



Councillors and Planning Applications

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- This note describes the behaviour required of councillors in the determination of planning applications. There is another relevant note, [Do councillors have to follow the advice of officers in taking planning decisions?](#) (SN/SC/1030).
 - The *Localism Act 2011* will completely change the previous system, but the relevant provisions have not yet been brought into force. Standards for England expects to lose its regulatory role at the end of January 2012 and to be abolished on 31 March 2012.
 - Councillors have to follow a Code of Conduct, with particularly strict rules relating to personal interests, such as a councillor living near to a property where there is a planning application.
 - The Code of Conduct and Standards Board interpretations do not automatically prevent a councillor from taking part in a planning decision if he has earlier expressed a view about a development. However, he does risk being accused of “predetermination”. A planning application has to be determined in the appropriate committee after considering all the appropriate evidence, and not before.
 - The *Localism Act 2011* will abolish the concept of predetermination from 15 January 2012. Councillors will still have to have an open mind, but previous actions will not be evidence that they do not do so.

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Contents

1 The regime that will be replaced in 2012 2

1.1 Personal interests 2

1.2 Lobbying 3

2 The Localism Act 2011 will abolish the regime 4

2.1 Changes to register of interests and code of conduct 4

2.2 Abolition of predetermination 4

3 Timetable for abolition of the standards board regime 5

1 The regime that will be replaced in 2012

Part III of the *Local Government Act 2000* introduced a new ethical framework for members and employees of local authorities. This included a statutory code of conduct for councillors, and the creation of a standards committee for each local authority. It also established a new body, the Standards Board for England, to provide an independent mechanism for investigating instances of unethical conduct by local authority members, including any allegations that a code has been breached. However, local standards committees now do most of the investigation with the Standards Board co-ordinating and monitoring.

The Labour Government issued model codes of conduct for different types of councillor in 2001, but they were widely criticised for being too strict. After consultation, a new model code of conduct for all councillors was introduced and came into force in May 2007 - *The Local Authorities (Model Code of Conduct) Order 2007* (SI 1159).¹

1.1 Personal interests

Councillors need to declare personal interests and are not allowed to vote if they have prejudicial interests. The definition of personal interests includes:

Personal interests

8. — (1) You have a personal interest in any business of your authority where either—

(a) it relates to or is likely to affect—

(ix) any land in your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

¹ <http://www.opsi.gov.uk/si/si2007/20071159.htm>

- (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer;

Personal interests have to be disclosed (paragraph 9). There follows a definition of prejudicial interest:

Prejudicial interest generally

10. — (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

This is followed by a list of exceptions not particularly relevant to planning decisions. Paragraph 12 is particularly important since it defines what a local councillor can do in the planning committee (or board) that determines an application in the area where he lives: and in which he has a prejudicial interest.

Effect of prejudicial interests on participation

12. — (1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—

(a) you must withdraw from the room or chamber where a meeting considering the business is being held—

- (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
- (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee;

(b) you must not exercise executive functions in relation to that business; and

(c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only 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, whether under a statutory right or otherwise.

1.2 Lobbying

The position on lobbying was rather less clear, and only in part relates to the Code. The general principle was that a councillor could not express an opinion on a proposed development and then take part in a planning committee meeting. If he had expressed a view in advance, he was said to have fettered his discretion. This was the predetermination rule. Councillors found it very difficult if they were elected on the basis of their view on a major development, only to find that their campaigning excluded them from taking part in making the decision.

2 The Localism Act 2011 will abolish the regime

2.1 Changes to register of interests and code of conduct

The [Localism Act 2011](#) will allow more local variation in the regime. It allows the local authority to decide what to include in the local register of interests. Some councils might choose not to change the existing register but others might want to limit those interests having to be registered.

At some date not yet announced, the Government will allow local authorities to adopt a new code of conduct. Under s.28:

A relevant authority must secure that a code adopted by it under section 27(2) (a “code of conduct”) is, when viewed as a whole, consistent with the following principles—

- (a) selflessness; (b) integrity; (c) objectivity; (d) accountability; (e) openness; (f) honesty; (g) leadership.

Again, some authorities might choose to retain the existing code of conduct, but others might want changes.

2.2 Abolition of predetermination

The *Localism Act 2011* s.25 will abolish the predetermination rule, from 15 January 2012.

25 Prior indications of view of a matter not to amount to predetermination etc

(1) Subsection (2) applies if—

- (a) as a result of an allegation of bias or predetermination, or otherwise, there is an issue about the validity of a decision of a relevant authority, and
- (b) it is relevant to that issue whether the decision-maker, or any of the decision-makers, had or appeared to have had a closed mind (to any extent) when making the decision.

(2) A decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because—

- (a) the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter, and
- (b) the matter was relevant to the decision.

(3) Subsection (2) applies in relation to a decision-maker only if that decision-maker—

- (a) is a member (whether elected or not) of the relevant authority, or
- (b) is a co-opted member of that authority.

(4) In this section—

“co-opted member”, in relation to a relevant authority, means a person who is not a member of the authority but who—

- (a) is a member of any committee or sub-committee of the authority, or

(b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority, and who is entitled to vote on any question which falls to be decided at any meeting of the committee or sub-committee;

“decision”, in relation to a relevant authority, means a decision made in discharging functions of the authority, functions of the authority’s executive, functions of a committee of the authority or functions of an officer of the authority (including decisions made in the discharge of any of those functions otherwise than by the person to whom the function was originally given);

“elected mayor” has the meaning given by section 9H or 39 of the Local Government Act 2000;

“member”—

(a) in relation to the Greater London Authority, means the Mayor of London or a London Assembly member, and

(b) in relation to a county council, district council, county borough council or London borough council, includes an elected mayor of the council;

“relevant authority” means—

(a) a county council, (b) a district council, (c) a county borough council, (d) a London borough council, (e) the Common Council of the City of London, (f) the Greater London Authority, (g) a National Park authority, (h) the Broads Authority, (i) the Council of the Isles of Scilly, (j) a parish council, or (k) a community council.

(5) This section applies only to decisions made after this section comes into force, but the reference in subsection (2)(a) to anything previously done includes things done before this section comes into force.

However, councillors will still have to be careful. Planning applications will still have to be determined in accordance with the development plan “unless material considerations indicate otherwise”.² The abolition of predetermination does not remove that legal obligation. They still need to be open-minded in determining planning applications. The difference is that the fact that they may have campaigned against a proposal will not be taken as proof that they are not open-minded.

3 Timetable for abolition of the standards board regime

On 6 December 2011, Standards for England described the arrangements for its abolition:

As you will already no doubt be aware, it is the government’s intention to effect the abolition of the “Standards Board Regime” through the Localism Act 2011. This means that, under the standards provisions of the Act, Standards for England is to be abolished.

The government has now clarified the timetable for our abolition in response to a parliamentary question from Lord Greaves, although this is still subject to formal confirmation through regulations. It is the government’s intention that our abolition will take effect on 31 March 2012.

² *Planning and Compulsory Purchase Act 2004 s.38(6)*

Prior to this, our regulatory role in handling cases on your behalf and issuing guidance will stop from a date that will be set out in regulations but, as noted in the government's response to Lord Greaves, is anticipated to be 31 January 2012.

From this date, Standards for England will no longer have powers to accept new referrals from local standards committees or conduct investigations into complaints against members. Any existing referrals or investigations we have at that time will be transferred back to the relevant authority for completion. However, any complaints which are being handled locally on that date will need to continue through to a conclusion; and similarly any matters relating to completed investigations or appeals which have been referred to the First Tier Tribunal will continue to conclusion.

As stated, this means we will be returning, to local authorities, any existing referrals or open investigations which we have been unable to complete by 31 January. We currently have a number of cases which we expect will not be completed by this date, and we have already contacted the monitoring officers in question to agree handover arrangements.

You may also wish to note that - while we can continue to receive referrals of new cases up to 31 January, and we will continue to assess whether it is in the public interest to take them on or not for the short time remaining - it will become increasingly unlikely that we will feel in a position to take a case where the investigation is likely to go beyond the end of January.

Standards for England staff will, of course, continue to be on-hand between now and the end of January to facilitate the transfer of existing referrals and open cases back to local standards committees, as well as to provide advice and guidance on the current framework.

Please note that these arrangements relate only to the role of Standards for England in the current standards framework. It is for DCLG to confirm when the other standards elements of the Localism Act 2011, such as the removal of powers from existing local standards committees, the requirement to adopt a local Code and to appoint an independent member, will come into force.³

³ Standards for England Press Release, *Arrangements relating to the abolition of Standards for England*, 6 December 2011