

Code of Conduct Exercise (Includes Answers)

Scenario

A planning application for a proposed development of 90 semi-detached and terraced social housing units and 6 retail units, including a supermarket and a fast food outlet, has been submitted to your local planning office. The application is under consideration by the planning officers and has not yet come to the council planning committee for decision. You are aware of the planning application and that a number of objections have been lodged against the application.

Below are some scenarios that you might encounter in relation to this, or any other planning application, that may be submitted to your planning office. In each scenario you should choose the most appropriate action based on the principles and rules set out in the NI Local Government Code of Conduct for Councillors. (Please note there may be more than one answer to some questions.) These scenarios have been chosen to give you a flavour of the types of situation you might come across but the answers are not exhaustive and cannot cover all eventualities. You should always refer to the Code of Conduct in the first instance for guidance on how to act.

Lobbying and Access to Councillors

1. You are a member of the planning committee. While you are at a local event, a lobby group opposed to the development approaches you to discuss the development and seek your support. Which of the following should you do?
 - (a) Make it clear that you are not in a position to lend support for or against the application.
 - (b) Direct the representations to the relevant planning officer.
 - (c) Discuss the development with the group and tell them your opinion on the development.
 - (d) Advise the group to speak to a councillor who is not on the planning committee.

Answer: A, B and D

Reason: Paragraph 7.4 of the Code of Conduct states that if you will have a role in the council's decision on a matter of a quasi-judicial nature, you must make it clear that you are not in a position to lend support for or against the application and you must direct the representation to the appropriate department of the council. Furthermore, paragraph 9.7 of the Code states that if an approach is made to you, you should restrict yourself to either giving procedural advice or

advise the group to write to or speak to a member who is not on the planning committee.

This does not mean that you should not listen to the views the lobby group wishes to express but as paragraph 9.5 advises, 'you must not make public statements about a pending decision or state your intention to vote in a particular way before the committee meeting has taken place'.

2. You are a member of the planning committee. The developer approaches you and requests a meeting with you on your own to discuss the development. Which of the following should you do?
 - (a) Accept the meeting and discuss the development with the developer.
 - (b) Decline the meeting and make it clear that you are not in a position to lend support for or against the application.
 - (c) Direct the meeting request to the relevant planning officer.

Answer: B and C

Reason: Paragraph 7.4, 9.5 and 9.7 all apply in this case as well, and in any interactions on planning matters you must make it clear that you are not in a position to lend support for or against the application. While you can listen to the views of the developer, best practice would suggest that you should not meet with the developer on your own as this may be perceived to bias you in favour of the development. Instead you can direct the developer to the relevant planning officer or ask for the planning officer to arrange a meeting with the developer, allowing the opportunity for other planning committee members to also attend.

3. You are a member of the planning committee and are approached by your constituents in relation to this development. Which of the following can you **not** do?
 - (a) Make known to planning officers what representations you have received from your constituents on the application.
 - (b) Seek factual information about the progress of the case.
 - (c) Lobby other planning committee members to vote in a particular way.
 - (d) Advise your constituents that they should contact the relevant planning officer so their opinions can be included in the officer's report to the committee.
 - (e) Advise your constituents to write or speak to a member who is not on the planning committee.
 - (f) Organise support for or against the development.

Answer: C and F

Reason: Paragraph 7.5 of the Code of Conduct states if you are asked to decide on a matter, you must not lobby other councillors on that matter. You also must not organise support for or opposition to a particular recommendation on the matter or act as an advocate to promote a particular recommendation on the matter.

Paragraph 9.6 of the Code advises that it is appropriate to make known to planning officers what representations you have received and to assist constituents in making their views known to the relevant planning officer. While you are free to attend public meetings/events, you must not express a 'for' or 'against' view by advocating a position in advance of the planning committee meeting.

4. You are not on the planning committee and you wish to support the developer in respect of the development. Which of the following can you **not** do?
 - (a) Make known to the planning officer your views on the application and any representations you have received.
 - (b) Speak up at the planning committee meeting on behalf of the developer.
 - (c) Put pressure on the planning officer to approve the application.
 - (d) Put pressure on a planning committee member to vote in favour of the development.

Answer: C and D

Reason: You must not put pressure on a planning committee member to vote in a particular way or use any other means or coercion to secure their vote on a matter. You must not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, your council.

The application has now been considered by the planning officers and has been presented to the planning committee with a recommendation to approve the development. For the remaining scenarios, consider them from the point of view of being a member of the planning committee.

Decision-making

5. During your election campaign you supported your local constituents by vocally objecting to this development and your objections were reported in the local media. The application is now before the committee for decision. Do you:
- (a) Decide that you should participate in the debate and vote at the planning committee meeting as you are aware your constituents strongly oppose the development?
 - (b) Take part in the debate as a committee member but do not take part in the vote at the planning committee?
 - (c) Declare that you have previously made up your mind about this application and leave the room while the case is being discussed and voted on?
 - (d) Decide you wish to make representations on behalf of your constituents, declare this, speak to the committee from the floor and leave the room while the committee members vote on the application?

Answer: C and D

Reason: Paragraph 9.5 of the Code of Conduct states that, 'given that a decision on a planning application cannot be made before the planning committee meeting has been held, when all relevant information relating to the application is available and has been considered, you must not make public statements about a pending decision or state your intention to vote in a particular way before the committee meeting has taken place'.

Your vocal objection indicates that you have made a decision on the planning application before the committee meeting was held and you should therefore refrain from taking part in the debate and vote at the planning committee and you should leave the room while these are taking place.

However, paragraph 9.8 of the Code allows a planning committee member to decide they cannot remain impartial and to make representations on behalf of their constituents or other parties at a planning committee meeting. Afterwards the member must leave the room while the remaining committee members consider it

and must not take part in the voting. If you wish to speak at the meeting, you must do so from the 'floor' of the meeting and not from the committee table.

6. You are aware that 500 objections have been received against this application, including a large number from your constituents. The planning officer has recommended approval of this development but you do not agree with the officer's recommendation and believe that planning permission should be refused. Which of the following can you do?
- (a) Vote to reject the application because of the volume of objections, including a large number from your own constituents.
 - (b) Consider all the evidence presented by the planning officer and decide whether there are appropriate planning grounds to refuse the development, based on the material considerations of the case.
 - (c) Vote for deferral of the application and seek further information.

Answer: B or C

Reason: Under paragraph 9.9 of the Code of Conduct, if you propose, second or support a decision contrary to an officer's recommendation, you must only do so on the basis of sound **planning** considerations which must fairly and reasonably relate to the application concerned. These considerations include planning policy, landscaping, impact on the neighbourhood, planning history, etc.

Paragraph 8.1 of the Code, which outlines the rules relating to decision-making, also applies.

You may have an option to defer the planning application, but you need to be aware that deferrals may negatively impact on planning performance statistics.

Conflicts of Interest

7. At the planning committee meeting you become aware that the application has been submitted by a close friend of yours. Do you:
- (a) Say nothing and vote in support of the application because you do not think the interest is material enough as you have not seen your friend in some time?
 - (b) Declare you have an interest and leave the room while it is being discussed and voted on?
 - (c) Declare you have an interest and decide that interest is immaterial and remain for the vote?

Answer: B

Reason: Paragraph 9.15 of the Code states that you must not take any further part in the development management process following submission of an application for you or a family member, friend or close personal associate. It is your own personal responsibility to determine, having regard to council advice and guidance, whether you have any private or personal non-pecuniary interest in any matter before the planning committee (as per paragraph 6.4 of the Code).

8. You are on the Board of Governors for the local school which is next door to this development. You are aware that the school is in the process of selling part of the land to the developer. When the application is presented to the planning committee for decision, do you:
- (a) Say nothing and vote on the application?
 - (b) Declare you have an interest and leave the room while it is being discussed and voted on?
 - (c) Declare you have an interest and decide that interest is immaterial and remain for the vote?

Answer: B

Reason: 6.9 states that, 'except where you have been appointed by your council as a representative on the organisation, you must not vote (although you may speak) on any matter directly affecting the finances or property of the organisation if you are a member of the organisation's management committee or governing body.'

9. You have a local corner shop which would be negatively impacted by the supermarket in the proposed development. Do you?
- (a) Say nothing and vote on the application?
 - (b) Declare you have an interest and leave the room while it is being discussed and voted on?
 - (c) Declare you have an interest and decide that interest is immaterial and remain for the vote?
 - (d) Decide you do not want to be a decision-maker on the application so you can speak out against the application at the committee meeting?

Answer: B or D

Reason: This would be considered a pecuniary interest. Paragraph 6.1 of the Code of Conduct advises that Section 28 of the 1972 Act requires you to declare

any direct or indirect pecuniary interest you have in any matter coming before any meeting of your council. Paragraph 6.2 goes on to state that you must not speak or vote on a matter in which you have a pecuniary interest. If the matter is to be discussed by the council, you must withdraw from the meeting while the matter is being considered.

However, paragraph 6.5 advises that in exceptional circumstances you may be able to get a dispensation from the Department under Section 29 of the 1972 Act to speak and vote at a council meeting in spite of a pecuniary interest.

Points to raise

Other parts of the Code apply equally to planning matters, it is not just Section 9. This includes:

Gifts and Hospitality

Paragraph 4.20 which states that you must not accept from anyone gifts, hospitality, material benefits or services for yourself or any other person, which might place you, or appear to place you, under an improper obligation. This includes any gifts, benefits or services offered to you in relation to planning.

Rules on decision-making

Paragraph 8.1 of the Code outlines the rules you must adhere to when participating in meetings or reaching decisions regarding the business of the council. These include:

- Making decisions objectively, on the basis of the merits of the circumstances involved, and in the public interest.
- Have regard to any relevant advice provided by your council's officers.
- Take into account only relevant and material considerations and discount any irrelevant or immaterial considerations.
- Not comply with political group decisions on the matter being considered where these differ from your own view.

Additional Q&As

Q: What if I am on the planning committee and want to support my constituents in opposing an application? Can I opt out of the vote and speak at the meeting to support my constituents in opposing the application?

A: Paragraph 9.8 of the Code, allows for planning committee members who decide that they cannot remain impartial and wish to make representations on behalf of constituents or other parties, attend a committee meeting and such make representations. Afterwards the member must leave the room while the remaining committee members consider it and must not take part in the voting. However, the exact processes for the operation for planning committees must be agreed by each council and it will therefore be up to your council whether they decide to implement this 'opt out' option or not.

Q: Am I allowed to ask for information on a particular planning application?

A: Yes. You can contact the relevant planning officer and ask for an update on the application or you can ask for a meeting with the planner officer and developer, allowing the opportunity for other planning committee members to also attend.

Q: My party has come out in favour of the development and has instructed me to support it. What should I do?

A: Paragraph 8.1 of the Code, which outlines the rules in relation to decision-making, states that you must not comply with political group decisions on the matter being considered. The key point to remember is that a decision on a planning application cannot be made until the planning committee has been held (para. 9.5 of the Code).

Q: Para 9.13 of the Code states that, 'if you have substantial land, property or other interests which would prevent you from voting on a regular basis, you must not sit on a decision-making committee that deals with planning applications'. Can you define 'substantial'?

A: This paragraph is not intended to stop landowners etc. from sitting on planning committees; rather it is intended to ensure the efficient operation of the planning committee by limiting those who would be regularly called upon to declare they have an interest which would prevent them from voting. It is not so much the scale of any land or property holdings but the extent to which they might affect your ability to carry out the duties of a planning committee member in an efficient manner. The key point here is that it would **prevent you from voting on a regular basis** – up to the individual – cannot put a figure on this.