

# PLANNING PROTOCOL CONSIDERATION OF PLANNING APPLICATIONS

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## INTRODUCTION

This Protocol of Conduct in relation to planning matters ('the Planning Protocol') is based on the one adopted by Cheshire West and Chester Council but tailored for use by the Town Council.

Local Councils (town) are not planning authorities, but as important consultees they are still part of the planning process. They are no longer statutory consultees, but have the right to be notified by planning authorities if they have requested them to do so. It is important therefore, that their consideration of planning applications are conducted in public, are open and fair.

It is intended that the Planning Protocol will continue to engender public confidence in the planning system at Town level, whilst avoiding procedural rules which are so rigid and overbearing that observance of them would become an end in itself at the expense of the consideration of the merits of an application.

The role of a Neston Town Councillor is a dual one. It involves balancing representing the needs and interests of individuals and the community with the need to maintain an ethos of impartial decision making on what can often be highly controversial proposals.

## RELATIONSHIP TO THE CODE OF CONDUCT FOR COUNCILLORS

The rules in the Code of Conduct for Councillors adopted by the Local Council must always be complied with first. The rules in this Planning Protocol must then be applied. They seek to explain and supplement the Code of Conduct for Councillors for the purposes of planning matters. If a Councillor does not abide by this Code of Good Practice, they may put:

- the Council at risk of proceedings on the validity of their decision on observations; and
- themselves at risk of being named in a complaint being made to the Monitoring Officer. [A breach of the Planning Protocol is very likely to also be a breach of the Code of Conduct.]

## PURPOSE AND APPLICATION OF THE PROTOCOL

1. The aim of this Planning Protocol is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well-founded in any way.
2. The key purpose of Planning is to control development in the public interest.
3. Your role as a Member of the Town Council is to make planning observations openly, impartially, with sound judgement and for justifiable reasons.
4. This Planning Protocol applies at all times when Councillors are involved in the planning process. (This includes, when part of decision-making meetings of the Town Council or Community and Environment Committee or when involved on less formal occasions, such as

meetings with officers or the public and consultative meetings.) It applies as equally to planning enforcement matters or site-specific policy issues as it does to planning applications.

5. If you have any doubts about the application of this Planning Protocol to your own circumstances you should seek advice early, from the Council Manager or if appropriate the Monitoring Officer, and preferably well before any meeting takes place.

### **CONFLICT OF INTERESTS**

1. Councillors who have substantial property interests or other interests, which would prevent them from voting on a regular basis, should avoid serving on the Community and Environment Committee.
2. Serving Councillors, who are themselves, or are acting as agents for people pursuing, a planning matter should play no part in the decision-making process for that proposal. The identification the conflict of interest is important.
3. The Councillor concerned should make any such interest clear to the Committee if the planning application is submitted to the Community and Environment Committee.

### **DISCUSSIONS WITH APPLICANTS**

1. It is less likely that Town councillors will be involved in discussions with applicants than members of the principal council, however if councillors are involved in any type of discussions with applicants, either before or after a planning application is submitted or any other type of meeting, to discuss development proposals or other contact with applicants or their agents, it should always be made clear that the discussions will not bind the Council to make a particular decision and that any views expressed are personal and provisional.
2. Members of the Community and Environment Committee should be especially careful in attending such meetings and avoid expressing support or opposition. Also, whilst members may receive information from applicants and give information to applicants and members of the public, to safeguard their impartiality they should maintain a clear distinction between receiving/passing on information and more detailed involvement which could be mistaken for supporting or advocating a particular view or outcome.
3. Any developer presentations to councillors, outside the normal committee cycle, should be the subject of a formal request to the Council Manager. Councillors will be limited to asking questions to clarify points of detail. There will be no discussion of the merits or demerits of the proposal.
4. All meetings between councillors and applicants relating to major project applications should be recorded in writing and should be attended by an officer.

### **THE REPRESENTATIONAL ROLE**

1. It is accepted that a key element of the Councillors role and duties is representing the views of the electorate on matters of local importance. It is in this area that there can be the potential for conflict between this local representational role and the need for the Councillor to be part of the decision-making process. Members must be careful to avoid predetermination of the matter or the appearance of having made up their mind before the committee meeting.
2. It is inevitable that Councillors will be lobbied on planning proposals and asked to represent the views of the community. If letters are sent by lobbyists to Councillors, a copy of these should be sent to the Council Manager to enable the content to be considered if appropriate, by Committee. At Committee, a councillor should always declare that they have been lobbied (either in support or opposition to an application).

3. Sometimes a Neston councillor may also be a Member of Cheshire West and Chester Council (CWaC). The Town Council's view on the application does not in principle prevent that member taking part in the principal council's Planning Committee's decision-making process, but it must be clear that they have kept an open mind on the application and have not pre-determined it. When considering the application at Town level, the councillor should point out that, in the event of the matter being referred to the CWaC Planning Committee, they would consider the matter afresh and with an open mind. They may find it clearer not to express an opinion or vote at Town level.
4. It is unwise for a member to express a final personal view on the planning application before the Committee meeting at which the application response is to be determined. A member should not give the impression that when voting on an application they would not be influenced by these additional factors. To act in this way would be to appear to be acting partly out of prejudice rather than through reason based on information received and argument considered. A member who acted unreasonably in this way would increase the risk of a successful challenge to overturn the Committee's decision being made by an aggrieved party.
5. A decision on an application being considered by Community and Environment Committee cannot be determined before the formal meeting, either at a pre-briefing meeting or political meeting with the purpose of influencing councillors how to vote or for councillors agreeing how to vote.
6. Councillors should also not put undue pressure on officers to put forward a particular or comment.
7. Observations from the Town Council should always be objective after all information both for and against the application have been fairly considered. It should be remembered that the Planning Authority can only consider "material planning matters". Members should always consider the aims and policies of the Neston Neighbourhood Plan and also any stated Town Council planning objectives.

### **MEMBERS' "CALL IN" PROCEDURE**

1. Members are notified of applications in the Neston Town Council area via email and weekly memos. Any Councillor has the opportunity to refer a planning application to the Community and Environment Committee for consideration. All requests for referrals must be made within the timescale provided on the memos, and sent to the Governance and Operations Manager or Council Manager.
2. It is desirable that the member referring the application to the Community and Environment Committee attends at the meeting to explain their reasons for this matter coming before the Committee.
3. If a councillor requests that an application be considered by Committee, he/she should not express an opinion on the application prior to the meeting, but wait for all information to be available and listen to the debate before reaching a personal decision, so as to avoid the inference of pre-determination.
4. Where a member is approached to refer a planning application to the Community and Environment Committee then members are notified via the Community and Environment Committee agenda.

### **SITE-VISITS**

1. Although not common at Town level, site Inspections can play a legitimate part of the planning process but must be limited to inspections by viewing and as a fact-finding exercise. They are not to be used to determine a proposal prior to the Committee meeting. It is important to ensure that Councillors taking planning decisions are in possession of all the facts, including matters that may have been pointed out or come to light during a site

visit. Attendance of Councillors will not only demonstrate that Councillors are fully informed but will also ensure that high quality consistent and sound decisions are made, and that the risks of legal challenge are minimised.

2. Do try to attend site inspections organised by the Town Council where possible, or if invited by the planning authority. Don't request a site inspection unless you feel it is strictly necessary.
3. Do ensure that any information that you gained from the site inspection is reported back to the Committee meeting, so that all councillors have the same information.
4. Remember that if invited to join a site visit by CWaC, it constitutes a part of the formal Committee process and members' interest's provisions apply. They are arranged formally by CWaC. There is no requirement for CWaC to agree to a request by the Town Council to join the site-visit.
5. Neston Council officers or the Chairman of the Council or Committee may be allowed to attend Cheshire West and Chester Planning site-visits, if approved, but for the purpose of asking questions only and only under strict guidance. For this purpose, the Council Manager will be notified. Otherwise, third parties will not be able to attend.
6. Unless they are required to permit access to the site, the site owner will not normally be invited to attend. Discussions with the applicant, their agent or any third party should be avoided. If it is necessary to seek information from the applicant on site, this will be done by an officer.
7. The purpose of a site-visit is for Members as a group to have facts pointed out by officers and questions responded to, not for there to be a debate about issues, nor for any decision to be made on the application. That will take place at the Committee meeting.
8. Town Council only site visits should be arranged through the Council Manager and an officer should always be present. A record of the visit and those in attendance will be made. The visit must be conducted in the same way as a CWaC organised site visit.

## **PUBLIC SPEAKING AT COMMITTEE**

1. Members of the Community and Environment Committee should not allow members of the public or visiting members to communicate with them during the committee's proceedings (orally or in writing) other than through the scheme for public speaking or through the Chairman, as this may give the appearance of bias.
2. All Councillors are entitled to speak at a planning meeting in accordance with the Public Participation rules either as an individual, representative or ward member. However, where you might be regarded as having a personal and prejudicial interest in the application then you may attend and speak in accordance with the protocol but only for the purpose of making representations, answering questions or giving evidence relating to the matter in the same manner as would apply to a normal member of the public. Immediately after doing so, you must leave the meeting room whilst the meeting considers the proposal even though members of the public may remain.
3. Neston Town Council will give equal opportunity to the following groups of members of the public wishing to speak at a committee meeting on a planning application:
  - Civic Society/Local representation.
  - Objectors.
  - Applicants/supporters representations.

## **DECLARATION OF INTEREST**

1. Councillors should follow scrupulously Neston Town Council's Code of Conduct in relation to declarations of interest.
2. Not only should impropriety be avoided but also any appearance or grounds for suspicion of improper conduct. In particular, they should not favour any individual person, company or group nor put themselves in the position where they appear to do so. They should carefully consider the need to declare an interest in any planning proposal of an outside body in which the Councillor is closely involved.
3. The principles about the disclosure of interests should be applied not only to formal meetings, but also to any of a member's dealings with Council officers, or with other Councillors. Treatment of Officers by members should be fair and proper. (see also Protocol on Member-Officer Relations)
4. Members should refer to Appendix B of the Code of Conduct regarding the declaration of interests and non-participation in decision making in respect of "Disclosable Pecuniary Interests", "Other Registerable Interests" and "Non-registerable interests."

## **PLANNING OBLIGATIONS**

1. Members should avoid becoming involved in discussions with applicants, prospective applicants, their agents, landowners or other interested parties regarding benefits which may be offered to Neston Town Council or benefits which Neston Town Council itself wishes to obtain.
2. Members of a Community and Environment Committee should, when considering the merits of an individual planning application, consider any relevant planning obligation which has been offered by the applicant or agent. They may include representations on planning obligations in their observations to the planning authority.

## **PLANNING DECISIONS**

Following submission of comments by Committee a record of the decisions taken by the CWaC Planning Committee are reported to the Community and Environment Committee at their scheduled meetings or relayed by means of an Officer briefing.