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# CARLISLE CITY COUNCIL

Report to:- **Development Control Committee**

Date of Meeting:- 3rd November 2001

Agenda Item No:-

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<b>Public</b>	<b>Policy</b>	<b>Delegated: Yes</b>
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<b>Accompanying Comments and Statements</b>	<b>Required</b>	<b>Included</b>
Environmental Impact Statement:	No	No
Corporate Management Team Comments:	No	No
City Treasurers Comments:	No	No
City Solicitor & Secretary Comments:	No	No
Head of Personnel Services Comments:	No	No

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Title:- **CODE OF CONDUCT FOR DEALING WITH PLANNING MATTERS**

Report of:- **Director of Environment and Development**

Report reference:- **EN.174/01**

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## Summary:-

The Report details proposed changes to the Code of Conduct for dealing with Planning Matters.

## Recommendation:-

It is recommended that the proposed amendments to the Code of Conduct detailed in paragraphs 2.4 to 2.6 should be approved.

Mike Battersby  
Director of Environment and Development

**Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: None**

**1.0 INTRODUCTION**

1.1 Members approved the Code of Conduct for dealing with Planning Matters in January 1999 and a copy is attached at Appendix 1. The Code covers such matters as:

- Declaration and Registration of Interests
- Development Proposals submitted by Councillors and Officers, and Council development
- Pre-application discussions
- Lobbying of and by Councillors
- Officer Reports to Committee
- Decision Contrary to Officer Recommendations and/or the Development Plan
- Committee Site visits
- Regular Review of Decisions
- Information, Complaints and Record-keeping

1.2 The Code seeks to ensure that the Council's statutory responsibilities as Local Planning Authority are carried out in an open, consistent, structured and fair manner where all interests of the community are taken into account. It is intended to assist Councillors to discharge the need for planning decisions to be made within the legal framework of the Planning Statutes and the policies of the development plan.

**2.0 Proposed Amendment**

2.1 One or two recent Committee decisions have been contrary to Officer recommendation and this is quite proper and allowed for in Section 7 of the Code of Conduct. Although the Code of Conduct details the correct procedure to follow in these circumstances some of these decisions have highlighted the problem in ensuring that the reasons given for the decision are appropriate.

- 2.2 If the applicant decides to appeal the refusal the Council could be in difficulty if the wrong policies have been quoted. To overcome this potential problem some authorities, including Cumbria County Council and South Lakeland District Council, defer the actual decision when they are minded to refuse against officer recommendation, until the next meeting.
- 2.3 This deferral allows time for confirmation that convincing reasons for refusal can be made, based on material planning considerations and the most appropriate policies.
- 2.4 It is therefore suggested that paragraph 7.1 be amended to read at the bottom of page 12.

**"If the Development Control is minded to refuse a planning application contrary to the planning officers recommendation, a final decision on the application shall be deferred until the next meeting.**

**This deferral of the decision will allow time for confirmation that clear and convincing reasons for refusal of the application can be made, based on material planning consideration".**

- 2.5 The three bullet points at the top of page 13 should be deleted.
- 2.6 Following the recent structural changes to the Council it will also be appropriate to take the opportunity to amend references to the "Planning and Land Use Sub-Committee" to the "Development Control Committee" and the Chairman of the Committee at the end of the Preface. All these proposed amendments are shown in Appendix 1 with old text crossed out and new text underlined.

3.0 RECOMMENDATION

3.1 It is recommended that the proposed amendments to the Code of Conduct detailed in paragraphs 2.4 to 2.6 should be approved.

Mike Battersby

Director of Environment and Development

**Contact Officer:** Alan Eales

**Ext:** 7170

**AMENDED CODE OF CONDUCT FOR DEALING WITH PLANNING MATTERS**

## PREFACE

The City Council has an important role as Local Planning Authority for Carlisle since planning decisions help shape how the City and its surrounding rural areas grow and develop. Planning proposals are often controversial however, and it is important that the planning process is seen to be responsive to the genuine concerns of those likely to be affected by development so that their views are fully considered. Invariably this means that the Council must, when deciding applications, reconcile different and sometimes conflicting viewpoints.

6 The Code of Conduct was adopted in January 1999. It seeks to ensure that the Council's statutory responsibilities as Local Planning Authority are carried out in an open, consistent, structured and fair manner where all interests of the community are taken into account. It is intended to assist Councillors to effectively discharge the need for planning decisions to be made within the legal framework of the Planning Statutes and the published policies of the Development Plan while having regard to the demands of their role in representing their electorate. This Code is framed to help Councillors to strike that balance in the most meaningful and transparent way.

The Council's Code of Conduct requires that advice given by Officers to Councillors and to the public on planning matters must be fair and objective. It is particularly

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important that everyone engaged in the planning process must have complete confidence in the manner in which it is conducted. The Code recognises that particular care must therefore be taken in the handling of the City Council's own planning proposals so that the public can see that these have been treated in the same objective way as other applications.

In adopting this Code of Conduct and in its implementation the City Council commits itself to providing a Planning Service that is founded on quality, responsiveness, fairness and openness. It is the least the public of Carlisle should expect and I am confident that we can fully meet that expectation.

*John Collier*  
*Councillor Geoff Prest*

Chairman of Planning and Land Use Sub-Committee  
Development Control Committee

# 1 INTRODUCTION

- 1.1 **The City Council's Code of Conduct emphasises that:**
- the planning process should be characterised by open and transparent decision making
  - one of the key purposes of the planning system is to control development in the public interest
  - the process should leave no grounds for suggesting with any justification that a decision has been partial, biased or not well-founded in any way
  - the code applies to any Committee, including full Council, when taking a planning decision
  - Councillors are responsible to the electorate and must vote in the interests of the whole District
  - Officers are responsible to the Council as a whole
  - the code is available to Councillors, staff and members of the public.

# 2 DECLARATION AND REGISTRATION OF INTERESTS

- 2.1 The nature of the planning process means that potential conflict of interests between the formal role of Councillors and Officers and their own personal activities can arise quite often. Even if the Officer or Councillor plays no part in the planning process, an outside observer might construe that they have had an influence on the decision-making process. This may be especially the case with those who hold a senior position within the Council.

Councillors involved in planning already have a statutory obligation to declare pecuniary interests and a duty under the National Code of Local Government Conduct to declare non-pecuniary interests in any planning matter coming before them.

**To avoid conflicts of interest unduly influencing its planning decisions, the Council will ensure that:**

- individual Officers and Councillors engaged in planning matters or who sit on the Planning and Land Use Sub-Development Control Committee are individually responsible for declaring interests and for following the National Code of Local Government Conduct
- the Council will maintain a register of members' interests in accordance with statutory requirements and members will notify the Town Clerk and Chief Executive of any changes to enable the register to be updated as required by statute
- Councillors and Officers will normally declare pecuniary and non-pecuniary interests at the beginning of each Committee meeting but this will not absolve them from the need to make a declaration at any other time during the meeting if an interest subsequently arises
- Councillors who have substantial property or other interests that would prevent them from voting on a regular basis should avoid serving on the Planning Development Control Committee
- the Council will hold annual seminars to advise Councillors on how to judge the declaration of interests using practical examples wherever possible
- all Planning Officers and other Senior Officers within the Council engaged in planning matters or who advise the Planning and Land Use Sub-Development Control Committee will declare any interests, such as membership of voluntary

groups or private organisations, when planning applications regarding their activities are considered by the Council.

- 2.4 The Council will prepare a council-wide code of conduct for both Members and Officers for all its activities. This planning Code of Conduct may have to be revised in due course to fit in with the council-wide code.

### DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS AND OFFICERS, AND COUNCIL DEVELOPMENT

- 3.1 There is great scope for misunderstanding amongst the public about how objectively decisions are made when the Council itself is promoting a scheme or when individual Councillors or Officers are making development proposals. Again it will be a matter of judgement for individual Councillors (bearing in mind their duties under both statute and the National Code) and Officers to declare their interest in a planning application. Where development on Council land or Council-sponsored development is concerned the legitimate interests of the Council to promote development could appear to the public to influence its planning decision.
- 3.2 To avoid the appearance of any conflict of interests and ensure that development proposals are brought forward in an open and transparent way, the Council will deal with its own planning applications in the same way as any other application. The application will be considered in the context



of the policies of the Development Plan, national and regional planning guidance and other material considerations. Furthermore, to avoid suspicions of impropriety and favouritism, **Carlisle's local code of practice is that:**

- serving councillors and Officers who submit their own proposals or act as agent for others will clearly identify their status in writing when submitting proposals and will play no part in its processing or decision-making
- the Council's monitoring officer will be informed when this occurs
- these proposals will always be reported to the Planning and Land-Use Sub-Development Control Committee and the monitoring officer will confirm that it has been processed normally
- Officers advice to the Council will be impartial and based on sound planning matters in the context of the published Development Plan, national and regional planning guidance and other material considerations.

Schemes on Council-owned sites and development the Council is otherwise promoting can attract criticism that the Council may find it difficult to separate its roles as both developer and planning authority. It is important that there is a process in place which identifies to all concerned the key planning issues and how the Council would wish to ensure any development should proceed. The Council already brings forward development briefs for important sites, mostly privately owned, such as those allocated in the Carlisle District Local Plan. This principle will be extended to all Council-related development sites. Most Council-sponsored schemes are for relatively small-scale development and it would not be appropriate to instigate a

full development brief in all cases. The scale of the site and its circumstances would determine the level of detail within the appraisal and the need for public consultation. **The Council's code will be that:**

- the Council Committee responsible for land management and disposal is not the planning-committee-Development Control Committee
- Council-owned sites will be appraised by the Council's Planning Service prior to being marketed or developers invited to negotiate a scheme
- Council-sponsored development will be brought forward within the Council in such a way that the Council's planning view has been sought prior to a planning application being prepared and this view will be made known in writing to the relevant Committee or Director
- small sites, for example housing developments of 12 or less units, will be subject to a simple planning appraisal, whilst larger or more complex sites will require a full development brief which will be agreed by the Environment or other major policy-making Committee
- the development brief will clearly set out the relevant planning matters and the Council's Local Plan policy as well as other important corporate policy issues that have a bearing on the application.

## PRE-APPLICATION DISCUSSIONS

4.1 Many of the Council's services are in regular contact with developers to assist them in bringing forward appropriate investment and development for the District. This is

recognised as good practice but it can be interpreted as a "behind closed doors" style to the public concerned about the impact of development on their area. The impartiality of Officers and Councillors is vital and the Council will maintain helpful but proper relations with developers and other interested parties to ensure consistency of approach across the Council. **The Council's guidelines are that:**

- Officers of the Planning Service should hold pre-application and pre-decision meetings with developers to discuss proposals in order to encourage appropriate development, improve schemes of poor quality and to give initial guidance on what would be permissible under current policy

- it is clear to all that the discussions do not bind the Council to a particular decision

- advice should be impartial, consistent, based on the development plan or other material considerations and it should be clear whether or not the Officers involved are the decision-makers

- written file notes should be made by Councillors and Officers of all meetings or telephone calls with developers and third parties and in the case of "contentious" discussions a follow up letter is advisable; these should be recorded on planning files – marked confidential if necessary – for subsequent reference if required

- Councillors should not, as a rule, become involved in discussion with developers or third parties regarding schemes which will potentially give rise to a planning application

- at public meetings or when presentations are made to committees/members, it will be made clear at the outset that any planning decision will only be made by the Council's Planning and Land Use Sub-Committee

- Officers from services other than Planning should also make written records of their discussions with developers and a copy should be placed on relevant planning files – marked confidential if necessary – to ensure consistency of advice

- any formal advice on the likely outcome of a planning application should be given through the Head of Planning Services or representative and then only on a "without prejudice" basis.

## 5 LOBBYING OF AND BY COUNCILLORS

5.1 This planning code of conduct must take into account the realities of the political and representative role that is undertaken by Councillors. The planning process puts Councillors into the position of taking decisions within a legal framework but also requiring them to exercise their representational role on behalf of their constituents. Lobbying of Councillors about planning matters is an integral part of democratic life in Carlisle.

5.2 The relationship between Officers and Councillors is obviously crucial to the decision-making process. Officers are accessible if Councillors wish to discuss a particular planning application but there is a clear distinction of roles and Councillors do not direct Officer advice to the Committee. The likely content of the ~~Planning and Land Use~~ Sub- Development Control Committee schedule is discussed in advance with the Chairman of the Committee and the Chairman and Vice-Chair are briefed on the detail of the

reports to the Committee.

As with other aspects of the planning function it is important that the electorate have a clear image of the guidelines under which Councillors must operate if the perception of bias and hidden decisions is to be avoided.

**The Council's code is that:**

- Councillors on ~~Planning and Land Use Sub- Development Control~~ Committee should generally avoid organising support or opposition to an application or lobbying other Councillors
- Councillors should not indicate that they have made up their mind on an issue in advance of the ~~Planning and Land Use Sub- Development Control~~ Committee, that is before being exposed to all the evidence and arguments
- Councillors should restrict themselves to giving procedural advice in advance of the ~~Planning and Land Use Sub- Development Control~~ Committee meeting; a standard letter is available for this purpose
- Planning committee members who have publicly committed themselves to a particular view on an application in their ward should make an open declaration and not vote on the application
- Councillors who have a particular ward interest can inform the Chairman of the ~~Planning and Land Use Sub- Development Control~~ Committee that they wish to represent those interests and ask for dispensation to speak at the Committee
- Councillors should not put pressure on Officers for a particular recommendation and the Head of Planning should inform the Chair of Committee and/or Chief Executive if undue lobbying from Councillors takes place
- the overriding duty of a Councillor is to the whole local community and in planning matters Councillors act as

individuals rather than as members of a political group to determine applications and policy.

## OFFICER REPORTS TO COMMITTEE

6.1

- The Council delegates to Officers authority to determine minor planning applications and applications which are uncontroversial, that is where no objections are raised. The Council's ~~Planning and Land Use Sub- Development Control~~ Committee determine all other planning applications. Councillors who sit on this Committee are guided by reports submitted by Officers. To avoid public concern and loss of confidence in the quality of decision-making and the possibility of maladministration or a judicial review, **Officer reports will:**
- be accurate, objective and fair
  - include a copy of all written submissions pertaining to relevant planning considerations on each application for the Committee's consideration; in this way all views can be made directly known to Councillors attending the meeting
  - in summary, cover the substance of the public's and other consultees views or objections
  - give a clear exposition of development plan policy, site history and material considerations
  - usually have a written recommendation
  - contain a technical appraisal which justifies the recommendation and any conditions that might be imposed on the application
  - state clearly the material considerations which justify any recommendation contrary to the development plan.

Oral reporting at the Committee will be kept to a minimum, though the Council will continue with its practice of updating the Committee on the day on certain applications, for example where information from consultees is awaited, so as to be able to deal with applications swiftly. Where reports do not have a written recommendation (on Schedule B), the "Director to Report" statement will explicitly identify the reasons for the lack of recommendation (e.g. awaiting Highway or Environment Agency comments). Where an oral report is given a careful minute will be taken of the report and the decision that is made.

## DECISIONS CONTRARY TO OFFICER RECOMMENDATION AND/OR THE DEVELOPMENT PLAN

It is particularly important that decisions should usually accord with the Development Plan (in Carlisle this is the County Structure Plan and the Carlisle District Local Plan, guided by Regional Planning Guidance) and that the Committee does not determine the application on the basis of the personal circumstances of applicants. In most cases decisions will follow the policies and proposals of the Development Plan and Councillors will generally agree with the Officers recommendation on a particular application. On occasions and quite properly, Councillors will disagree with this advice and determine a proposal according to their interpretation of the situation. It may also be the case that the circumstances and merits of a particular application might be considered as outweighing the current policy. It is important to ensure that proper procedures are followed and

detailed records are made of these types of decisions, as to why they were made and the implications of the decision. **If the Planning and Land Use Sub-Development Control Committee makes a decision contrary to the Development Plan or the Officer's recommendations:**

is minded to refuse a planning application contrary to the planning officer's recommendation, a final decision on the application shall be deferred until the next meeting.

This deferral of the decision will allow time for confirmation that clear and convincing reasons for refusal of the application can be made, based on material planning considerations.

- a detailed minute will be made by the Town Clerk to record the Committee's reasons
- the reasons should be clear and convincing
- the Chairman of the Committee will, as a matter of policy, ensure the Committee gives substantial planning reasons for its decisions and asks Officers for their advice on the implications of a contrary decision.

A contrary decision should not be made because of the personal circumstances of the applicant, unless planning policy specifically allows for this.

If Councillors wish to add or amend conditions this will also be recorded and the reasons given; Officers will be asked to draft these and include in the decision notice.

A senior legal officer will always attend the meeting to ensure procedures are followed.

## 8 COMMITTEE SITE VISITS

Site visits by the ~~Planning and Land Use Sub-~~ Development Control Committee can be a useful way of helping the Committee to reach an objective decision, especially where there are complex issues or it is a particularly controversial matter. The decision to have a site visit is usually made when the Committee, in public, first considers an application and so the determination of the application will be delayed for some 6 weeks. **The Council's good practice will be based on the following points:**

- To avoid delay and cost, site visits will only be used when the benefit is expected to be substantial.
- The reason for the visit will be recorded by the Town Clerk and will usually be that the impact of a proposal is unclear, that the application is very complex or that the proposal is particularly contentious.
- The Sub-Committee and Officers will make the visit unaccompanied by the applicant or any objectors.
- Ward Members and, where appropriate, representatives of the Parish Council are invited to attend and give their views.
- All members of the ~~Sub-~~Committee are invited to attend the site visit but the decision will be taken at the subsequent formally-convened meeting.

## 9 REGULAR REVIEW OF DECISIONS

The Council determines some 1,000 planning applications a year and so the impact of its decisions on the District can be

significant. An important element of the Council's work is to ensure that not only are its procedures in good order but that the quality of its decision-making is maintained. It would be impossible to evaluate every decision and so a selective review will be the most fruitful way forward. Such a review will encompass both the quality of the development concerned and the process by which the decision was reached. Many planning decisions are also delegated to Officers and these must also be monitored on a regular basis. There are clear links to the monitoring and review process undertaken on the Local Plan. **To improve the quality and consistency of decision-making, the Council will:**

- undertake a regular review of a sample of its recent decisions
- look at a range of types of permissions by visiting the sites of implemented planning permissions and preparing briefing notes on each case to assess the quality of its decisions
- undertake a review of a sample of delegated power files for the quality of record keeping
- monitor the comments made by members of the public on the Council's planning policies for consideration in the review of planning decisions and reviews of the Local Plan
- formally consider whether the review gives rise to the need to review policies or practices and link this to the monitoring work on the Local Plan to consider the extent to which Local Plan policy has been implemented.

## INFORMATION, COMPLAINTS AND RECORD-KEEPING

# 10

Due to the nature of the planning process, it is inevitable that not everyone will be content with the planning decisions that are taken by the Council. It is important that there is an opportunity for those people to have their complaints thoroughly investigated, particularly to ensure that the process of reaching the decision was fair and open. The availability of more information about how the planning system operates and how the Council undertakes its planning role would also probably help to reduce any concerns that might exist about probity in the planning process locally. **The Council will:**

- continue to make available the established corporate complaints system to deal with planning related matters, giving equal attention to enforcement and development plan matters as much as planning applications
- ensure every planning application file contains an accurate account of events throughout its life
- continue to publish leaflets and other documents such as the Planning Handbook in order to provide information about the Council's planning work
- further invest in the information technology which supports the work of the Planning Service in order to ensure that records are maintained and information is available to the public.

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Any concerns over how a planning matter has been handled should first be raised with the case officer dealing with the matter. If this does not resolve your concern, please contact:

Alan Eales  
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Carlisle City Council  
Civic Centre  
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