considerations. They must not give the impression that their mind is closed before the matter is considered by the decision-making committee.
- 15.2. It is not a problem for a member to be predisposed in respect of a particular planning matter. 'Predisposition' is where a member holds a preliminary view for or against an issue, such as an application for planning permission, but has an open mind to the merits of the arguments before they make the final decision at the committee meeting. This includes having a preliminary view about how they are likely to vote before the meeting, or expressing that view publicly..
- 15.3. On the other hand, 'predetermination' or bias can lead to problems. This is where a member is closed to the merits of any arguments relating to a particular issue, such as an application for planning permission, and decides on the issue without taking the evidence and arguments into account. This could lead to a challenge to the decision made through a judicial review application to the courts.

- 15.4. Members must not even appear to have already decided how they will vote at the meeting, such that nothing will change their mind. This impression can be created in a number of ways, such as quotes to the press, comments to officers, or what they have said at meetings or written in correspondence.
- 15.5. Membership of an organisation such as a national charity will rarely amount to predetermination or bias on its own, unless the organisation has a particular vested interest in the outcome of a specific decision that a member is involved in making. Members should also refer to the Code of Conduct relating to the declaration of interests for guidance.
- 15.6. There is an important difference between those members involved in taking a decision and those members seeking to influence it, as the latter are generally free to speak about how they want that decision to go. When considering whether there is an appearance of predetermination or bias, members 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?
- 15.7. When applying this test, members should be aware of the fine line between being predisposed, and being predetermined or biased, and should exercise caution and express themselves clearly where they are predisposed. Appendix 3 gives examples of the different circumstances in which predetermination and bias may arise.
- 16. Gifts and hospitality**
- 16.1. Members should refer to the Member Code of Conduct for guidance on the receipt of gifts and hospitality.

## **C. Guidance for officers**

### **17. Reports to committee**

- 17.1. 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 to the Planning Committee:
- 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 that clearly justifies the recommendation;
  - a full justification of material considerations if the recommendation is contrary to the development plan;
  - a written recommendation of action.

17.2. Verbal reporting (except to update a report) should be rare and carefully recorded in the meeting minutes when it does occur.

## **18. Complaints and record keeping**

18.1. Every planning application file must contain an accurate account of events throughout its life. Particular care must be taken with applications determined under powers delegated to officers. The principles of complete and accurate record keeping apply equally to enforcement and development plan matters. All files are stored electronically.

18.2. Complaints will be fully investigated in accordance with the Authority's complaints process, which is outlined on our website at: [How to complain \(broads-authority.gov.uk\)](#) .

## **19. Gifts and hospitality**

19.1. Officers should treat with caution any offer of a gift, favour or hospitality, or any other benefit, to themselves or a family member made by an organisation or member of the public with whom they have dealings in the course of their work. Officers should refer to the Code of Conduct for Employees, or to the Head of Human Resources, for further advice.

## Public Speaking Scheme at Planning Committee

### Purpose

The purpose of the Public Speaking Scheme at the Authority's Planning Committee is to allow applicants and objectors to speak in support of, or objection to, a planning proposal being considered by the committee.

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. Parish Councils and Ward or Division members of District Councils and the County Council may also address the Planning Committee as part of the Public Speaking Scheme.

The Scheme applies to matters where the Broads Authority is the decision maker, and not where the Authority is asked to respond as a consultee to a proposal.

The scheme does not apply to enforcement matters, applications where the proposal is dealt with or refused under delegated powers, consultations or planning policy matters such as the Local Plan for the Broads.

### Objecting to an application

While it is not essential, objectors to applications are encouraged to follow the process of making formal written submissions, which can then be referred to in reports to the Planning Committee. An opportunity to speak in front of the committee is also available if a formal objection has previously been made.

It is important to stress that there is no disadvantage to objectors who do not present their objection in person in front of the committee. Planning officers will make sure that all objections received are reported fairly, and members will fully consider the matters raised when making a decision.

### Supporting an application

Either the applicant or their agent (but not both) has the opportunity to speak at the meeting in support of the application. Any other supporters are asked to share the applicant's allotted speaking time. Applicants are also encouraged to work with the Planning Case Officer to make sure sufficient information has been submitted in advance to allow the Planning Committee to make a fully informed decision.

### Speaking at committee

It is the responsibility of objectors and the applicant/agent to contact the Planning Case Officer to follow the progress of the application, and arrange to attend the committee meeting at which the application is being considered. Progress on applications, together with committee agenda and reports, are made available on the Authority's website at <https://www.broads-authority.gov.uk/about-us/committees>.

A request to speak should be made to the Governance team as soon as possible, and at the latest by 3pm the day before the meeting. The Governance team will notify the committee Chair and the Planning Case Officer of the request. As noted above, objectors are encouraged to submit a formal written submission.

To be taken into account, any additional material on any applications or Enforcement Matters must be received at least 3 days before the meeting, otherwise it will not be taken into account. This is to give members sufficient time to consider all relevant information. However, this does not prevent those who have registered to speak from making the points within their allotted time for public speaking. Any correspondence for members concerning an application before the committee must also be addressed to the Planning Case Officer so they can provide professional advice to members. Failure to follow this process may result in items being deferred or late information being discounted.

Space is set aside in the meeting room for speakers to address the meeting. The Chair will ask all members of the public who wish to speak to come up to the public speaking space at the start of the presentation on the relevant application. The Chair may consider changing the order of the agenda in cases of exceptional public interest.

Public speaking will begin immediately after the Planning Officer's presentation, at which they will describe the proposal and site location, outline responses received, give policy guidance and make an overall assessment of the proposal with a recommendation to the committee. Representations will then be heard in the following order:

- Parish Councillors (5 minutes)
- Objectors (total of 5 minutes)
- Applicant/agent/supporters (total of 5 minutes)
- Ward or Division Councillors (5 minutes)

Any extensions to the time limit for all speakers is at the discretion of the Chair.

Any speaker who wishes to make a visual presentation to the committee, must notify the Governance team by 3pm on the previous day to see whether the necessary equipment can be made available, and the presentation is in an accessible format.

If there are several objectors, they should agree beforehand on sharing or delegating their time. This also applies to the applicant, agent and any supporters. The Chair will try to make sure points are not repeated. If there are exceptional circumstances of public interest, the Chair has discretion to increase the time allocated.

With the Chair's permission, members or officers will be allowed additional time to ask questions of the objector and the applicant, agent and supporters to seek clarification about the points raised **only**. This will be additional time to that allocated for public speaking..

Speakers are **not** allowed to question other speakers, members or officers. The Planning Officer will respond to comments and members' questions.

## Deferral

If new evidence is brought to the committee that could significantly affect or influence a decision, it may be necessary to defer consideration of the application to a subsequent meeting to allow members and officers to make a full assessment of the case.

## Appendix 2 - Protocol at Planning Committee site visits

### Selection of site visits

Planning Committee site visits are one way to make sure members get sufficient information about a site and surrounding area to reach a decision on a particular application. The visits 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. They are not formal committee meetings, and no decisions or recommendations are made at them.

The decision to hold a site visit is at the committee's discretion, and may be appropriate where:

- Officers recommend a 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 beneficial in the interests of local decision-making to demonstrate that all aspects of a proposal have been considered on site.

Determination of the majority of applications will not involve a site visit.

### Member attendance

All Planning Committee members are invited to attend site visits and are encouraged to do so wherever possible. Members are sent details of the visit in advance, including a site location map. Members who attend the site visit but not the committee meeting where the application will be considered are invited to send any comments to the Governance Officer before the committee meeting.

### Dates and times

Site visits are normally held two weeks before a Planning Committee meeting, starting at 10am.

### Other attendees

In addition to members, the following people are invited to the site visit 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 date and fact-finding nature of the visit, and permission is requested for access to the land..

### Conduct at site visit

The procedure at a site visit is as follows:

- (i) The Chair welcomes those attending, reminding them that the site visit is for fact finding only; no decision will be made on site, and the application will be considered for determination at a future committee meeting. The aim of the visit is not to debate the issues, but to make sure all participants are satisfied that members have seen all the appropriate details of the site and its surroundings. The Chair will remind members of the points in the 'Notes for members' section below.
- (ii) Apologies are noted.
- (iii) The Planning Officer describes the application giving details of the site, the development proposed and any updated information. They will show and explain any relevant drawings, and pay particular attention to the context of the site in the Broads area.
- (iv) Comments from other officers are invited, where appropriate, including:
  - County Council (Highways) Officer;
  - Other Broads Authority officers, e.g. Ecologist.
- (v) Questions from Planning Committee members are invited.

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

- (vi) Attendees walk around the site as a group, if necessary. At each stop, the Chair will ask if everyone is satisfied that all appropriate factual matters have been seen.
- (vii) The Chair concludes and closes the visit by reminding attendees when the application will be heard by the Planning Committee (if known) and when public speaking will be in operation.

The Chair may ask whether anyone (other than the applicant) wishes to refer to any points that require clarification before the committee meeting.

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

Notes for members:



- In view of the fact-finding nature of the site visit, members should be as impartial as possible before, during and after the visit.
- Participants should keep together as one group while moving around a site.
- Members should avoid discussing the application with applicants/agents or objectors before, during or after the site visit. If members wish to ask questions of any party, this should take place only when the whole group is present.
- Members should politely deflect any attempts at lobbying, by suggesting that comments be put in writing to the Authority or made during public speaking at the Planning Committee.
- Any member wishing to view a site outside an organised site visit should do so only from public vantage points, and should not enter into discussions with applicants/agents within the site.

## Appendix 3 - Predetermination and bias - examples

**Predetermination and bias may arise in a number of ways, including those set out below.**

### **Connection with someone affected by a decision**

This sort of bias particularly concerns administrative decision-making, where the Authority must take a decision that 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 that objectively looks impartial, if a member serving on it is closely connected with one of the parties involved.

### **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.

### **Prior involvement**

This sort of bias arises because someone is being asked to make a decision about a matter they have previously been involved with. This may be a problem, for example, if a member is hearing an appeal on a matter on which they have previously expressed a view. However, if the member is just required to reconsider a matter in the light of new evidence or representations, it is unlikely to be unlawful for them to participate.

### **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 that suggest 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.