

Williton Parish Council

Members' Code of Good Practice: Planning

1. Overview

The aim of this Code of Good Practice: to ensure that in the planning process there are no grounds for suggesting that a decision to make a recommendation to the local planning authority has been biased, partial or not well founded in any way.

The key purpose of Planning: to control development in the public interest to facilitate place-shaping and community planning as laid out in the Somerset Council's Development Plan. Williton Parish Council's purpose is to provide recommendations to assist the local planning authority in that development.

Your role as a member of the Environment and Planning Committee (and all Parish Councillors when a planning application is discussed by Full Council): to make recommendations to the Local Planning Authority openly, impartially, with sound judgement and for justifiable reasons.

When the Code of Good Practice applies: this code applies to Parish Councillors at **all times** when involving themselves in the planning process. (This includes decision-making meetings of the Williton Parish Council; or when involved on less formal occasions, such as meetings with Officers or the public and consultative meetings.)

Councillors are reminded that this document is only for general guidance, as it cannot cover all eventualities. It is the individual Councillor's responsibility to act correctly under all circumstances. If you have any doubts about the application of this code to your own circumstances you should seek advice early from the Parish Clerk, preferably well before any meeting takes place.

2. Background

Planning has a positive and proactive role to play at the heart of local government. It is a powerful tool that helps councils achieve the ambitions of local communities. Good planning stimulates growth and promotes innovation. It helps to translate goals for healthier communities, higher employment, better housing, reduced congestion, educational attainment, safe and sustainable communities into action through well-designed medical centres, offices, universities, homes, roads and other facilities vital to achieving them.

Williton Parish Council's decisions to make recommendations to the Local Planning Authority involve balancing the needs and interests of individual constituents and the community with the need to maintain an ethic of impartial decision-making on what can be highly controversial proposals.

The planning process is complex and sometimes highly emotive. It is essential that members of Williton Parish Council conduct themselves correctly to avoid complaints which could have personal consequences and may, in some cases, involve the Parish Council in substantial costs. For many members of the public, the Environment and

Planning Committee is the most visible operation of the Parish Council, and one that can affect their lives most directly. Some stand to gain substantial financial benefit from the outcome of the Local Planning Authority decision.

This Code of Good Practice has therefore been prepared to provide members with additional guidance on their role on the Environment and Planning Committee, and for all Parish Council members when the Full Parish Council makes a planning recommendation to Somerset Council.

3. Roles of Councillors

The planning system works best when the roles and responsibilities of the many participants essential to its effective operation are clearly understood. It is vital that elected Councillors understand their role and the context and constraints in which they operate.

Councillors

Councillors sit as a non-judicial body, but act in a semi-judicial capacity, representative of the whole local community in making decisions to make recommendations on planning applications. They must, therefore:

- a) Act fairly, openly and apolitically.
- b) Approach each planning application with an open mind, avoiding pre-conceived opinions.
- c) Carefully weigh up all relevant issues.
- d) Determine each application on its individual planning merits.
- e) Avoid undue contact with interested parties; and
- f) Ensure that the reasons for their decisions are clearly stated.

4. Members' Code of Conduct

All Councillors must follow the rules laid out in the Members' Code of Conduct to ensure they are, and are seen to be, fair and impartial in their work as a Councillor.

Relationship to the Members' Code of Conduct

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

Do then apply the rules in this Planning Code of Good Practice, which seeks 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 Council and yourself at risk of proceedings on the legality or maladministration of the related decision.

5. Development Proposals and Interests Under the Councillors' Code of Conduct

Do disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with other Parish Council members. Disclose your interest prior to the commencement of discussion on the particular matter in which you have an interest.

Do then act accordingly.

Where your interest is either a disclosable pecuniary interest or a personal and prejudicial interest.

Do not participate, or give the appearance of trying to participate, in the making of any recommendation on the matter to the Local Planning Authority.

Do ask another Parish Council member to represent your views to the Parish Council if you are unable to attend the relevant meeting. If this is not possible then it is recommended that you put those views in writing.

Do not get involved in the processing or drafting of the application.

Do not seek or accept any preferential treatment or place yourself in a position that could give the public the impression you are receiving preferential treatment. In other words, if you have a personal and prejudicial interest in a planning application, you should not seek to use your position as a Parish Councillor to discuss the matter with Officers and other Councillors when a normal member 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 personal and prejudicial interest to an appropriate Somerset Council Officer (either in person or in writing), this Code of Good Practice places greater limitations on you in representing that proposal than would apply to a normal member of the public.

For example, where you have a personal and prejudicial interest in an application to be put before the Environment and Planning Committee, you would have to withdraw from the Committee Room whilst the meeting considers it, whereas an ordinary member of the public would be allowed up to the three minutes to address the Committee and to

observe the meeting's consideration of the application. You are permitted to make a statement as per a member of the public, should you choose to do so, but then must withdraw from the meeting. If you declare a disclosable pecuniary interest, then you would also forego the right to make a statement as a member of the public and you must take no part in the proceedings whatsoever.

Do also be aware that, where:

- you have been significantly involved in the preparation, submission or advocacy of a planning proposal; or
- you have been appointed or nominated to an outside body or organisation by the Parish Council as its representative; or
- you are a trustee or company director of the body submitting the proposal and were appointed by the Parish Council;

you should always disclose a prejudicial as well as personal interest and withdraw from the meeting of the Environment and Planning Committee.

Do consider yourself able to take part in the debate on an application when acting as part of a consultee body (where, for example, you are also a Somerset Councillor), provided:

- the proposal does not substantially affect the well-being or financial standing of the consultee body.
- you make it clear to the consultee body that:
 - ◆ your views are expressed on the limited information before you only.
 - ◆ you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward, town or parish, as and when it comes before the Environment and Planning Committee, and you hear **all** of the relevant information; and
 - ◆ you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Environment and Planning Committee.
- you disclose the personal interest regarding your membership or role when the Planning Committee comes to consider the proposal.

Do notify the Clerk of the Environment and Planning Committee in writing of your own applications, and those of relatives and close associates, and note that:

6. Fettering Discretion in the Planning Process

Before considering this section, it will be helpful to the reader to refer to the broad definition of the term 'fettering a discretion' which is set out at Annex A.

Do not fetter your discretion and therefore your ability to participate in the decision-making process 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 its formal consideration at the Environment and Planning Committee without having heard the full discussion at the meeting.

Fettering your discretion in this way and then taking part in the decision may put the Council at risk of:

- a) Finding of maladministration; and
- b) 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.

Do be aware that you are likely to be considered to have fettered your discretion where the Parish 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 such significant personal involvement, 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.

Do not 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.

Do explain that you do not intend to speak and vote because you have, or you could reasonably be perceived as having, judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes of the meeting.

Do take the opportunity to exercise your separate speaking rights as a Parish Council member where you have represented your views or those of local electors and fettered your discretion, but do not have a personal and prejudicial interest.

- Where you do:
 - ◆ advise the Chair 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.

7. Contact with Applicants, Developers and Objectors

Do refer those who approach you for planning, procedural or technical advice to the Local Planning Authority

Do not 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 never seek to arrange that meeting yourself but should request the Parish Clerk, or Clerk to the Environment and Planning Committee to organise it. The Parish Clerk or Clerk to the Environment and Planning Committee will then ensure that those present at the meeting are advised from the start that the discussions will not bind the Williton Parish Council or Somerset Council Local Planning Authority 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 Environment and Planning Committee.

Always:

- follow the rules on lobbying (see below).
- consider whether or not it would be prudent in the circumstances to make notes when contacted; and
- report to the Parish Clerk 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 in the Environment and Planning Committee minutes.

In addition, in respect of presentations by applicants or developers:

Do not attend a planning presentation unless another Parish Councillor, the Parish Clerk or Assistant to the Parish Clerk is present and/or it has been organised by the Parish Office.

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

Do remember that the presentation is not part of the formal process of debate and determination of any decision to make a recommendation to the Local Planning Authority. This will be carried out by the Environment and Planning Committee.

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.

8. Lobbying of Councillors

Discussions between a potential applicant and the Parish Council prior to the submission of an application can be of considerable benefit to both parties and are encouraged. With the recognition of the need to allow and encourage Councillors to be champions of their local communities it is recognised that Councillor engagement in pre-application discussions on major development is necessary to allow Councillors to fulfil this role.

Do explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it would prejudice your impartiality, and therefore your ability to participate in the Environment and Planning Committee's decision-making, to express an intention to vote one way or another or take such a firm point of view that it amounts to the same thing.

Do remember that your overriding duty is to the whole community of the Parish. You therefore need to make decisions impartially, that should not improperly favour, or appear to improperly favour, any person, company, group or locality.

Do not accept gifts or hospitality from any person involved in, or affected by, a planning proposal. If a degree of hospitality is entirely unavoidable, ensure, its

acceptance is declared as soon as possible and remember to register the gift or hospitality in accordance with the Parish Council's rules on gifts and hospitality.

Do copy or pass on any lobbying correspondence you receive to the Parish Clerk or Clerk to the Environment and Planning Committee at the earliest opportunity.

Do promptly refer to the Parish Clerk or Clerk to the Environment and Planning Committee any offers made to you of planning gain or constraint of development, through a proposed S106 Planning Agreement, or otherwise.

Do inform the Parish Clerk or Clerk to the Environment and Planning Committee where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality).

Do note that, unless you have a disclosable pecuniary interest or a personal and prejudicial interest, you will not have fettered your discretion or breached this Planning Code of Good Practice through:

- listening to, or receiving, viewpoints from residents or other interested parties.
- making comments to residents, interested parties or other members, provided they do not consist of, or amount to, pre-judging seeking information through appropriate channels.
- being a vehicle for the expression of opinion or speaking at the meeting as a Parish Council member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion, 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; or
- being a Parish Council member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or 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.

9. Lobbying by Councillors

Do not 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 personal and prejudicial interest requiring your withdrawal from any Environment and Planning Committee meeting where the application is discussed.

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, The Ramblers or a local Civic Society. However, you will need to disclose a personal interest where that organisation has made representations on a

particular planning application and make it clear to that organisation (if approached by them) and the Environment and Planning Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal.

Do not 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 to make a recommendation to the Local Planning Authority is to be taken.

Do not decide or discuss how to vote on any planning application at any sort of political group meeting or lobby any other Councillor to do so. Political Group Meetings should **never** dictate how Councillors should vote on a planning issue. Any vote taken on political lines will leave the Council open to challenge as set out in section 4 of this code.

10. Site Visits

Whilst not every application will be deemed to require a site meeting before a recommendation is made on a planning application by the Environment and Planning Committee or Full Council, in certain circumstances they can be useful. Site visits are for observing the site and gaining a better understanding of the issues. Visits made by committee members, with the Clerk of the Environment and Planning Committee or the Parish Clerk's assistance, are normally the most fair and equitable approach. They should not be used as a lobbying opportunity by objectors or supporters. This should be made clear to any members of the public who are there.

The need for site visits

It is important for the Environment and Planning Committee to have a clear rationale for undertaking organised site visits in connection with planning applications and that any visits are conducted properly and consistently. The purpose of a site visit is for Parish Councillors to gain knowledge of the development proposal, the application site and its surroundings.

A decision by the Environment and Planning Committee to carry out a site inspection should normally only be taken where the impact of the proposed development is difficult to assess from the plans and any supporting information submitted by the applicant, or additional material provided by officers. Site visits cause delay and should only be carried out where Councillors believe a site visit is necessary to make such an assessment. Reasons should be given for the decision to make a site visit.

Site visits can cause delay and should only be carried out where Councillors believe a site visit is necessary to make such an assessment. If possible the site meeting should be carried out before the meeting of the Environment and Planning Committee meeting or Full Council meeting where the planning application is to be discussed to help ensure that no delay is caused. Reasons should be given for the decision to make a site visit.

In order to ensure that site visits are undertaken in a timely manner, the Clerk to the Environment and Planning Committee shall inform members the day the notification of the planning application is received from the Local Planning Authority or if the notification is received late in the day or it is received on a day the Clerk does not work

as soon as practically possible. Where a member(s) of the Committee consider that a site visit is required they must make a request, in writing, for a site visit to be held with their reasons to the Clerk of the Environment and Planning Committee, or Parish Clerk, within three days of receiving the notification from the Clerk. The Clerk will advise the Chairman and Vice Chairman of the Environment and Planning Committee of the request on the day the request is received and if they agree to a site visit this shall be arranged with the applicant/Agent preferably before the Environment and Planning Committee meeting where the planning application will be discussed. If it is not possible to arrange the site meeting before the Committee meeting a request for an extension of time to the Local Planning Authority shall be requested.

Who visits?

The Environment and Planning Committee as a whole may undertake a site visit which, if possible, should be scheduled to take place in advance of the Environment and Planning Committee or Full Council meeting at which the application will be discussed.

As the site visit is open to all members of the Environment and Planning Committee or Full Council those members who are not able to attend should carefully consider whether they will be in receipt of all relevant facts when the matter comes back before Committee for determination.

The applicant and/or their agent will normally be in attendance and can answer any questions members of the Environment and Planning Committee, or Full Council, may have, but no discussions with the applicant/agent will be entered into.

Members of the public will not normally be present unless agreed with the applicant/agent before the site visit commences. No discussions with members of the public will be entered into.

The Clerk to the Environment and Planning Committee, or Parish Clerk, will ensure that all correspondence in relation to site visits clearly identifies the purpose of the site visit together with the format and conduct of the inspection, so that applicants/agents and interested parties are aware prior to the meeting.

Procedure on Site

The purpose, format and conduct should be made clear at the outset and adhered to throughout the visit.

Once the site visit is started, a detailed explanation of the proposal will be made by the Clerk to the Environment and Planning Committee or in their absence the Clerk to the Parish Council or by a Parish Councillor. Councillors will then be given the opportunity to view the site and surroundings from all relevant vantage points and to ask questions to the person who has given the detailed explanation of the proposal.

Councillors should keep together during site visits and not allow themselves to be addressed separately. No decisions are made at site visits although observations may be made to the Environment and Planning Committee, or Full Council, by the applicant and any member of the public. Information obtained from the site visit must be reported to the subsequent meeting of the Environment and Planning Committee.

A record should be kept of the reasons why a site visit is called together with details of who attended the site visit and a brief record of what happened at the site visit.

Informal Site Visits

Where a site visit by the Environment and Planning Committee, or Full Council is not appropriate, there are advantages in Parish Councillors making their own individual site visits to gain knowledge of the development proposal, the application site and its surroundings.

Do make a personal visit to an application site if you do not feel you will be able to come to a fair decision without seeing the site. Always try to view the land or building concerned from a public vantage point, for example an adjoining road or a public footpath.

Do ensure that any particular observations you make during the site visit, are reported to the Environment and Planning Committee or Full Parish Council meeting, so that all Councillors have the same information.

Do ensure that you treat the site visit only as an opportunity to observe the site to clarify particular issues. Wherever possible, make the visit unaccompanied.

Do not hear representations from any other party during the visit. Where you are approached by the applicant, agent or a third party, advise them that they should make representations in writing to the Local Planning Authority and Williton Parish Council should they wish the Environment and Planning Committee or Full Parish Council meeting to take their comments into account when determining their recommendation that will be sent to the Local Planning Authority. It should be made clear that the Parish Council only makes recommendations on planning applications and do not determine them hence why their comments should always be sent to the Local Planning Authority.

Do not express opinions or views to anyone.

Do not accept an invitation to be shown around by either the applicant, agent or a third party unless you are accompanied by the Parish Clerk.

11. Public Speaking at Meetings

Do not allow members of the public to communicate with you during the Environment and Planning Committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.

Do ensure that you comply with the Williton's Parish Council's procedures in respect of public speaking.

12. Decision-Making

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

Do comply with the requirements of the Town and Country Planning Act 1990 and make decisions to make recommendations to the Local Planning Authority in accordance with the Development Plan unless material considerations indicate otherwise.

Do come to your decision to make recommendations to the Local Planning Authority 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, defer a decision on an application for planning permission it.

Do not vote or take part in the meeting's discussion on an application unless you have been present to hear the entire debate,

Do have recorded the reasons for the Environment and Planning Committee's decision to defer making a recommendation on any proposal.

Annex A

A Broad Definition of the Term 'Fettering a Discretion'

Fettering a Discretion is one of those unfriendly and legalistic phrases which derive from the statutory basis which underlies all local government decision-making. Unfortunately, it is quite difficult to replace, or to translate into normal English. So, here is a broad definition instead:

It means that where a decision-making body (like a Council, or a Committee or an Executive Councillor) is obliged to exercise some discretionary power under statute, then it must **exercise** that discretion fairly, at the right time and only after taking all proper factors into account. (Deciding upon the fate of a planning application is a good example of such a discretion.)

If, instead of keeping that essential open mind, it can be seen that it (or its members) has already **committed** themselves, in one direction or another, **before the moment**

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when that discretion must be exercised (i.e., **after** all material factors have been considered) then they are said to have “fettered their discretion”.

The consequence of such pre-judging can be dire. In a bad case, the validity of the decision could be challenged in a number of ways, including through the courts, with painful and expensive consequences for all concerned, including the Council itself, and for individual Councillors who have left themselves open to this criticism.

Policy Reviewed and Re-Adopted by the Williton Parish Council on 5th August 2024

Signed (Chairman)