

PART FIVE

A GUIDE TO THE ROLE AND RESPONSIBILITIES OF PARISH COUNCILLORS

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1. Introduction - What Parish Councillors Do

Parish Councillors have a dual role:-

- They represent the views and concerns of the residents of the parish to the parish council itself and, through it, to the district, county or unitary authority;
- They report back to residents on issues affecting the parish.

The formal part of these roles, especially the first one, is carried out by attending meetings and corresponding with the parish Clerk. The parish council might have committees and even sub-committees. This is more likely to be the case in larger councils. Individual councillors do not have, and cannot be given, powers to make decisions on behalf of the parish council. This applies to the Chair as much as to the other Councillors, although the Chair does have personal responsibilities in connection with the running of formal meetings.

The less formal part of these roles of listening and talking to people, including the local elected members of the district, county or unitary council, will almost certainly take up more of the Councillor's time. However, it is important to remember that "rules of behaviour" apply whenever activities of being a Parish Councillor are being undertaken.

What follows below are guidance notes intended to assist Councillors in avoiding pitfalls which can catch the unwary in the carrying out of what might seem the most straightforward of activities. The information will also help Parish clerks to advise their Councillors both inside and outside meetings and to induct newly-elected or co-opted Councillors.

The requirement to complete a register of interests caused some controversy when it was extended to Parish Councillors, but it is a crucial element of complying with the code of conduct. In rural parishes, and those centred on smaller settlements in particular, the risk of Councillors being affected by personal or prejudicial interests can be quite high. Also, it can be difficult to maintain an appropriate distance from local lobby or campaign groups. This is most likely to be the case in planning matters, an issue that should engage particularly those Councillors who are also elected members of the local planning authority. Advice on these potential problem areas is included in the briefings.

2. The Role of the Chair

The main rules of law governing the role of the Chair of a parish council are set out in the Local Government Act 1972, principally within Schedule 12, which sets out, for example:

- that the Chair must preside at a meeting of the parish council if he or she is present and;
- that it is the person who presided at the meeting who has the responsibility to sign the minutes as a true record.

It is the duty of the Chair

“to preserve order, and to take care that the proceedings are conducted in a proper manner, and that the sense of the meeting is properly ascertained with regard to any question which is properly before the meeting”

National Dwellings Society v Sykes (1894)

It is the Chair's responsibility:

- (a) To determine that the meeting is properly constituted and that a quorum is present;
- (b) To inform himself as to the business and objects of the meeting;
- (c) To preserve order in the conduct of those present;
- (d) To confine discussion within the scope of the meeting and reasonable limits to time;
- (e) To decide whether proposed motions and amendments are in order;
- (f) To formulate for discussion and decision questions which have been moved for the consideration of the meeting;
- (g) To decide points of order and other incidental questions which require decision at the time;
- (h) To ascertain the sense of the meeting by:
 - (i) Putting relevant questions to the meeting and taking the vote thereon (and if so minded giving a casting vote);
 - (ii) Declaring the result; and
 - (iii) Causing a ballot to be taken if duly demanded;
- (i) To approve the draft of the minutes or other record of proceedings (with the consent of the meeting);
- (j) To adjourn the meeting when circumstances justify or require that course; and
- (k) To declare the meeting closed when its business has been completed

“Knowles on Local Authority Meetings” (ICSA Publishing)

Voting

During the meeting, if a vote on a matter is tied, the Chair, or other person presiding, has a second or casting vote.

Whilst it is a convention in some councils that the Chair will not vote when a matter is put before the meeting and will only use his or her casting vote, there is no rule of law on this and it is becoming a practice little followed. Some councils apply a convention that the Chair will use his or her second or casting vote in a way to support the status quo and keep the

question open for reconsideration at a later date, which is generally considered to be best practice.

The Chair's term of office continues until the appointment of a successor, other than where the Chair resigns or is disqualified. This continuity also applies when the Chair has not been re-elected following local elections. In this case, the Chair does not have a vote on the appointment of a successor but does have a casting vote in the event of equal votes.

Outside of the Meeting

The Chair:

- is the person to whom notice of resignation is given by other Councillors or the Clerk;
- may convene meetings of the council (on proper notice to the Clerk);
- when attending ceremonial events, is the proper person to represent the parish;
- may receive an allowance to meet the expenses of his or her office.

Beyond that, the workings and decisions not taken by the council or through the delegation scheme, by one of its committees or sub-committees are to be taken by the Clerk to the parish council.

The Chair may have an enhanced role, as functions may be delegated to the Clerk in consultation with the Chair (or the Chair of a Committee). This means that the decision and the responsibility for it, remains with the Clerk (not the Chair) but that he or she must first bring the matter to the attention of the Chair and take into account the views of the Chair in coming to his or her decision.

It is also likely to be the case that the Chair will be the person whom the Clerk will approach;

- for information about the council and the parish;
- to seek to informally discuss matters with and;
- to informally consult on decisions that are in the Clerk's remit to make or pass back to a formal meeting.
- Correspondence to and from the council should normally be dealt with by the Clerk, not by the Chair, although, where there are no other administrative staff, the Chair will be the most appropriate person to deal with correspondence in the absence of the Clerk e.g. to sign letters giving effect to a council decision, or to send a 'holding' reply pending consideration of a matter by the council.

3. Guide to the Code of Conduct - Complaints and Investigations

Since May 2008, all complaints are referred locally to the standards committee of principal authorities in the first instance. In the case of town and parish councils, complaints concerning the conduct of town and parish Councillors will be referred to the standards committee of the district or unitary authority in whose area the town or parish council is situated.

An assessment sub-committee of the standards committee will consider the complaint, usually within 20 working days, and will decide, in the presence of a parish council representative:

- whether to refer it for investigation;
- whether it is more suitable for some other form of action such as mediation or conciliation;
- whether it appears to be so serious or otherwise unsuitable for local investigation that it should be referred to the Standards Board or;
- whether no further action should be taken on the matter

In the event of the assessment sub-committee deciding to take no further action, the complainant can request a review of that decision which will then be heard by a review sub-committee comprising different members of the standards committee than those who undertook the initial assessment.

If it is decided that the complaint will be investigated, the Monitoring Officer of the principal authority is responsible for appointing an investigating officer. However, if the complaint has been referred to the Standards Board the investigation will be undertaken by an ethical standards officer. It should be noted that the Standards Board does have the ability to send any referred cases back to the local standards committee if they feel that this is appropriate. If this is the case, and it has been referred back for investigation, the Monitoring Officer is again responsible for appointing an investigating officer.

Once the investigation has been completed a report will be prepared and presented to the standards committee which may meet as a committee or may proceed by way of a hearing sub-committee.

Where an ethical standards officer has undertaken an investigation he or she may still refer it back to the standards committee if it is considered it to be suitable for local determination. In the event that it is not, it will be heard by the Adjudication Panel which can impose more stringent sanctions than those available to a local standards committee, up to a maximum of 5 years disqualification.

Where the standards committee hear any matter they must first determine the facts if disputed then, if they are satisfied that there has been a breach of the code, decide on the appropriate sanction. The standards committee will normally follow rules of procedure as to the conduct of the hearing. Once a decision has been taken as to an appropriate sanction, the subject member has a right to seek permission to appeal that decision.

The Standards Board has issued extensive guidance on making complaints, what happens to complaints and also on local investigations and other action, including how to conduct an investigation, all of which can be downloaded from their website.

4. Guide to the Code of Conduct – Some Frequently Asked Questions

What is the code of conduct?

Every authority is required to adopt a code of conduct which sets out rules governing the behaviour of its members. All elected, co-opted and independent members of local authorities, including parish councils, fire, police and national parks authorities are covered by the code.

Are all councils bound by the same code?

Each authority must include the provisions of a model code of conduct approved by Parliament. Authorities can choose to add their own local rules to the model code if they wish, although most adopt the model code without additions. Any local rules must be in keeping with the spirit of the code of conduct and not make it unenforceable. If changes are made there is a duty to notify the Standards Board and advertise in a local newspaper.

What sort of things does the code cover?

The code of conduct covers areas of individual behaviour such as members not abusing their position and not misusing their authority's resources. In addition, there are rules governing disclosure of interests and withdrawal from meetings when members have relevant interests. Members are also required to record their financial and other interests.

Can I get any further guidance on the code of conduct?

Yes. A model code for parish councils and a full guide to the code of conduct was published by the Standards Board in May 2007 and can be downloaded from their website (www.standardsboard.co.uk). A pocket guide to the code is also available.

In addition the Standards Board has produced a series of fact sheets covering the following topics:

- Bullying;
- Disclosing confidential information;
- Gifts and hospitality;
- Lobby groups and declarations of interest;
- Personal and prejudicial interests;
- The ethical framework for local government.

There is also a series of frequently asked questions available from the Standards Board, which is subject to regular review and updating, to explain key points of the code of conduct.

5. Interests and bias

Members have a general duty under the code of conduct to register and, where applicable, declare personal interests at meetings. They must also consider whether their personal interest gives rise to a prejudicial one and, if so, take the relevant steps as set out below. Whilst interests can apply to many scenarios, parish councillors often have particular queries with regards to membership of lobby groups and being a dual-hatted member.

Membership of Lobby Groups

You should act in accordance with the general principles which underpin the code and in particular:

- You should serve the public interest only;
- You should not place yourself in a situation where your honesty and integrity may be questioned;
- You should reach your own conclusions on the issues before you;
- You should take decisions fairly on the merits of the issue;
- You may take into account the views of others, including your political group, but should reach your own conclusions on the issues before you act in accordance with those conclusions.

Personal interests

- The Code of Conduct requires you to declare a personal interest in any matter relating to an interest you must include in your register of interests.
- You are required to declare a personal interest if you are a member of a group that lobbies or campaigns about an issue that comes up for discussion or decision at your authority.
- You should declare the existence and nature of your interest at the meeting so that members of the public are informed about interests that may relate to your decisions.
- You can continue to participate unless the interest is also prejudicial (see the section on prejudicial interests below).
- You may not have a personal interest in a related discussion or decision of your authority if you merely campaigned on an issue as an individual and not as member of a relevant lobby group - for example, if you tackled an issue as part of your election campaign. However, you should still consider the general test for personal and prejudicial interests and whether there is any other reason why you should not participate in the decision, including the possibility of bias.
- You may want to discuss your circumstances with your monitoring officer.

For further information on bias and predetermination, see the Standards Board's occasional paper, which is available from their website - www.standardsboard.gov.uk.

Prejudicial interests

Under the Code of Conduct, you only have to withdraw from a meeting where your personal interest is also prejudicial.

Exceptions:

You cannot have a prejudicial interest in a matter if:

- a) The matter falls within one of the exempt categories of decisions under paragraph 10(2)(c), for example, any ceremonial honour given to members. A full list of exempt categories can be found in the Standards Board's code of conduct guidance, which is available on their website - www.standardsboard.gov.uk.
- b) The matter does not affect your financial interests or does not relate to a licensing or regulatory matter brought by you or a person or body in which you have a personal interest.

For example, you will not have a prejudicial interest in a developer's planning proposal which you and your lobby group have campaigned against, if you, any person, or any body you have a personal interest in is not financially affected by the proposal. The planning proposal might indirectly affect your lobby or campaign group since it relates to things it campaigns for or has expressed public opinions about. However, in this context, it will not be relevant for the purposes of the Code.

Nevertheless, you may have a prejudicial interest where the matter is an application for a grant for funding for a body on your register of interests, or a planning or licensing application made by you, a person or a body on your register of interests.

If your personal interest in a matter falls outside the exempt categories mentioned in a) above, and does affect your financial or regulatory interests, you will then have to consider the following test:

General test for prejudicial interests:

Would a member of the public, who knows the relevant facts, reasonably think your personal interest is so significant that it is likely to prejudice your judgment of the public interest?

If the answer is 'yes' then you would have a prejudicial interest.

If you have a prejudicial interest, what you can do depends on whether your authority has adopted paragraph 12(2) of the code of conduct. If it has not you must withdraw from the chamber. If it has, it will depend on whether the public are also allowed to attend the meeting for the same purpose.

If you merely campaigned on an issue as an individual and not as a member of a relevant lobby group - for example, if you tackled an issue as part of your election campaign then you may not have a personal interest in a related discussion or decision of your authority. However, you should still consider the general test (see below) for personal and prejudicial interests and whether there is any other reason why you should not participate in the decision. You should also consider the possibility of bias.

In conclusion, if the matter to be discussed will have a direct impact on a lobby campaign group of which you are a member, e.g. grant of funding or approval of planning application, it is likely to be prejudicial.

You will also need to consider:

Am I biased or have I predetermined a matter?

PRIMARY TEST:

Whether an informed member of the public would think that there is a real possibility that you could be biased.

Have I made up my mind about the issue?

You should not make your mind up about an issue before you come to take a decision on it. You can still form a provisional view but you must be willing to consider all arguments presented at the meeting and you must be genuinely open to persuasion on the merits of the case.

If you do not have a genuinely open mind about a matter, this will potentially leave the decision susceptible to legal challenge because of the common law concept of predetermination. Predetermination is a legal concept that predates the code of conduct. Further guidance on predetermination has been published by the Standards Board and can be found on their website.

Dual-hatted members

Where you have interests arising from service on other authorities and public bodies e.g. as governor on a school board or as trustee of a village hall, you need to balance three principles:

1. You should withdraw from consideration of issues where these interests conflict with your public duties, to such an extent that you have a prejudicial interest. You need to think carefully about what is the business of the meeting you are attending.
2. The rules on interests should not obstruct Members who are involved in other forms of public service, such as another tier of local government.
3. The rules on interests are not intended to interfere with the proper conduct of council business.

As above, the primary test should be: would a reasonable member of the public, who knew all the relevant facts, think that your interest was so significant that your judgement of the public interest would be prejudiced?

You can participate on the same issue at more than one tier of local government e.g. parish or district/unitary but you should:

- To avoid allegations of pre-determination at parish level, make it clear that you will reconsider the matter at the other body taking into account all relevant evidence and representations there
- At district/unitary level declare a personal (not prejudicial) interest arising from membership of the parish council which has already expressed a view on the matter, but make it clear you are considering the matter afresh, taking all the evidence and representations presented to that meeting into account.

BUT:

- You should not make decisions on planning and licensing relating to an authority on which you also serve or participate in direct negotiations between two authorities
- There is more likelihood of being able to participate if you are acting in an advisory rather than a decision-making capacity.

If you have a prejudicial interest

You can still:

- Make written representations to officers in a private capacity provided you disclose the existence and nature of your interest and don't seek preferential consideration
- Use a professional representative (e.g. for the submission of a planning application)
- Arrange for another Member to represent the view of constituents
- If your council has adopted paragraph 12(2) of the 2007 model code of conduct you can attend to speak and give evidence, and once you have spoken or are requested to you must leave the room. This depends on the public being permitted to attend for the same purpose.

You cannot:

- Be present in the public gallery or speak as a member of the public
- Make written representations to Members of the relevant Committee
- Discuss the matter with other Members (even to ask the Ward Councillor to represent your own views – as opposed to the views of constituents)
- Lobby Committee Members or try to get officers to change their decisions or recommendation.

6. Guidance on Appointments to Outside Bodies

This guidance draws attention to the main issues which you, as a Councillor, should consider when appointed to serve on an outside body. In the context of this guidance, an outside body is a non-statutory organisation which may be a charity, an incorporated company (either limited by shares or guarantee), a friendly society or an unincorporated association.

Service on outside bodies has always been an established part of a councillor's role. An appointed member on an external body will be able to use their knowledge and skills as a council member to assist the organisation to which they are appointed.

Councils are increasingly working in partnership with external organisations and greater clarity is needed as to the role of Councillors appointed to these bodies. Questions of accountability and governance are likely to arise as funding streams that are of benefit to outside bodies may be channelled through the council as the accountable body

Membership of an outside body brings into play different considerations to those which relate to council membership. As a member of an outside body you will have different duties, obligations and liabilities depending upon the type of organisation involved.

Matters to consider before appointment

Appointment to membership of outside bodies can take various forms, and before taking up active membership it would be prudent to establish the capacity in which you are appointed. This may be either:

- As a member of the management committee, board of directors or committee of trustees of the outside body. Here you will not only be representing the interests of the council but you will also have duties to the outside body and a role in its governance. You will have detailed responsibilities which are outlined further in this guidance (See section on Directors Duties); or
- As a member of an outside body where you represent the council's position as a 'member' of the outside body but take no part in its management or governance other than to attend and vote at annual or general meetings. Here you will be mainly concerned with representing the council and will not have responsibilities for governance of the body.

The main issues:

- The application of the council's code of conduct;
- The primary duty to act in the interests of the outside body;
- Duties as a charity trustee (if applicable);
- Duties as a company director (if applicable);
- Liabilities in respect of unincorporated organisations;
- Conflict with the Member's role as a Councillor.

Code of Conduct – Register of Interests

The code of conduct requires that:

“13 (2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest ..., register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

You must register a personal interest in:

“8 (1)(a) (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Authority”

Matters to Check – Questions to Ask

Councillors are advised that in the event of being appointed to an outside body and taking up the position you should be clear about the answers to the following questions:

1. What is the nature of the organisation and its main activities? Is it a company, if so what type of company is it (limited by shares or guarantee)? Is it unincorporated? Does it have charitable status?
2. In what capacity do I serve on the outside body? Is the effect of my appointment to make me a member of the company, a director or a charitable trustee?
3. Do I have a copy of the body's governing instrument (this may be a trust deed, a constitution or memorandum and articles of association)?
4. Have I been supplied with a copy of any code of conduct to which I am subject as a member of the body?
5. Am I aware of the identity of other directors, trustees or committee members?
6. Is there an officer of the body such as a Secretary or Clerk to whom I can refer?
7. Are written minutes kept of meetings and have I seen these minutes?
8. Are meetings being conducted in accordance with the governing instrument?
9. Am I aware of the financial position of the organisation to which I have been appointed?
10. Am I aware of any contracts between the body and the council?
11. Does the governing body of the organisation receive regular reports on the financial position?
12. Have I seen the last annual report and accounts?
13. Am I aware and have I been advised of the main risks the body faces and what steps are taken to deal with such risks?
14. Have I been informed of the main insurances held by the body?

Council's Code of Conduct

The council code of conduct requires that a member must observe the code of conduct whenever the member is acting as a representative of the authority.

The code of conduct also states:

“2(5) Where you are act as a representative of the authority:

- (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or*
- (b) on any other body, you must, when acting for that other body, comply with the authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.”*

Directors Duties

If the body is a limited company, it is likely that you will be appointed as a company director. You will need to complete a form giving your details for filing in the Register of Companies at Companies House. The secretary of the body should assist you with this.

Duties of company directors are not the same as your responsibilities as a Councillor.

These duties can be summarised as follows:

- A fiduciary duty to the company, not to the individual shareholders or Members, to act honestly and in good faith and in the best interests of the company as a whole. Directors are, therefore, in a similar position to trustees who must take proper care of the assets of the company.
- A general duty of care and skill to the company, but a director requires no greater skill than might reasonably be expected of someone of that individual's particular knowledge and experience. A director is not deemed to be an expert, but is expected to use due diligence and to obtain expert advice if necessary.
- Like a Councillor in respect of council decisions, the director is under a duty to exercise independent judgement, though it is permissible for him to take into account the interests of the third party which he represents (such as the council). In such a case, the director must disclose that position and tread a fine line between the interests of the company and the party represented. The director cannot vote simply in accordance with the council mandate: to do so would be a breach of duty.
- There may be actual or potential conflicts between the interests of the council and the interests of the company. For example, the company might be inflating a bid for a council grant. In such rare circumstances, the only proper way for the conflict to be resolved is for the Councillor to resign either from the company or from the council.
- Directors are not allowed to make a private profit from their position. They must therefore disclose any interests they or their family have in relation to the company's contracts. Whether they are then allowed to vote will depend upon the company's Articles of Association.
- Directors must ensure compliance with the Companies Acts in relation to the keeping of accounts and that the relevant returns are made to the Registrar of Companies. Failure to do so incurs fines and persistent default can lead to disqualification as a director.
- They should also ensure compliance with other legislation such as health and safety and equalities legislation if the company employs staff or employs contractors to undertake works.

Charitable Trustees

Those who are responsible for the control and administration of a charity are referred to as trustees, even where the organisation is a company limited by guarantee, though they are not strictly trustees. A number of publications are available on the Charity Commission's Website at: www.charitycommission.gov.uk. See Publication CC3 - "Responsibility of Charity Trustees" which is a useful reference document.

A charity may also be unincorporated (see below).

The duties of charity trustees can be summarised as follows:

- Trustees must take care to act in accordance with the charity's trust deed or governing document and to protect the charity's assets i.e. act to ensure that the people the trust is held for benefit. They are also responsible for compliance with the Charities' Acts and the Trustee Act 2000.
- Trustees must not make a private profit from their position. They must also perform their duty with the standard of care which an ordinary, prudent business person would show. Higher standards are required of professionals and in relation to investment matters.
- Charitable trustees must ensure that the information relating to the trust and trustees is registered with the Charity Commissioners and that annual accounts and returns are completed and sent.
- If charitable income exceeds £10,000, the letters, adverts, cheques etc must bear a statement that the organisation is a registered charity.
- Trustees are under a duty to ensure compliance with all relevant legislation, for example, in relation to tax and health and safety.

Unincorporated Organisations

Groups that are not limited companies may be "unincorporated associations" which have no separate identity from their Members. The rules governing the Members' duties and liabilities will (or should) be set out in a constitution, which is simply an agreement between members as to how the organisation will operate. Usually the constitution will provide for a management committee to be responsible for the everyday running of the organisation. Management Committee members must act within the constitution and must take reasonable care when exercising their powers.

Members who are involved in the administration of an unincorporated body will need to be aware that as the body has no separate corporate status, any liabilities will fall upon the members personally.

Members need to assess the risk of personal liability and the extent to which this has been covered by insurance arrangements.

Conflicts of interests and bias

Councillors appointed to an outside body will have a personal interest in that body and will need to consider their position when they sit on cabinet, a council committee or other decision-making body which is considering a matter which relates to the outside body.

A personal interest will always need to be declared and the Councillor will need to consider whether or not they also have a prejudicial interest arising from that membership.

Having prejudicial interest rules apply, regardless of whether or not the Councillor was appointed onto the outside body by the council. The rules simplify what were quite complex rules about overriding duties to a company or as a trustee that were applicable under the previous code of conduct.

What may happen in relation to that item of business depends on whether that Councillor has a "prejudicial interest" under the code of conduct and the meeting rules.

If the council has adopted paragraph 12(2) of the code of conduct, a Councillor has a prejudicial interest in an item of business arising from their membership of an outside body they must still leave the Chamber, but only after they have attended the meeting for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose.

Involvement and Reporting

Councillors appointed to an outside body should ensure that they take a proper role in the management and governance of that body. This will include attending meetings regularly and being familiar with issues relating to that body.

It is recommended that a Councillor appointed as the council's representative should consider the need to make reports to the council on the progress being made by that body and on any issues which the council should consider.

Further Advice

Relationships between the council, outside bodies and the council's representative can be complex. In any case of dispute or difficulty, advice should be sought from the Clerk, who can then take advice from professional advisors where necessary.

7. Guide to Probity and Planning

Under the relevant planning legislation, parish councils are entitled to be notified of every planning application unless they have waived the requirement. The district/unitary council have to inform the parish council in writing of the application, indicating the nature of the development and identifying the land to which it relates. If the parish council wishes to make any representations it must do so within 14 days of the notification made to it. However, local protocols may exist and it is always advisable to check with the relevant district council what arrangements have been put in place.

Many of the complaints considered by the Standards Board for England relate to members' involvement in planning applications and it is therefore very important that members are scrupulous in their adherence to the code of conduct, for example in declaring personal interests (paragraphs 8 and 9 of the code); leaving the room if the interest is prejudicial (paragraph 12) and not using their position as a member to improperly confer on themselves or any other person, an advantage or disadvantage (paragraph 6).

If a member of the parish council is also a member of the district council planning committee which is considering a planning application, the member will need to be careful that they have not pre-determined an application as a result of any prior involvement of the parish council. If in doubt, the Councillor should consult their Monitoring Officer.

What is a Material Planning Consideration?

The primacy of the development plan has been with us for some time. This is currently expounded through S38 of The Planning and Compulsory Purchase Act 2004, which states

'If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination is to be made in accordance with the plan unless material considerations indicate otherwise.'

Policy documents within the plan change from time to time. Current advice is that if a policy in the development plan conflicts with any other policy in the development plan the conflict must be resolved in favour of the document most recently adopted, approved, or published.

So what is a material planning consideration that has the ability to overturn the development plan? In short, it is relevant elements of policy (national, regional and local), the views of consultees and factors on the ground.

In terms of consultees, there are statutory and non-statutory consultees. The council is a non-statutory consultee but its views and those of local residents are always considered, but local opposition or support on its own is not a reason for refusing or granting planning permission. Opposition or support must be backed up by valid planning reasons.

Whether or not a factor is capable of being a material planning consideration is a matter of law. Beyond that, it is a matter of fact whether a factor *capable* of being a material consideration *is* a material consideration in any particular case. Once the existence of the material consideration is established, the "weight" given to it in the eventual decision is a matter of judgement for the local planning authority.

In responding to planning applications submitted in the council's area, it is important to differentiate between material and non-material considerations. In short, the former can legitimately be considered and the latter cannot.

Examples of issues the local planning authority can normally consider as a material planning consideration:

- Overshadowing;
- Overlooking and loss of privacy;

- Adequate parking and servicing;
- Overbearing nature of proposal;
- Loss of trees;
- Loss of ecological habitats;
- Design and appearance;
- Layout and density of buildings;
- Effect on listed building(s) and conservation areas;
- Access and highways safety;
- Traffic generation;
- Noise and disturbance from the scheme;
- Disturbance from smells;
- Public visual amenity (not loss of private individual's view);
- Flood risk.

Examples of issues the local planning authority cannot normally consider as a material planning consideration:

- Loss of value to private individual property;
- Loss of view;
- Boundary disputes including encroachment of foundations or gutters;
- Private covenants or agreements;
- The applicant's personal conduct or history;
- The applicant's motives;
- Potential profit for the applicant or from the application;
- Private rights to light;
- Private rights of way;
- Damage to property;
- Disruption during any construction phase;
- Loss of trade and competitors;
- Age, health, status, background and work patterns of objector;
- Time taken to do the work;
- Capacity of private drains;
- Building and structural techniques;
- Alcohol or gaming licences.