



# **Protocol of Conduct in Relation to Planning Matters**

**Date adopted: January 2020**

**Review date: March 2022**

# CREWE TOWN COUNCIL PROTOCOL OF CONDUCT IN RELATION TO PLANNING MATTERS

Adopted by Council: 7<sup>th</sup> January 2020  
Review Date: March 2022

This Protocol of Conduct in relation to planning matters ('the Planning Protocol') substantially follows the Model Code produced by the Association of Council Solicitors and Secretaries following consultation with the Audit Commission, the Local Government Ombudsman and the Standards Board for England. It is based on the one adopted by Cheshire East 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 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.

## 1 INTRODUCTION

- 1.1 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.
- 1.2 The key purpose of Planning is to control development in the public interest.
- 1.3 Your role as a Member of the Town Council is to make planning observations openly, impartially, with sound judgement and for justifiable reasons.
- 1.4 When the Planning Protocol applies: this Planning Protocol applies at all times when Councillors are involved in the planning process. (This includes, where applicable, when part of decision making meetings of the Town Council or Planning 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.
- 1.5 If you have any doubts about the application of this Planning Protocol to your own circumstances you should seek advice early, from the Town Clerk or if appropriate the Monitoring Officer, and preferably well before any meeting takes place.
- 1.6 In this Planning Protocol "Planning Meeting" covers all meetings of the Planning Committee.

## 2 RELATIONSHIP TO THE MEMBERS' CODE OF CONDUCT

- 2.1 Do apply the rules in the Members' Code of Conduct first, which must always be complied with throughout the decision-making process.
- 2.2 Do then apply the rules of this Planning Protocol, which seeks to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not abide by this Planning Protocol you may put:
  - the Council at risk of proceedings on the legality or maladministration of the related decision; and
  - yourself at risk of either being named in a report made to the Council or, if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Monitoring Officer.

### **3 DEVELOPMENT PROPOSALS AND INTERESTS UNDER THE MEMBERS' CODE**

3.1 Do disclose the existence and nature of any interest, including any perceived interest, at any relevant meeting, including informal meetings or discussions with officers and other Councillors. This is your responsibility. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter.

3.2 Do then act accordingly. Where your interest is a **disclosable pecuniary interest** or a **prejudicial Interest**:

- Don't participate, or give the appearance of trying to participate, in the making of any decision on the matter. You must withdraw from the meeting room when the matter is discussed however please see paragraph 11 for your right to attend and make representations.
- Don't try to represent local, or Ward views, get another Member to do so instead.
- Don't get involved in the processing of the application. Don't seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a disclosable pecuniary interest or a prejudicial Interest in a proposal, using your position to discuss that proposal with Officers or Councillors when other members of the public would not have the same opportunity to do so.
- Do be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a disclosable pecuniary interest or a prejudicial interest to an appropriate officer, in person or in writing, the Code places greater limitations on you than would apply to a normal member of the public.

3.3 Do notify the Town Clerk in writing of your own application, or if you are employed as an agent and at the time the application is made. You do have a right to make written representations to officers of the Town Council about the proposal and may address the planning meeting in the Public Participation period subject to certain additional restrictions (see para 10 below).

### **4 FETTERING DISCRETION IN THE PLANNING PROCESS**

Given the requirement that Councillors of the planning meetings should exercise an independent mind and decide proposals in accordance with the relevant planning considerations, Councillors must not favour any person, company, group or locality or commit themselves to a particular point of view on a planning application prior to its full consideration at the Council's planning meetings.

4.1 Don't fetter your discretion and therefore your ability to participate in planning decision-making at this Council by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the Town Council or Planning Committee and of your hearing the officer's advice and evidence and arguments on both sides.

4.2 Fettering your discretion 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 pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

4.3 Do be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. Through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.

4.4 Do remember that you are, of course, free to listen to a point of view about a planning proposal from the developer, an objector or a neutral party, give procedural advice and agree to forward any comments to the planning committee, but should then refer the person to the planning authority or ask them to write to the Town Clerk. Never tell anyone you support or oppose their view or will (or will not) vote in a particular way. If you have been lobbied, make it clear at the planning committee when you make another person's view known.

4.5 Do not use any political group meetings prior to the planning meeting to determine how you or other Councillors should vote. There is no objection to a political group having a predisposition, short of predetermination, for a particular outcome or for you to begin to form a view as more information and opinions become available but decisions can only be taken after full consideration of the information and consideration at the planning committee meeting. Political Group Meetings should never dictate how Councillors should vote on a planning issue.

4.6 Don't speak and vote on a proposal where you have fettered your discretion. You do not also have to withdraw, but you may prefer to do so for the sake of appearances.

4.7 Do take the opportunity to exercise your speaking rights as local councillor where you have represented your views or those of local electors and fettered your discretion, but do not have a disclosable pecuniary interest or a prejudicial Interest. Where you do:

- advise the proper officer or Chairman that you wish to speak in this capacity before commencement of the item;
- remove yourself from the member seating area for the duration of that item; and
- ensure that your actions are recorded.

## **5 MEMBERSHIP OF THE PRINCIPAL AND OUTSIDE BODIES**

5.1 Do be aware that, if you are also a Cheshire East Councillor that you may have a personal interest in matters which relate to that organisation mentioned below and you must exercise your discretion in deciding whether or not to participate in each case and where:

- you have been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of that Council.

5.2 If you are part of the planning process at Cheshire East Council, you may decide not to express a view or vote at Town level in case you later fetter your discretion.

## **6 CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS**

It is recognised that pre-application discussions can be of great benefit to the planning process provided that they take place within clear parameters and governance arrangements.

6.1 Do refer those who approach you for planning, procedural or technical advice to Cheshire East Planning Officers, although you may advise of the procedure at Town Council.

6.2 Don't agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should arrange it through the Town Clerk and ensure that an officer accompanies you. The officer will then ensure that those present at the meeting are advised from the start that the discussions will not bind the Town Council to any particular course of action, that the meeting is properly recorded and the record of the meeting is disclosed when the application is considered by the Planning Committee.

6.3 In addition, in respect of presentations by applicants/developers:

- Don't attend a planning presentation unless an officer is present and/or it has been organised by officers.

6.4 Do ask relevant questions for the purposes of clarifying your understanding of the proposals.

6.5 Do remember that a presentation is not part of the formal process of debate and determination of a recommendation on any subsequent application.

6.6 Do be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other Councillors might vote.

## **7 LOBBYING OF COUNCILLORS**

7.1 Do explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and therefore your ability to participate in the planning meeting if you express an intention to vote one way or another or such a firm point of view that it amounts to the same thing.

7.2 Do remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.

7.3 Don't accept gifts or hospitality from any person involved in or affected by a planning proposal.

7.4 Do copy or pass on any lobbying correspondence you receive to the Town Clerk at the earliest opportunity.

7.5 Do promptly refer to the Town Clerk any offers made to you of planning gain.

7.6 Do inform the Town Clerk or Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality).

7.7 Do note that, unless you have a disclosable pecuniary interest or a prejudicial interest, you will not have fettered your discretion or breached this Planning Protocol through:

- listening or receiving viewpoints from residents or other interested parties;
- making comments to residents, interested parties, other Councillors or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
- seeking information through appropriate channels; or
- being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

## **8 LOBBYING BY COUNCILLORS**

8.1 Don't become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and are likely to have a prejudicial interest and have to withdraw.

8.2 Do register your membership of any lobby group and declare the existence and nature of your interest in any lobby. Often this will be a personal interest and you can continue to participate but note that it can sometimes be a prejudicial interest or lead to allegations of bias or predetermination and in those circumstances, you must withdraw from the meeting.

8.3 Do weigh up the following factors where your lobby group has expressed a public view on a matter and consider whether a reasonable member of the public, knowing the relevant facts, would think that you appear biased.

8.4 Do not publicly support a particular outcome on a proposal within your Ward or actively campaign for it if you wish to take part in the planning process. It would be very difficult for you to demonstrate that you had the necessary degree of impartiality to properly weigh the arguments presented and the decision would be open to challenge. Again, it is a question of maintaining the fine balance between a predisposition where your mind is not totally made up and a predetermination.

8.5 Do join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society, but disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the planning meeting that you have reserved judgement and the independence to make up your own mind on each separate proposal.

8.6 Don't excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken. It is difficult to define "excessively" but you need to consider whether a member of the public, knowing the facts, would think that, through your representations, the lobbied member was no longer able to take a view on the matter in the public interest but had predetermined it.

## **9 SITE INSPECTIONS**

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 Planning 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.

9.1 Do try to attend site inspections organised by the Town Council where possible, or if invited by the planning authority.

9.2 Don't request a site inspection unless you feel it is strictly necessary.

9.3 Do ensure that any information that you gained from the site inspection is reported back to the Planning meeting, so that all Councillors have the same information.

9.4 Do ensure that you treat the site inspection only as an opportunity to seek information and to observe the site. Do ask the officers at the site inspection questions or seek clarification from them on matters which are relevant to the site inspection.

9.5 Do be prepared to listen to and ask questions of fact from the Applicant or other parties but do not be drawn into arguments or detailed discussions on the individual merits of an application or give the impression that you have made up your mind. The decision can only be made at the Planning meeting and you should make this clear to any applicant or other party and suggest that they make written representations or use of the Public Participation arrangements and direct them to, or inform, the officer present. Don't express opinions or views to anyone.

9.6 Be wary about entering a site, which is subject to a proposal other than as part of an official site inspection, even in response to an invitation, as this may give the impression of bias. If you feel it is essential for you to visit the site other than through attending an official site inspection, please advise the Town Clerk and ensure you comply with these good practice rules.

## **10 PUBLIC SPEAKING AT MEETINGS**

10.1 Don't allow members of the public to communicate with you during the planning meeting proceedings (orally or in writing) other than through the scheme for public participation period, as this may give the appearance of bias.

10.2 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.

## **11 OFFICERS**

Councillors and officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate whilst officers are responsible to the Council as a whole. Their relationship is based upon mutual trust and understanding and this must never be abused or compromised. Instructions to officers can only be given through a decision of the Council, the Committee or under delegated powers and not by individual Councillors acting outside those powers.

11.1 Don't put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Town Clerk, which may be incorporated into any committee report.)

11.2 Do recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with the Town Clerk or Council's Planning Advisor.

11.3 Do recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Officer Code of Conduct and associated protocols, particularly the Protocol for Member/Officer Relations.

## **12 DECISION MAKING**

12.1 The Council may request a local Cheshire East Councillor, to request a proposal to go before the Cheshire East planning meeting rather than be determined through officer delegation. Be aware that Cheshire East Councillors have a "Call-in" protocol and so the Town Council will need to specify the justification for such a request.

12.2 Do come to meetings with an open mind and demonstrate that you are open-minded.

12.3 Do justify recommendations in accordance with the Local Plan unless material considerations indicate otherwise.

12.4 Do come to your decision only after due consideration of all of the information reasonably required upon which to base a decision.

## **13 TRAINING**

13.1 Do endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans and thus assist you in carrying out your role properly and effectively.

## **14 INVOLVEMENT IN SECTION 106 AGREEMENTS**

The Town Council may as part of their response to the planning authority request that a section 106 agreement (or Section 278 agreement) be entered in to with a developer. These must be relevant to planning and directly related to the proposed development if they are to be taken into account in making a decision on a planning application. Local Planning Authorities must not grant planning permission for unacceptable development because of unrelated benefits offered by the applicant and should not be unduly influenced by any benefits offered.

14.1 Do remember that the purpose of Section 106 Agreements is to help make acceptable, development which would otherwise be unacceptable in planning terms, by prescribing the nature of the development, or compensating for loss or damage created by the development, or to mitigate a developments impact. They must therefore be relevant to planning and relate fairly and reasonably to the development.

14.2 Don't hold formal or informal meetings with Applicants, Developers and Objectors over the contents of potential Section 106 agreements.

## **15 BREACHES OF THE PLANNING PROTOCOL**

Maintaining high ethical standards enhances the general reputation of the Town Council, its Councillors and its officers. Open and transparent decision making enhances local democracy and should lead to better informed citizens. This Planning Protocol, along with Crewe Town Council's Members Code of Conduct are intended to promote these standards.

15.1 Do be aware of your responsibilities under this Protocol and the Members Code of Conduct.

15.2 Do seek advice if you are in doubt.