

Chapter 5 Part 3: GOOD PRACTICE

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PROBITY IN PLANNING:

1. CODE OF GOOD PRACTICE FOR THE PLANNING SERVICE

This code of good practice will guide Officers and Members of the Council in dealing with planning matters and will inform local residents and potential developers as to the procedures which will apply. **(Paragraphs in bold type are intended to form the Code)**

This code draws on the document entitled “Probity in planning for Councillors and Officers produced jointly by the Local Government Association (LGA) and the Planning Advisory Service (PAS).

1.1 The general role of Members and Officers

It is essential that all Members and Officers act in a way which is fair and impartial and which is clearly seen to be so. Members and Officers should take account of all opinions which are expressed. They should act in the interests of the whole Borough rather than any partisan interest.

Members and Officers should take decisions in the interests of the whole Borough and should act impartially towards each person, company, group and locality.

1.2 Gifts and hospitality

Members and Officers may occasionally be offered gifts or hospitality by an applicant, a potential applicant or an agent. It is very important that there should be no prospect of charges of impropriety being levelled against the Council or any particular individual.

Members and Officers should abide by the Council’s Code on Gifts and Hospitality.

1.3 Discussions with applicants, potential applicants and agents

The Council recognises the value of pre-application discussions between an applicant and the Council. The pre-application process that the authority has in place is designed to ensure that local knowledge and expertise is fed in to the planning process at an early stage and that the authority complies with paragraphs 186 and 187 of the National Planning Policy Framework in engaging positively with applicants.

The authority also recognises that involving Councillors early can help to identify issues, lead on community issues and ensure that all issues are addressed in an open and transparent way. This accords with the ‘no shocks’ approach recommended by PAS.

The ability of Members to be involved has, to an extent, been strengthened by section 25 of the Localism Act. This section of the Localism Act does not however mean that the process will not be adversely affected by perception and this Code addresses those issues to ensure transparency throughout the process.

At the start of any meeting it will be made clear that any discussion will not bind the Council to making a particular decision and any views expressed are personal and provisional.

Officers will be present with Councillors in pre-application meetings with the applicant.

A written note will be made of all meetings by the Officer in attendance. These notes will contain the issues raised and advice given and will be placed on the planning file. If any confidential discussions are required, then the note will clearly be marked as confidential.

All advice will be impartial and will not advocate a particular position. This will not prevent Officers from expressing a provisional view on whether or not they would consider a proposal to be in accordance with the development plan and other material considerations.

It is recognised that it is impossible to record each and every discussion that a Councillor may have with constituents on planning matters. Members will exercise their discretion on such discussions and notify the Head of Planning and Economic Development when they consider that any meeting or discussion should be recorded on the planning file. When making such decisions Members will have regard to this Code.

1.4 Public involvement

To assist the issue of probity it is essential that members of the public are as fully involved as possible in the Planning process, in accordance with clear guidelines. Applications are therefore the subject of publicity in accordance with the Council's publicity policy. The current policy forms the appendix to this Code, which may be amended from time to time by the Planning Committee.

Public consultation on all planning applications should be carried out in accordance with the Council's Publicity Policy.

1.5 Reports

Comprehensive, accurate and impartial reports ensure adequate consideration of the issues, help to enable consistent decision-making and provide a sound basis for Members to decide whether or not to agree with the Officers' recommendations.

Officers' reports represent the professional views of the Head of Service and should cover relevant national and local policies, the substance of any objections and the views of those consulted.

Members will recognise the need for Officers' impartial advice and will not seek to compromise the impartiality of Officers.

Comments received after the preparation of the Committee agenda will be summarised verbally or through the late items report at the meeting.

1.6 Interests

Local requirements in respect of Members' interests are set out in full in the Council's Code of Conduct and the various kinds of interest are defined in detail in that document.

Members will comply with the Code of Conduct for Councillors in respect of interests.

Officers will comply with the Code of Conduct for Employees in respect of interests.

1.7 Lobbying

Members of the public (and the Ombudsman) expect that planning issues will be considered in an open and fair manner in which Members making the decision will take account of all the facts and arguments presented before arriving at a decision. If Members committed themselves one way or the other before hearing all the facts and arguments, and in particular before reading the Officer's report, they would risk making themselves vulnerable to an accusation of partiality. If they then took part in the discussion and voted, they would risk the possibility of judicial review of the decision or a finding of maladministration. Members for a Ward to which a proposal relates have a duty to be active local representatives and they may therefore, in accordance with the Council's constitution, take part in the discussion, although not vote.

Members who respond to lobbying by expressing unqualified support or opposition in respect of an issue in advance of reading the Officer's report for the relevant Committee meeting should not vote on the issue and, except for Ward Members, should not take part in the discussion, so avoiding any risk of judicial review.

Members will declare any lobbying at the start of the meeting.

1.8 Committee site visits

It is important that site visits are seen to be fair to all parties and Members will be accompanied by Officers. Representations will not be heard during the visits, as these are covered in the Officers' reports, however the applicant/agent or objectors may point out particular features or ask Members to view the site from particular viewpoints.

At the start of any site visit it will be made clear to all in attendance that the site visit is not an opportunity for lobbying.

Site visits may be held if they are likely to be of benefit to the decision-making process.

The purpose of the visits should be for Members to see the site and not to hear additional representations.

1.9 Decision Making

If Members were to take a firm view on a planning matter before the decision-making meeting, they would not be able to demonstrate that, in participating in a decision, all the relevant facts and arguments had been taken into account. They would have fettered their discretion and might therefore place the Council in danger of judicial review or a finding of maladministration.

Detailed minutes will help to confirm that the reasons for decisions which are contrary to Officers' recommendations and to established policy are clear and convincing, as required by the courts, and they will therefore help to avoid any risk of judicial review.

It is quite legitimate for Members, Officers or the Council itself to submit proposals and for them to seek to explain and justify their proposals to an Officer before consideration by Committee, however such applications can easily give rise to suspicions of impropriety and it is therefore vital to ensure that they are handled in a way that gives no grounds for accusations of favouritism.

Members and Officers taking decisions on behalf of the Council should reach their own conclusions on the issues and act in accordance with those conclusions, only after carefully weighing all relevant facts and arguments.

Members should draw conclusions only after considering Officers' reports.

Detailed reasons should be given of any Committee decisions which are contrary to officers' recommendations or to established policy.

When Members wish to add to or amend an Officer recommendation, an Officer should draft any such amendment taking into account the reasons given by Members. If necessary, the meeting should be adjourned to enable the Officers to compile the reasons (and any conditions) for permission or refusal, or to take appropriate advice.

Members or Officers who pursue planning matters on their own behalf or as agents should play no part in the decision-making process, nor should they lobby fellow Councillors.

Proposals which involve Members or Officers who are involved in the planning process* should be reported to Committee and the Council's Monitoring Officer should be informed of them.

Proposals for the Council's own development should be reported to Committee and should be treated in the same way as those of private developers.

* Officers involved in the planning process who are Chief Officers, Heads of Service and employees of the planning and building control sections.

1.10 Bias and Pre-determination

Members of the Planning Committee need to take account of the general public's expectation that a planning application will be processed and determined in a transparently open and fair manner, in which members taking the decision will take account of all the evidence presented before arriving at a decision, not take into account irrelevant evidence or representations and that to commit themselves one way or the other before hearing all the arguments and evidence makes them vulnerable to an accusation of partiality. A Member may voice their concerns publicly before a meeting, but they should make it clear that they will not form a final opinion until they have considered all the information.

Members must not prejudice their ability to participate in planning decisions at a Planning Committee by making up their mind or clearly appearing to have made up their mind on how they will vote on any planning matter prior to formal consideration of the matter at the relevant Planning Committee and hearing the officer's presentation and evidence and arguments on both sides.

Pre-determining a matter in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

If a Member has made up their mind prior to the meeting or have made public comments which indicate that they might have done and is not able to reconsider their previously held view, then they will not be able to participate on the matter.

Members who are members of a Planning Committee and who in that capacity attend any ancillary meeting or Committee need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application or on planning policies. Section 25 of the Localism Act 2011 provides that a Member should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular meeting, provided they remain open to listening to all the arguments and changing their mind in the light of all the information presented at a relevant meeting. A Member in this position will always be judged against an objective test of whether the reasonable onlooker with knowledge of the relevant facts, would consider that the Member was biased.

Circumstances may also arise where a Member has had significant personal involvement with an applicant, agent or interested party (whether or not in connection with the particular matter before the Planning Committee), which could lead an observer who knows the relevant facts to reasonably think the Member's interest is so significant that it is likely to prejudice the Member's judgement of the public interest.

For advice on bias and predetermination, Members should seek the advice of the Monitoring Officer and/ or Deputy Monitoring Officers.

1.11 Access to information

The Council will aim to give broad access to planning files.

Planning application files will be available for public inspection to the extent that they contain information which the Council is legally entitled to disclose.

Certain information may be subject to rules of confidentiality or copyright. The Monitoring Officer and the Head of Planning and Economic Development will, in case of doubt, determine whether particular documents should be disclosed.

1.12 Enforcement

It is important that Members of the public do not feel at risk of intimidation by people who may be breaching planning control. Enforcement files will not therefore be open to public inspection unless required to be under relevant legislation. They would however be available if an appeal is lodged or through prosecution, or to the Ombudsman in the event of a complaint.

Unless otherwise required by law, files relating to enforcement issues will not be open

to public inspection and, wherever possible, the names of complainants will not be revealed in order that Members of the public need not be inhibited from drawing the Council's attention to possible breaches of planning control.

1.13 Training and updating for Members

Planning legislation, guidance and procedures can be complex and therefore training and updating is essential for Members serving on Planning Committees. Some basic training on the planning process is also valuable for all members. Updating will normally involve reports to the Planning Committee. Training and updating may also take the form of seminars.

Members involved in the planning service should receive training before serving on Planning Committee and should be updated regularly on changes in legislation, policy guidance or procedures.

1.14 Monitoring the quality of decisions

The planning service aims to ensure that quality development takes place in appropriate locations and that unsuitable development is prevented. In order to ensure that these aims are met, it is necessary to assess the quality of developments which take place and the quality of the decisions which led to them. If the developments are unsatisfactory in some way, it may indicate a need for changes in the Council's policies or practices. Monitoring should help to improve the quality and consistency of decision-making, so strengthening public confidence in the planning system.

Officers should review annually a representative sample of implemented planning permissions in order to assess the quality of the decisions and advise members whether there is a need to reconsider any policies or practices.

1.15 Complaints

Any complaint received in writing about the way a planning matter has been dealt with, in terms of procedures or fairness, will be looked into fully. A disagreement with a decision will not in itself lead to investigation, however officers will explain the reasons for the decision.

Any written complaints regarding the way in which a planning decision has been reached will be investigated under the Council's Complaint Procedure.

2 PUBLICITY POLICY

1. Major Development

For applications falling within the "major developments" category, the Council will advertise the application in a local newspaper, by neighbour notification and with a site notice.

Major development includes :

- (a) 10 or more dwellings or, if this is not known, where the site is 0.5 hectares or more; and
- (b) for all other uses, where the floorspace to be created is 1000 square metres or more, or the site area is 1 hectare or more.

2. Minor Development

Minor development is all development which does not fall within the major development category above.

The Council will undertake neighbour notification as specified in section 8 below and, if the development falls within any of the defined categories at sections 3-7, will undertake further publicity as stated.

3. Applications accompanied by an Environmental Assessment

The Council will advertise the application in a local newspaper, by means of a site notice and by neighbour notification.

4. Departures from the Development Plan

Where an application proposes development which materially departs from the provisions of the development plan, then the Council will advertise the application in a local newspaper, by means of a site notice and by neighbour notification.

5. Listed Buildings and development within Conservation Areas

The Council will advertise applications for listed building consent and for developments in conservation areas which would affect the character or appearance of the area in a local newspaper, by means of a site notice and by neighbour notification.

6. Changes of Use to A3, A4 and A5 Uses (food and drink)

A3, A4 and A5 uses may be associated with additional noise, smells and general disturbance in the locality. In such cases, the Council will display a site notice and undertake neighbour notification.

7. Applications for new dwellings

Where new dwellings are proposed, particularly on infill plots, additional publicity is undertaken. The Council will display a site notice and undertake neighbour notification.

8. Neighbour notification

Neighbour notification occurs by means of a letter sent to the occupier of all buildings or land which directly about the application site as identified by the red line on an application. Where the ownership of unoccupied land is uncertain or cannot be identified from the ordnance survey plan, a site notice will be displayed. Neighbours are given 21 days from the date of a notification letter in which to comment on applications.

Neighbours are also sent further letters if an application is materially amended prior to a decision. The period for making further representations would normally be 7 days from the date of the letter.

9. Site notices

Site notices are A4 sized and brightly coloured to increase their visibility. Site notices are attached to a lamppost or similar structure as close as possible to the application site.

If the Council becomes aware that a site notice has been removed before the expiration of the consultation period, it will display a replacement notice for the remaining period of the consultation.

If a site notice is displayed, then a revised site notice (of a different colour) will be displayed to advertise the receipt of amended plans.

10. Minor amendments

Following the approval of a planning application, applicants sometimes wish to amend their proposals. Such amendments can only be dealt with if they are de minimis.

3 GUIDANCE FOR MEMBERS ON HOSPITALITY AND GIFTS

1. Introduction

This guidance is ancillary to the requirements of the Members' Code of Conduct. The Code governs the ethical standards required of Members. Specifically, it seeks to ensure that the public role of Members is not prejudiced by inappropriate behaviour or association. Members may be offered gifts or hospitality and it is important that such offers are considered critically. This guidance is written to assist in determining how to respond to such offers.

2. Principles

2.1 People or bodies may have on going contractual relationships with the Council. Equally, people or bodies may need planning permission or other consent from the Council to conduct their affairs. They could seek to secure a sympathetic response from Council Members by the making of gifts. Equally, whether or not the intention to secure an advantage is present, an outsider might suspect that any improper advantage is being sought from a Member. It is essential that Members should give critical consideration to the offer of gifts or hospitality in that light.

2.2 There are few hard and fast rules governing the acceptance of gifts and hospitality. Clearly if the offer is corrupt, there are criminal implications. Members are required to disclose any gift or hospitality over the value of £25.00 to the Monitoring Officer (MO). They will notify the MO, in writing, of the existence and nature of that gift or hospitality within twenty-eight days of receiving it. Details will be entered in a register maintained by the MO which is open to public inspection.

2.3 Members are personally responsible for all decisions connected with the acceptance of gifts or hospitality and for avoiding the risk of damage to public confidence in the authority.

2.4 Members should therefore treat all offers of gifts or hospitality with caution, with a view to not only avoiding impropriety but also any suggestion of impropriety. Members should give the same consideration to offers made to members of their family or friends which could be viewed as securing an indirect benefit to themselves.

2.5 Although all offers should be treated with caution, there will be occasions where not to accept reasonable gifts or hospitality would prejudice the regular conduct of the Council's business or give offence to persons or bodies of significance to the Council.

This is most obviously seen in the context of overseas civic twinning arrangements where courtesies demand the exchange of reasonable gifts and hospitality and special arrangements (detailed later) are in place. Equally, it is reasonable to expect business meetings to be accompanied by modest refreshment should the nature and duration of the meeting demand it. An example would be the provision of a working lunch.

2.6 It is important that the offer and receipt of gifts and hospitality takes place in an open manner. Such openness will serve to remove suspicion and provide accountability. It will also deter the making of inappropriate offers.

3. General Guidance

- * Whether to accept the offer of a gift or hospitality should be considered in the light of the above principles.
- * Members should never accept a gift or hospitality as an inducement or reward for taking any particular action.
- * Members should never accept a gift or hospitality if acceptance may be open to misinterpretation by those offering the gift or hospitality.
- * Members should never solicit a gift or hospitality.
- * Receiving civic hospitality provided by another public authority is acceptable.
- * Receiving tickets for sporting, cultural and entertainment events sponsored by the authority is acceptable.
- * Members should declare the receipt of all offers to the MO whether or not the offer has been accepted. The MO will keep a register of the receipt of gifts and hospitality, i.e. over £25.00.
- * Members should be particularly alert to any relationship that the person making the offer has to the Council, i.e. whether they have a contractual relationship with the Council or whether they are likely to require a favourable decision from the Council, e.g. a planning permission, a contract or a licence.
- * It is acceptable to receive modest gifts on significant occasions, e.g. at Christmas, where not to do so would show a lack of courtesy. An example of such a gift might be a diary or a calendar. Acceptance of a gift or hospitality is more likely to be acceptable where that offer either has been or is likely to be reciprocated by the Council.
- * Accepting modest refreshment to ease the working day is acceptable.
- * It is the responsibility of each individual Member whether to accept such offers. If in doubt, advice is obtainable from the MO.

4. Civic Gifts and Hospitality

- * It is the responsibility of the Chief Executive to ensure that hospitality for civic events is proportionate to the occasion. A guiding principle in accepting or offering hospitality is whether it is reasonable to expect the hospitality to be reciprocated at a similar level.
- * The presumption is that any gifts given to the Mayor or Deputy Mayor or Escort are gifts to the office of the Mayor and so belong to the Council. The Chief Executive is the final arbiter of whether such gifts belong to the Council or to the individual occupying the office of Mayor.
- * The Chief Executive will maintain a record of all gifts to the office of Mayor. All gifts in excess of a value of £25 will be declared to the MO for entry in the register.

4 PUBLIC SPEAKING AT PLANNING COMMITTEE

1. Protocol

Members of the public who have written to the Council objecting/supporting an application, together with the applicant will be advised in writing 7 days prior to the meeting of their opportunity to speak at the committee.

Those wishing to speak at the Committee must register their desire by telephoning the Democratic Services Section on 0115 917 3522 by 12 noon one clear working day prior to the committee meeting.

Two people objecting and two people supporting may speak.

Following the registration deadline, the people selected to speak will be notified by Democratic Services.

Speakers may be asked supplementary questions from the Committee where clarification is required, these supplementary questions will be asked via the Chair.

In the case of exceptional applications then the Head of Planning and Economic Development and Head of Legal may decide to vary these provisions to allow additional speakers to address the meeting.

People will be invited to speak after the Chair and relevant Officer have introduced the application and prior to the debate by Members.

Speakers will be limited to a maximum of 3 minutes each and may not otherwise participate in the Committee debate. The Chair will inform the speaker when there are 30 seconds remaining.

Speakers are only entitled to raise issues related to planning matters relevant to the particular application. Advice on non-planning matters will be provided on the explanatory leaflet and cannot be taken into account. The Chair will be entitled to stop the speaker if necessary. Advice can be obtained from the duty planner by telephoning 0115 917 7777.

Speakers are advised to avoid making derogatory or disparaging statements.

Speakers will not be able to ask direct questions of the Chair, Members of the Committee or Council Officers.

No visual aids will be permitted to supplement a presentation. The speaker may, however, refer to plans, photographs or other material already displayed at the meeting by the Council.

NOTES

1. Any Member may refer an application to the Planning Committee, on giving 28 days' notice from the date the application is published on the weekly list and having completed the relevant referral form. Such a Member may speak but not vote on the application, unless they are a Member of the Committee. Additionally, Ward Councillors also have the right to attend and speak but not to vote on an application for planning consent for a matter affecting their Ward. Speeches by Members who have referred an application to Committee and by Ward Members will be limited to five minutes' duration. Any Ward Councillor having spoken to the Committee will have the right to reply before the Committee votes.
2. It is expected that only one Ward Member will speak in support of an application and one against.
3. Any Member or Officer who is party to an application being considered by the Planning Committee may not avail themselves of the rights granted by this protocol because of the Codes of Conduct applicable to them and should not be present in the meeting during the consideration of their application.

Broxtowe Borough Council

Declaration of Gifts and Hospitality Form

All Councillors should conduct themselves with integrity, impartiality and honesty at all times and should maintain high standards of propriety and professionalism. Councillors should consider carefully if the acceptance of a gift or hospitality would be viewed as compromising these values.

Details of Councillor receiving gift or hospitality

First name	
Surname	
Job Title	
Department / Section	
Email Address	
Date of Declaration	

Description of gift or hospitality

Description of gift / hospitality	
Value / estimated value of gift / hospitality	
Purpose of the offer	
Person / organisation providing the gift or hospitality	
Relationship (or future relationship) to the person / organisation offering the gift or hospitality	
Acceptance of gift / hospitality	Yes / No

Retention period

Date added to register	
Date for removal from register	

Upon completion forward this form to the Monitoring Officer. This form will be retained for 7 years.