

Date: 27 November 2007

Report ADOPTION OF A CODE OF GOOD PRACTICE – PLANNING

### Purpose of the report

1. To invite the Authority to adopt a Members' Planning – Code of Good Practice to replace the existing Members' Code for exercise of development control.

### Background

2. The Authority has in place at present a Members' Code for exercise of development control. However, following the Authority's adoption of recommendations contained in the Audit Commission Report on Planning 2004-5 and a new Code of Conduct for Members it is considered appropriate to review and update this code as well to provide more detailed guidance to Members on the decision making process in respect of planning matters. A proposed revised version of the Code was presented to the meeting of the Authority on 25 September 2007, but members had some concerns about it, and asked me to amend it in the light of the issues raised by members, consult the Member Champion for Planning on a revised version, and then resubmit it to this meeting.

### Planning – Code of Good Practice

3. The existing code for exercise of development control is set out in the Members' handbook. Its proposed replacement, "Planning – Code of Good Practice", is set out in the **Annex** to this report. As instructed, this has been rewritten from the version previously before the Authority, taking into account, in particular, the following points made by members at the last Authority meeting:
  - a. Reverting to the existing guidance on site visits – albeit slightly clarified – in particular to allow public speaking at site visits.
  - b. Recognising the legitimacy of members engaging directly with the public in relation to planning applications, whilst avoiding the appearance of bias, or infringement of the code of conduct.
  - c. Clarity about the rights of members who are not on the Planning Committee to attend its' meetings and, with the permission of the Chairman, to address the Committee; but ensuring that the public are not confused about which members are actually on the Committee and determining the application.
  - d. Greater use of plain English, and avoidance of legalistic terminology.
  - e. Reflecting the ability of members under the new code of conduct to take a preliminary view on applications, whilst not finally making up their minds until they have heard the debate at the Planning Committee (to use legal jargon: allowing members to be predisposed, but not to predetermine an application)
4. I have consulted the Member Champion for Planning (Mr Blackie) on the revised draft code, and his views have been taken into account in producing the attached final draft.

## **RECOMMENDATION**

5. That the Authority adopt the document (“Planning – Code of Good Practice”) attached as an Annex to this report in place of the existing Members’ Code for exercise of development control.

**Richard Daly**  
**Solicitor / Monitoring Officer**

14 November 2007

## YORKSHIRE DALES NATIONAL PARK AUTHORITY

### PLANNING - CODE OF GOOD PRACTICE

#### Background

In 2003 the Association of Council Secretaries and Solicitors, in consultation with the District Audit Service, Local Government Ombudsman and the Standards Board for England, prepared a model Code of Good Practice following the introduction of the new ethical framework.

The Code of Good Practice detailed below has been prepared in light of that model code. It also reflects the recommendations contained in the Audit Commission Report on Planning 2004/05 and the Yorkshire Dales National Park Authority Code of Conduct which were adopted by the Authority on 9<sup>th</sup> August 2005 and 31<sup>st</sup> July 2007 respectively.

#### Introduction

One of the key purposes of the planning system is to regulate the development and use of land in the public interest. Planning necessarily affects land and property interests and as such is often highly contentious. It is important therefore that planning decisions are made openly, impartially, with sound judgement and for justifiable reasons.

The aim of this code of good practice 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.

This Code of Good Practice applies to Members at all times when they are involved in the planning process. This includes both Planning Committee meetings, meetings of the Authority when exercising the functions of the Planning Authority, and less formal occasions, such as meetings with Officers or the public and consultative meetings. It applies to planning enforcement matters or site specific policy issues as well as to planning applications.

**If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or Deputy Monitoring Officer, and preferably well before any meeting takes place.**

#### 1. Relationship to the Members' Code of Conduct

At its meeting on 31<sup>st</sup> July 2007 the Authority adopted the Yorkshire Dales National Park Authority Code of Conduct. The Code of Conduct sets out general provisions and obligations for Members, addresses the issue of personal and prejudicial interests and registration and declaration of Members interests and of gifts and hospitality. This Code of Good Practice is intended to explain and supplement the Code of Conduct in the context of planning control.

**Do** apply the rules in the Members' Code of Conduct first, which must always be complied with.

**Do** also apply the 9 principles in relation to Members' advocacy and representational role adopted by the Authority on 26<sup>th</sup> September 2006.

**Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning control.

If you do not abide by this Code of Good Practice, you may put the Authority at risk of proceedings on the legality or maladministration of the related decision and, if the failure is also likely to be a breach of the Code of Conduct, be the subject of a complaint to the Standards Board for England.

## 2. Development Proposals and Interests under the Members' Code

### Members must always declare personal and prejudicial interests in accordance with the Members' Code of Conduct

**Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with Officers and other Members. Disclose your interest at the commencement of discussion on that particular matter.

#### Where your interest is personal and prejudicial:-

- **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Planning Authority.
- **Don't** get involved in the processing of the application.
- **Don't** use your position to discuss the proposal with Officers or Members when other members of the public would not have the same opportunity to do so. (You should never 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 Member).

Whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate Officer, in person or in writing, the Code places greater limitations on you in representing that proposal than would apply to a normal member of the public. You may address the committee but only to make a presentation in the same manner that would apply to a member of the public. You may address the Committee for up to three minutes under the scheme for public speaking (and/or ask another Member to represent your views). You must then leave the room whilst the meeting considers the matter. You may not remain to observe the meeting from the public gallery.

## 3. When to make your decision

To protect the rights of planning applicants, and to preserve the integrity of Committee decisions, it is vital that Members do not make up their minds before they have all relevant material and arguments before them at the Planning Committee meeting. Members are entitled to feel pre-disposed towards a particular decision, but must still be able to consider and weigh relevant factors before reaching the final decision. Pre-determination arises when Members' minds are closed (or reasonably perceived to be closed) to the consideration and weighing of the relevant factors. That risks making the whole decision vulnerable to legal challenge.

**Don't** make up your mind, or appear to have made up your mind, on how you will vote on any planning matter until you have heard the Officer's presentation and evidence at the Planning Committee when the matter will be considered. This is particularly important if you are contacted by an external interest or lobby group. If you have made up your mind prior to the meeting, then you will not be able to participate in the determination of the matter by the Authority because if you did take part in the discussion or vote it would put the Authority at risk in a number of ways.

Firstly it would probably in the view of the Local Government Ombudsman constitute maladministration.

Secondly, the Authority could be at risk of legal proceedings on a number of possible grounds:

- that there was a danger of bias on your part; and/ or

- pre-determination; and/or
- a failure to take into account all of the factors enabling the proposal to be considered on its merits.

You may take part in the debate on a proposal when acting as part of a consultee body (ie where you are also a Member of the county/ district/parish council as well as being a Member of the Authority), provided:

- the proposal does not significantly affect the financial standing of the consultee body; and
- you make it clear during the discussion at the consultee body that;
  - (i) your views are expressed on the limited information before you only; and
  - (ii) you will reserve judgement and the independence to make up your own mind on each separate proposal when it comes before the Authority and you hear all of the relevant information; and
  - (iii) you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Authority; and
- you disclose the personal interest regarding your membership of the consultee body when the Authority comes to consider the proposal.

Where you have already made up your mind (in legal terminology “fettered your discretion”), and therefore decline to speak or vote on a proposal, you do not also have to withdraw (unless you also have a prejudicial interest), but you may prefer to do so for the sake of appearances. If you decide to stay in the meeting, explain that you do not intend to speak and vote because you have (or you could reasonably be perceived as having) judged the matter elsewhere, so that this may be recorded in the minutes.

#### 4. Contact with Applicants, Developers and Objectors

**Do** seek to minimise social contacts with known developers particularly when the developer is known to be contemplating development within the National Park or has submitted a planning application which has yet to be determined. Within the small communities of the Dales, local Members who have long standing social contacts with known developers may have difficulty avoiding such contacts. Nevertheless Members should avoid social contact with those who are known to have submitted a “live” planning application or objected to another’s proposal in case this gives the impression that their contact with the developer would affect their judgment of the public interest. If this impression could have been given, Members should declare a personal and prejudicial interest and not participate in determination of the proposal.

**Do** refer an applicant, developer or objector who approaches you about a planning application to Officers, if they need planning, procedural or technical advice.

**Don’t** agree to any meeting with applicants, developers or groups of objectors where it could give rise to the perception that you are taking sides.. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself as this may be perceived that you are promoting one point of view or the other. Request the Head of Planning to organise it. The Officers will then ensure that those present at the meeting are advised from the start that the discussions will not bind the Authority to any particular course of action; that the meeting is properly recorded on the application file; and the record of the meeting is disclosed when the application is considered by the Planning Committee.

**Do** remember to:

- follow the rules on lobbying (below);
- consider whether or not it would be prudent in the circumstances to make notes when contacted; and

- report to the Head of Planning any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

## 5. Lobbying

For the purposes of this Code lobbying is defined as the following :

**“Approaches or representations to a Member with the intention, or which may appear to have the intention, of influencing the way the Member deals with the planning matter”**

Applicants, supporters or those who may be affected by a proposal will often seek to influence the decision by an approach to a Member of the Planning Committee. It is a fundamental principle that members of the public are free to make their views known to Members and lobbying is a legitimate form of public representation. In order for the planning system to work effectively public concerns must be adequately aired.

However if such lobbying of Members of a Planning Committee oversteps the mark it can lead, unless care is taken, to the impartiality and integrity of Members being called into question. The information provided by lobbyists is unlikely to represent a complete picture of the relevant considerations in respect of a planning matter. The views of consultees, neighbours and the assessment of the case by the Planning Officer all need to be considered before a Member is in a position to form a balanced judgment on the case. The time for individual Members of the Planning Committee to make a decision on a proposal is at the committee meeting when all available information is to hand and has been duly considered. Members may of course form preliminary views, but if they commit themselves to supporting or opposing a particular proposal outside of the meeting at which it is being considered they should take no part in determining the matter. Discretion is always advisable, and the furthest a member should ever go would be to say “From what I know at the moment I support (or have reservations about) this application, but I won’t make a final decision until I have all the facts before me at Planning Committee”.

If you are lobbied:

- **Do** explain to those attempting to lobby you that, whilst you can listen to what is said you are not in a position to express an intention to vote one way or another or to express such a firm point of view that it amounts to the same thing because this will mean you cannot participate in the Authority’s decision making
- **Do** pass on any representations you receive and copy or pass on any lobbying correspondence you receive to the Head of Planning at the earliest opportunity. It will be placed on the relevant file and taken into account in determining the application.
- **Do** report lobbying at the start of the committee meeting so that it may be minuted.
- **Do** refer any offers made to you of planning gain or to restrict the development through a proposed s.106 Planning Obligation or otherwise to the Head of Planning
- **Don’t** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum and, if over £25 in value, its acceptance is registered as a personal interest in accordance with the Authority’s Code of Conduct as soon as possible
- **Do** indicate that you will pass on that person's views to the Head of Planning and if necessary the Planning Committee when it considers the matter but that you cannot commit yourself to vote in any particular way. If you intend to speak at the committee meeting in this way make it clear at the start of your speech on the item that this is what you are doing.
- **Don’t** take part in negotiations with applicants or potential applicants regarding their proposals for development except where such negotiations are part of a structured arrangement with Officers. To do so risks public perception of pre determination. Factual

information on adopted policies can be provided, but if applicants want more detailed discussions on a scheme then they should be referred to the relevant Planning Officer.

- **Do** inform the Monitoring Officer if you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality).

Unless you have a personal and prejudicial interest in the matter, if you follow this and the other advice in this Code, you will be able to speak and vote at the committee meeting.

## 6 . Lobbying by Members

**Don't** lead or act as spokesperson of an organisation whose primary purpose is to lobby or promote or oppose a planning application. This does not preclude you from joining general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning applications eg The Victorian Society, The Ramblers, CPRE or a local civic society. You should however make sure that if the group to which you belong has adopted a view on the matter then you declare a personal (but not necessarily prejudicial) interest when the matter is discussed.

## 7. Site Visits

Site visits can play an important role in ensuring that Members make decisions on a sound understanding of the relevant issues. However care must be taken to ensure that site visits are not misused as a lobbying device to help ensure a particular outcome in respect of controversial applications or to defer consideration of an application to a subsequent meeting. It is also important that there is a clear understanding by members of the public as to why certain applications require a site visit and others do not. For these reasons:

**Do** comply with the code of practice set out in the attached appendix in deciding whether a site visit is required and if so, the procedure to be followed.

**Do** attend, if possible, site visits organised by the Authority. (Failure to attend does not necessarily mean that you are precluded from taking part in determination of that matter at Planning Committee if you consider that you have sufficient information before you to make an informed decision).

**Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.

**Do** ask the Officers at the site visit questions or seek clarification from them on factual matters which are relevant to the site inspection.

**Don't** express opinions or views on the proposal to anyone.

**Don't** enter a site which is subject to a planning application other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:

- you feel it is essential for you to visit the site other than through attending the official site visit, and
- you have first spoken to the Head of Planning about your intention to do so and why (which will be recorded on the file) and
- you can ensure you will comply with these good practice rules on site visits, and
- you have the permission of the owner of the land.

You may of course view a site from a public highway at any time, but guard against becoming drawn into discussions of the merits of any proposal.

## 8. Speaking to the Public during Meetings

**Don't** encourage members of the public to communicate with you during the committee proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of predetermination or bias.

## 9. Involvement of Authority Members not on Planning Committee

Standing Order 2.4 provides that:

- Any Member may attend as an observer a committee to which he or she has not been appointed;
- Such a Member may remain in the meeting for items of business which are considered in private and from which members of the general public are excluded; and
- Such a Member may, with the Chair's permission, speak but not vote on any matter.

However, you must still bear in mind that you continue to be bound by the Code of Conduct even when you attend a committee meeting under this provision.. *If you have a **prejudicial interest** you may only attend to make representations in the same manner that would apply to a member of the public. You must then leave the room whilst the committee considers the matter.*

Any Member who wishes to attend Planning Committee under Standing Order 2.4 and request an opportunity to speak on a matter (in which he/she doesn't have a prejudicial interest) should, if possible, notify the Head of Planning or Chairman of the committee of this intention prior to the meeting. The Member should sit separately to members of the Planning Committee, so that members of the public are aware that the Member is not a decision making Member of the committee. The Chairman may permit the Member to speak after the officer presentation and public speakers, and during the debate by Members, for a maximum of 5 minutes.

## 10. Officers

**Don't** put pressure on any Officer to put forward a particular recommendation as this may be seen as prejudicing his/her professional integrity and impartiality and may be a breach of the Code of Conduct. This does not prevent you from asking questions or submitting views to the Head of Planning which may be incorporated into any committee report.

**Do** recognise and respect that Officers involved in the processing and determination of planning matters must act in accordance with any appropriate officer and professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, Planning Officers' opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of Members.

## 11. Decision Making

### (1) Importance of approved policies in decision making

In making decisions on planning applications, the law requires the application to be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan comprises the Local Plan / Local Development Framework and such policies should not be set aside in a particular case without sound planning reasons for doing so.

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

**Do** comply with S38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.

**Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, propose deferral of the application.

**Don't** vote or take part in the decision on a proposal unless you have been present to hear everything that has been said at that meeting, including the Officers' introduction to the matter.

**Do** make sure that if you are proposing, seconding or supporting a decision (especially one contrary to Officer recommendations or the development plan) that you clearly identify and understand the planning reasons leading to this conclusion/decision and can identify the supporting evidence. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge (for example at a Public inquiry or Judicial Review proceedings).

## **(2) Reports to Committee**

Officers' written reports to committee aim to be accurate and concise and provide all relevant information. They describe the proposal, and have a reasoned planning assessment of the proposal including an analysis of all relevant planning policies and other material planning considerations. They contain a written recommendation justified on the basis of relevant development policies and other material planning considerations. They cover consultations and other representations but may not include copies of all letters of objection or support received. They will, however, summarise any material planning considerations contained in such representations. Complete copies of all such correspondence are placed on the planning file and are available to Members.

**Do** advise the case Officer as soon as is practicable if you become aware of information relevant to the determination of a case which is on the Planning Committee agenda. Failure to do so may result in deferment of the case causing unnecessary delay.

**Do** contact the Head of Planning as soon as possible if you wish to discuss the interpretation of information in a Planning Committee report

## **(3) Decisions Contrary to policy and/or recommendation**

The law requires that decisions must be taken in accordance with the Development Plan unless material considerations indicate otherwise. Officers will advise in their report what arguments put forward by an applicant /objector or supporter to an application are considered capable of constituting material considerations. Often arguments of a personal kind relating to the circumstances of the applicant are put forward to support a proposal. Personal circumstances cannot outweigh other planning considerations except in the most exceptional circumstances.

If Members are minded to approve an application contrary to policy, they must identify clear and substantiated reasons capable of constituting material planning considerations. The following procedure will also apply:

a) Where a motion is put to a meeting, which if successful would result in the determination of a planning application contrary to policy and/or the advice of the Head of Planning, the names of the Members voting for, against and abstaining in respect of that motion shall be recorded in the minutes.

b) Where material considerations are considered to justify a decision contrary to recommendation or policy, the evidence or reasoning which supports the material considerations will be recorded in the

minutes. The recording of reasons for making decisions that are contrary to policy is in line with Government advice, and the view of the courts, that clear and convincing reasons must be given when a planning authority elects not to follow approved policies or Officer recommendations based on those policies. Detailed reasons are necessary to ensure that the position is completely clear to all interested parties, including the public, and to explain what otherwise might appear to be inconsistency.

c) Where a recorded vote shows an intention to grant or refuse permission contrary to policy or/and advice, the matter will stand deferred until the next meeting of the Committee (this is called "reference back"), except where the Head of Planning indicates that the issues raised by the proposed decision do not necessitate a deferral of the determination.

d) Where a matter is subject to reference back, at the next meeting the Officers will provide an additional report giving professional advice concerning the reasons put forward for setting aside policy and/or the Officers' recommendation, and offering appropriate conditions/reasons for refusal, should Members decide to confirm their earlier resolution.

In addition:

1. Reference back cases will normally be taken in public except where legal or other considerations preclude it;
2. Reference back cases will be considered as the first item of substantive business on the Planning Committee agenda;
3. Cases will be referred to the next meeting of the Planning Committee as a matter of priority. In those cases where this is not possible, the applicant and Members will be informed of the delay and the reasons for it.

## **12. Member Training**

The planning system is a quasi judicial process involving complex legal and technical issues which require the application of sound judgement in the assessment of planning proposals. A failure to follow proper practice and procedures can lead to serious consequences for the planning Authority. Therefore Members will be unable to participate in decision making involving Planning matters if they have not attended the mandatory planning training prescribed by the Authority.

## **CODE OF PRACTICE FOR NATIONAL PARK AUTHORITY SITE VISITS**

### **Purpose of a Site Visit**

Site visits can be useful in identifying important site features relevant to a proposal that may be impossible to convey in a written report or by photographs, plans and drawings. However, site visits can cause delay in the planning process and should only be used where there is an expectation of clear potential benefit.

The purpose of a site visit is a fact finding exercise. It is not part of the formal consideration of the application. Site visits should not be used as a forum for debating the application. Members of the public have an opportunity to put forward their *views* through written representations and/or the Public Speaking Scheme at the Planning Committee when all Members are present and where the matter will be determined. All contributions at site visits should therefore be directed to matters of fact.

### **Deciding whether a Site Visit is appropriate**

Site visits will only be considered necessary where :-

- 1 the proposal is particularly complex or;**
- 2. the impact or effects of the proposed development are difficult to visualise from the plans and any supporting material including slides or photographs which form a part of the Officer presentation.**

When a site visit is proposed at a meeting of the Planning Committee, the proposer will identify which of the criteria listed above applies.

Members will first vote on whether to see the visual presentation, before considering whether a site visit is necessary. If it is decided to see the presentation, then it will be shown, with a factual commentary by Officers, but without the merits of the application being discussed.

In all cases a formal vote will be taken on whether to hold a site visit.

The Head of Planning, with the approval of the Chairman of the Planning Committee, may also authorise a site visit where he considers one of the criteria listed above applies and to wait for the next available committee meeting would unnecessarily delay the planning application. In such instances Members will be provided with a draft report which sets out the key issues to be considered on site and will record the reasons why a site visit is considered necessary.

### **Procedure at Site Visit.**

Site Visits are not formal meetings of the Planning Committee. Public *rights* of attendance do not apply, although members of the public are permitted to attend. The Authority will invite the following to the site visit:

- all Members of the Planning Committee
- the applicant/agent
- those who have made written comment

- key consultees
- the Parish Council, and
- via the secretariat of the relevant authority, ward members of the county & district council (who are not on the Planning Committee).

Members who have a personal and prejudicial interest in the application should not attend the site visit. Members who have a personal (but non prejudicial) interest may attend but should declare the existence and nature of their interest at the outset.

The letter of invitation will state the reasons for the site visit and advise those attending that they should limit comments to those relevant to the reasons specified. The letter will advise those who wish to speak that they will have three minutes to address Members of the Planning Committee. In exceptional circumstances the time limit may be extended at the Chairman's discretion. Members of other authorities must indicate if they are speaking on their Authority's behalf. Members of the Planning Committee must not attend the site visit to represent the views of other authorities or bodies, but this does not preclude Members drawing attention to matters of fact, or decisions of those authorities or bodies.

The invitation will contain a location plan, when necessary.

The site visit will start with the Chairman reading a prepared statement on the purposes & procedures of the site visit. The Chairman will remind those present of the reasons for the site visit, and the need to concentrate on relevant issues, and that notes will be made of proceedings. The merits of the proposal should not be discussed.

The Planning Officer will explain the essence of the proposal and identify the key issues for Members to assess on site.

The applicant or agent will be given the opportunity to speak, followed by key consultees, local representatives (of the County, District and Parish Councils) and then others, including objectors. Members of the general public will be invited to speak on matters of fact. The Chairman will seek to ensure that contributors focus on the issues that made a site visit necessary and that they do not unnecessarily repeat points made by previous speakers.

Members of the Planning Committee will have the opportunity to ask questions of any speaker. Members should confine their questions to points of clarification and should refrain from any declaration or indication of their views, in support of or opposition to the application, unless they intend to take no part in subsequent Planning Committee meetings.

Views will not be sought on the merits of the case.

The Chairman will formally close the site visit and announce the date and venue of the Planning Committee meeting at which the case will be considered.

An Officer will take notes of the key issues discussed at the site visit, and will report them to the Planning Committee. Whenever possible, the notes will be included as part of the main Planning Committee agenda.