

# Planning Applications

## A Code of Conduct for Highland Councillors dealing with Planning Applications

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### About This Document

This document explains the guidelines that Highland Councillors follow when a Planning Application is being decided.

*(Sections in italics provide further explanation to assist understanding and interpretation of the code).*

The Council is anxious to ensure that the way it deals with all applications is consistent and fair.

As you will see, many people may have an interest when applications are submitted, perhaps as a neighbour or as a member of an interest group, or as the person applying for permission.

The Council must apply the legal procedures and rules with care, and take account of everything that is relevant to planning. It is very important that minds are not made up before all the proper information is at hand.

If you wish to speak to your Councillor about your planning application please read the notes in this leaflet carefully. If you have any queries we would like to help.

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### The National Code of Local Government Conduct

This code is issued by the Secretary of State for Scotland and applies to all Highland Council Members.

Councillors must follow the advice and requirements of the “National Code of Local Government Conduct” and Highland Council’s Standing Orders in deciding whether they have any clear and substantial private or personal interest in a planning matter coming before Committee. If the Councillor judges that the interest might affect his or her ability to act impartially or which might be

perceived by the public as likely to have that effect, then the Councillor will declare an interest and take no part in the discussion and determination of the matter.

*The National Code gives the following guidance to Councillors in deciding whether an interest is clear and substantial:-*

*“In deciding whether such an interest is clear and substantial you should ask yourself whether members of the public, knowing the facts of the situation, would reasonably think that you might be influenced by it. If you think so, you should regard the interest as clear and substantial”.*

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## **The Highland Council’s Own Developments**

On behalf of the various Service Committees of the Council, many Councillors will be responsible for activities relating to the purchase, management or selling of land and buildings. It is very important therefore that when dealing with planning proposals submitted by these Service Committees on behalf of the Highland Council, Councillors will confine their deliberations to the planning issues only.

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## **Discussion between Councillors And Planning Applicants**

Councillors must not take part in or give the impression of involvement in discussions with applicants concerning their proposals for development except where such negotiations are part of a structured arrangement with the Council’s planning officers. This applies both before an application is submitted as well as afterwards. However Councillors can often help the planning process because of local knowledge and by giving information and advice that can guide an applicant. This is particularly so where an applicant is acting on his/her own behalf with a proposal for a single house or a small business.

*This does not stop Councillors from receiving information from applicants or other members of the public but, in order to preserve their role as impartial decision-makers, they must maintain a clear distinction between receiving information, giving advice and negotiation.*

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## **Social Contacts with Applicants**

Councillors will seek to minimise social contacts with known developers and refrain from them when the developer is known to be contemplating development within the Highland Council area or has submitted a planning application which has yet to be determined. Within the small communities of the Highlands, Councillors who have long-standing social contacts with known developers may have difficulty in avoiding such contacts.

This guidance also applies to those who have objected to planning applications, because this may also give the impression to others that a Councillor favours the applicant or objector in determining the application. Where, as a consequence of contact, such an impression could have been given,

Councillors should declare an interest under the code and not participate in the discussion or determination of the proposal.

*Paragraphs 27-29 of the National Code of Local Government Conduct addresses the question of accepting hospitality.*

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## Responding To Lobbying

Except in exceptional circumstances, Councillors should avoid giving any commitment to applicants or objectors to support or oppose an application. Councillors should also avoid giving the impression of a commitment. It would, however, be appropriate to pass on knowledge of previous planning decisions relating to the site.

*The information provided by lobbyists is likely to represent an incomplete picture of the relevant considerations in respect of a planning application. The views of neighbours, the Community Council and relevant consultees, and the assessment of the case by the planning officer all need to be considered before a Councillor is in a position to make a balanced judgement on the merits of the case.*

*In the interests of being seen by the public as fair and impartial decision makers, Councillors should not commit themselves, give the impression of making a commitment or seek to persuade fellow Councillors to do so, outside of the relevant committee meeting.*

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## Personal Circumstances of the Applicant

In deciding planning applications, Councillors will only take account of the personal circumstances of the applicants insofar as it is compatible with the Government's advice on this matter in Circular 18/1986 (extract quoted below).

### “Personal” Permissions

*“Unless the permission otherwise provides, planning permission runs with the land and it is seldom desirable to provide otherwise. There are occasions, however, where it is proposed exceptionally to grant permission for the use of a building or land for some purpose which would not normally be allowed at the site, simply because there are strong compassionate or other personal grounds for doing so. In such a case the permission may be made subject to a condition that it shall enure only for the benefit of a named person - usually the applicant. This condition will scarcely ever be justified in the case of a permission for the erection of a permanent building”.*

More detailed guidance on the relevance and importance of personal circumstances in relation to housing in the countryside within certain areas of the Highlands was adopted by the Highland Council in May 1995. In such areas housing is only permitted where the house is essential for:

- the management of land;
- related family reasons;

- occupational purposes and in such circumstances the Council still insists on sound principles of good siting and building design.

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## **The Importance of Approved Policies in Decision Making**

In making decisions on planning applications Councillors will recognise that the law requires decision makers to have regard to the approved Structure Plan and its own adopted or emerging Local Plans, so far as material to the application, and to any other material considerations. Where the plans are material to the development proposal, Councillors must have regard to Section 18A of the Town & Country Planning (Scotland) Act 1992 which requires the application to be determined in accordance with the Plan, unless material considerations indicate otherwise.

*It should be noted that the law now gives substantial weight to the policies of Structure and Local Plans and they should not be set aside in a particular case without sound planning reasons for doing so.*

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## **Advice to Applicants Before They Apply**

The Council encourages applicants to discuss their proposals with the planning officer before applying. This can often save on time later when the application is made. Occasionally, the planning officer may advise that a proposal is contrary to Council policy. If this leads to a recommendation to refuse permission, such a decision can only be taken by Councillors meeting together in Planning Committee.

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## **Recording the Reasons for Planning Application Decisions Which were Contrary to Approved Policy**

Agreement will be reached at the meetings of Committees on the reasons for decisions on all planning applications which are departures from policy or against officers' recommendations and the full reasons for such a departure will be recorded in the minutes.

*The recording of reasons for making decisions which 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 the public and to explain what otherwise might appear to be inconsistency.*

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## Committee Site Visits

In holding site visits the Committee will follow the Hearings Procedures as agreed by the Planning Committee on 17th April 1996. Copies of the procedure can be made available on request.

*The report into the North Cornwall planning system observed that Committee site visits are a valuable means for allowing Councillors to see a site and its locality, and to hear applicants' and objectors' views at first hand. However, some may seek to use them as a lobbying device to help ensure the success of controversial applications. Authorities are advised to establish clear criteria for the circumstances in which a site meeting may be held and guidance for its conduct.*

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## Committee Funds

An unacceptable development should never be permitted because of unrelated financial benefits offered by the applicant. Nevertheless developers may voluntarily and independently offer financial assistance to local communities affected by their proposals. The Highland Council on 12th September 1996 adopted a procedure for responding to such approaches, separate from the planning system, with the lead responsibility being given to area Committees.