



**RTPI**

Royal Town Planning Institute

# PROBITY AND THE PROFESSIONAL PLANNER

Exercising your independent professional  
judgement

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**RTPI  
Practice  
Advice**

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# Introduction

Probity is defined as, ‘the quality of being honest and behaving correctly’<sup>1</sup> and is often quoted in connection with local politicians when making decisions.

Professional planners are held in high regard because they deal with important long-term issues that affect the lives of the general public. However, planning decisions can sometimes be controversial, politicised and misunderstood. Public confidence in a rigorous and transparent process is a fundamental requirement for a successful planning system. Professional planners are required to balance competing needs and preferences.

This practice advice is written for RTPI members. It refers to the different legislation and procedures that apply in England, Ireland, Northern Ireland, Scotland and Wales. It explains how the ‘RTPI Code of Professional Conduct’ and practice advice on ‘Ethics and professional standards’ support our members in exercising their independent professional judgement.

This advice covers the following key points:

- A recap of the RTPI Code of Professional Conduct and ethics advice regarding the requirement for planners to act in the public interest when interacting with councillors;
- The policy context for councillors in England, Ireland, Northern Ireland, Scotland and Wales;
- Promotion of productive relationships between councillors and planners.

This advice does not specifically cover ‘delegated authority’ which is the power conferred to designated planning officers by locally elected councillors so that the officers may take decisions on specified planning matters on behalf of the council<sup>2</sup>.

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<sup>1</sup> Cambridge University Press, definition of probity <https://dictionary.cambridge.org/dictionary/english/probity>

<sup>2</sup> Planning Portal, definition of delegated powers [www.planningportal.co.uk/directory\\_record/205/delegated\\_powers](http://www.planningportal.co.uk/directory_record/205/delegated_powers)

# 1. Professional conduct for planners

## Acting in the public interest

Planning professionals are expected to meet and maintain high standards of competence and conduct themselves in a way that inspires trust and confidence in the profession.

It is the mark of a reflective practitioner to demonstrate the ability to weigh up competing issues or tensions in order to come to a reasoned professional decision. Ethics is generally defined as moral principles governing human behaviour and therefore are central to the way RTPI Members conduct themselves as professionals. A defining feature of the planning profession is the duty “to advance the science and art of planning (including town and country and spatial planning) for the benefit of the public”<sup>3</sup> under the RTPI’s Royal Charter<sup>4</sup>.

Delivering this duty by acting in the public interest has historically been defined in terms of protecting public health, public amenity and the environment from ‘harm’. Today, RTPI Members serve a range of interests. Acting in the public interest involves having regard to the expectations of the local community and politicians as well as future generations. Tensions can often arise when trying to reconcile these different interests and challenges.

You will be aware that as an RTPI Member you are governed by the [RTPI Code of Professional Conduct](#) and the [RTPI practice advice on Ethics and Professional Standards](#). The following section covers the main points in these papers regarding probity and the professional planner.

RTPI Members can fulfil their ‘public interest’ duty by having regard to:

- The long term consequences of the planning proposal or issue in question and their professional involvement;
- The inter-related and cumulative effect of decisions;
- The use of accurate and relevant technical information;
- The views of stakeholders and public agencies and representations made by local residents and businesses;
- The protection of natural, cultural and historic environments or any features of special interest;
- Public amenity, safety, design and accessibility.

<sup>3</sup> About the RTPI, [www.rtpi.org.uk/about-the-rtpi/](http://www.rtpi.org.uk/about-the-rtpi/)

<sup>4</sup> RTPI (2017) Ethics and professional standards practice advice [www.rtpi.org.uk/media/2675025/ethics\\_update\\_2017.pdf](http://www.rtpi.org.uk/media/2675025/ethics_update_2017.pdf)

The Code requires RTPI Members to act fearlessly and impartially when exercising their professional judgement. RTPI Members are obliged to exercise their judgement independently and provide planning advice in a professional manner.

The Code requires RTPI members to adhere to five core principles, namely:

- **Competence, honesty and integrity** – Members must take all reasonable steps to maintain their professional competence throughout their career; and should be honest and informed by appropriate technical inputs in carrying out their duties;
- **Independent professional judgement** – Members must exercise fearlessly and impartially their independent professional judgement to the best of their skill and understanding;
- **Due care and diligence** – Members must discharge their duty to their employers, clients, colleagues and others with due care and diligence;
- **Equality and respect** – Members must not discriminate on grounds including but not limited to race, nationality, gender, sexual orientation, religion, disability or age;
- **Professional behaviour** – Members are expected at all times to conduct themselves in such a manner that does not prejudice their professional status or the reputation of the RTPI.

## Acting fearlessly and impartially

Under most planning regimes, professional planners will recommend a course of action to a 'decision maker' for example a senior manager, client or politician. As a private consultant or a head of a local government service, you may also be the decision maker under delegated powers.

As is often the case there may be tensions between these positions, however as a professional planner you have a responsibility for reconciling these differences. This should be done with a view to advancing sustainable development – in its social, economic and environmental dimensions; and within the framework of international, national and local planning legislation and policies.

Social media, such as Twitter, Facebook, LinkedIn and Instagram, is increasingly a feature of professional activities and personal lives. Where there is overlap, you should consider making a distinction between personal and professional viewpoints, for example by adding a disclaimer to make it clear that the opinions expressed are your own and not the views of your employer. You may wish to consider having separate accounts for personal friendships and professional acquaintances, and be mindful whether you include your professional designation on any personal accounts<sup>5</sup>. You should refer to the social media policy of your employer. There will be times when RTPI Members disagree with the conclusions reached by other members and professionals and, in their professional role, there will be times when it may be appropriate to express and explain such disagreements in public letters, to the press and on social media. However, members should take

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<sup>5</sup> RTPI (2017) Ethics and professional standards [www.rtpi.org.uk/media/2675025/ethics\\_update\\_2017.pdf](http://www.rtpi.org.uk/media/2675025/ethics_update_2017.pdf)

care to express their views in a respectful and professional manner. If members are concerned about the conduct and capability of another member this would more appropriately be raised through the complaints procedure of the relevant organisation rather than in the public domain.

It is helpful to remember that ultimately it is a requirement for RTPI Members to exercise their judgement independently and provide planning advice in a professional manner. A client, planning committee or other decision maker can follow or disregard this advice as they choose. Another planning professional can also legitimately express an alternative opinion. Similarly the balancing of social, environmental and economic benefits of development is not a fixed equation and planners may reach differing, but reasonable, conclusions on planning matters.

Planning systems are governed by legislation and policy set at the national and local level, and elected politicians are often involved in making decisions on behalf of their constituents. Local community groups themselves might also commission planning advice which, if working as a consultant for a landowner or developer, you may need to respond to. Planners working as officers for a council may be faced with local residents or politicians campaigning to stop a development. Therefore RTPI Members should understand the position of others and explain the reasons for the professional advice or action they are recommending.

Where you anticipate there could be conflict, it may be helpful to adopt the approach of listing potential courses of action and the associated planning dimensions, so that the decision maker can weigh up the options and outcomes available to them. This would also apply when working for private clients. Training on community engagement and on probity can be provided for councillors.

## Raising Concerns

RTPI Members are encouraged to raise concerns about poor ethical practices, misconduct or wrongdoing particularly when it is in the public interest. Concerns should first be raised internally with a manager, but if this does not address your concern, or your manager is part of the issue, you may want to discuss with another more senior manager in the organisation or independent agency (see page 19).

RTPI Members practising in the UK, or those engaged by a UK company working abroad, who are considering raising a concern, should be aware of the provisions of the Public Interest Disclosure Act 1998<sup>6</sup>. The Act affords individual protection from action taken by an employer for reporting a concern whether or not the information is confidential or whether the malpractice occurred within the UK or overseas. Personal grievances (e.g. bullying, harassment, discrimination) should be dealt with through employer procedures or other dispute resolution services<sup>7</sup>.

<sup>6</sup> [www.legislation.gov.uk/ukpga/1998/23/contents](http://www.legislation.gov.uk/ukpga/1998/23/contents)

<sup>7</sup> Ibid.

## 2. Policy context for councillors

The legislative and policy mechanisms relating to probity for councillors vary across the UK nations and Ireland. However, there are two constants in all the systems covered in this advice:

- All five planning systems are plan led with the principle that the decisions on planning applications should be made in accordance with the adopted development plan, unless there are material considerations that may indicate otherwise;
- The issue of probity and supporting planners in exercising their independent professional judgement is an important component to promoting public confidence in planning systems.

### England

In England, the Localism Act (2011) moved the responsibility for councillor standards and conduct to individual local authorities<sup>8</sup>. It requires local authorities to maintain a code of conduct<sup>9</sup> based on the seven principles of the Nolan Committee on Standards in Public Life<sup>10</sup> (see *page 9*). All local authorities (other than town and parish councils) are required to designate a Monitoring Officer in England, Scotland and Wales. The Monitoring Officer has the specific duty to ensure that the Council, its officers, and its Elected Councillors, maintain the highest standards of conduct in all they do. The Monitoring Officer's legal basis is found in Section 5 of the Local Government and Housing Act 1989 in England, Wales and Scotland (as amended)<sup>11</sup>. Local authorities are also required to deal with allegations of breaches in the code and failure to register pecuniary<sup>12</sup> (financial) interests in proposals. The Local Government and Social Care Ombudsman<sup>13</sup> can investigate certain types of complaint against individual local authorities and can make recommendations for resolving the issues. However, it does not provide a right of appeal against a council's decision regarding whether a breach of standards of conduct has occurred<sup>14</sup>. Further information on the type of planning complaints that the Ombudsman can consider is available<sup>15</sup>.

<sup>8</sup> House of Commons Library Briefing Paper, Mark Sandford (2019), Local government standards in England <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN05707>

<sup>9</sup> Localism Act 2011, [www.legislation.gov.uk/ukpga/2011/20/part/1/chapter/7](http://www.legislation.gov.uk/ukpga/2011/20/part/1/chapter/7)

<sup>10</sup> Committee on Standards in Public Life (1995), [www.gov.uk/government/publications/the-7-principles-of-public-life](http://www.gov.uk/government/publications/the-7-principles-of-public-life)

<sup>11</sup> Local Government and Housing Act 1989 [www.legislation.gov.uk/ukpga/1989/42/section/5?view=extent&timeline=false](http://www.legislation.gov.uk/ukpga/1989/42/section/5?view=extent&timeline=false)

<sup>12</sup> [dictionary.cambridge.org/dictionary/english/pecuniary](http://dictionary.cambridge.org/dictionary/english/pecuniary)

<sup>13</sup> The Local Government and Social Care Ombudsman, [www.lgo.org.uk](http://www.lgo.org.uk)

<sup>14</sup> Local Government and Social Care Ombudsman's response to CSPL's Local government ethical standards review [www.lgo.org.uk/assets/attach/4342/CSPL%20-%20Local%20government%20ethical%20standards%20review.pdf](http://www.lgo.org.uk/assets/attach/4342/CSPL%20-%20Local%20government%20ethical%20standards%20review.pdf).

<sup>15</sup> [www.lgo.org.uk/make-a-complaint/fact-sheets/planning-and-building-control](http://www.lgo.org.uk/make-a-complaint/fact-sheets/planning-and-building-control)

## Ireland

In Ireland the Local Government Act (2001) sets out an ethical framework and imposes a statutory duty on all those in local government service to maintain proper standards of integrity, conduct and concern for the public interest<sup>16</sup>. This includes the establishment of a code of conduct for local authority employees<sup>17</sup> and councillors<sup>18</sup>.

The Office of the Planning Regulator (OPR)<sup>19</sup> was established in 2019 and has a role to review the performance by planning authorities and An Bord Pleanála, in their planning functions. This includes assessing any risks of maladministration or corruption. The OPR was established following a recommendation from the Tribunal of Inquiry into Certain Planning Matters and Payments, commonly known as the Mahon Tribunal. This investigated allegations of corrupt payments to politicians regarding political decisions, mostly around planning permissions and land re-zoning issues in the 1990's in the Dublin County Council area.

The recommendations of the report included more robust whistle-blower legislation, a new planning regulator to give direction to local and regional planning authorities, and expanded disclosure requirements for public officials.

Finally, the Ombudsman<sup>20</sup> exists to examine complaints from members of the public, who believe they have been unfairly treated by public service providers.

## Northern Ireland

The two-tier planning system was introduced in April 2015. It introduced a sharing of planning responsibilities between the 11 newly created Councils and the Department for Infrastructure.

Under the Planning Act (Northern Ireland) (2011) each local authority became the Local Planning Authority for its district council area with powers for local development planning, development management and planning enforcement. A new mandatory Code of Conduct for Councillors<sup>21</sup> was introduced by Section 53 of the Local Government Act (2014). The Department for Infrastructure retains decision-making powers on major applications.

This was a major change for the role of councillors from being consultees on planning applications, to making decisions on applications as members of the planning committee or full council.

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<sup>16</sup> Local Government Act, 2001 [www.irishstatutebook.ie/eli/2001/act/37/section/169/enacted/en/html#sec169](http://www.irishstatutebook.ie/eli/2001/act/37/section/169/enacted/en/html#sec169)

<sup>17</sup> Department of Housing, Planning and Local Government, Code of Conduct for Employees [www.housing.gov.ie/local-government/administration/code-conduct/code-conduct-employees-jan-2007](http://www.housing.gov.ie/local-government/administration/code-conduct/code-conduct-employees-jan-2007)

<sup>18</sup> Department of Housing, Planning and Local Government, Code of Conduct for Councillors [www.housing.gov.ie/sites/default/files/publications/files/code\\_of\\_conduct\\_for\\_councillors\\_-\\_10\\_july\\_2019.pdf](http://www.housing.gov.ie/sites/default/files/publications/files/code_of_conduct_for_councillors_-_10_july_2019.pdf)

<sup>19</sup> The Office of the Planning Regulator, [www.opr.ie/about/](http://www.opr.ie/about/)

<sup>20</sup> The Ombudsman, [www.ombudsman.ie/](http://www.ombudsman.ie/)

<sup>21</sup> Department Communities (2014), NI Local Government Code Of Conduct For Councillors, [www.communities-ni.gov.uk/publications/ni-local-government-code-conduct-councillors](http://www.communities-ni.gov.uk/publications/ni-local-government-code-conduct-councillors)

## Scotland

The Standards Commission for Scotland<sup>22</sup> is the main body responsible for oversight of matters relating to probity in Scotland. They are an independent body established to encourage high ethical standards in public life through the promotion and enforcement of Codes of Conduct for councillors and those appointed to the boards of devolved public bodies.

All councils and those devolved public bodies listed under Schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act (2000) are obliged to have a Code of Conduct<sup>23</sup> for their elected and appointed members.

The Scottish Parliament approved one Code of Conduct, which is applied to every Scottish councillor. The Councillors' Code of Conduct applies to all 1227 councillors elected to the 32 local authority areas within Scotland<sup>24</sup>. The code is updated periodically.

There are two further roles that are important to note regarding Scotland:

- A Public Services Ombudsman for Scotland<sup>25</sup> forms the last stage for complaints regarding local authorities;
- A National Performance Coordinator<sup>26</sup> will be appointed in 2020, with the task to 'monitor planning authorities' performance of their functions, and provide advice to planning authorities and others on improving their performance'<sup>27</sup>.

## Wales

In Wales, the Model Code of Conduct for Councillors was introduced in 2008 (as amended on 1 April 2016). The Public Services Ombudsman for Wales produced guidance for Councillors on the Code<sup>28</sup>. All members and co-opted members of local authorities are required to sign up to the Code as part of their declaration of acceptance of office. The Public Services Ombudsman for Wales investigates complaints where members of local authorities in Wales have breached the Code.

<sup>22</sup> Standards Commission for Scotland, [www.standardscommissionscotland.org.uk/about-us/who-we-are](http://www.standardscommissionscotland.org.uk/about-us/who-we-are)

<sup>23</sup> Standards Commission for Scotland, Code of Conduct [www.standardscommissionscotland.org.uk/codes-of-conduct/councillors-code-of-conduct](http://www.standardscommissionscotland.org.uk/codes-of-conduct/councillors-code-of-conduct)

<sup>24</sup> Ibid.

<sup>25</sup> Scottish Public Services Ombudsman, [www.spsso.org.uk/](http://www.spsso.org.uk/)

<sup>26</sup> Scottish Government, Planning: post-bill work programme [www.gov.scot/publications/transforming-planning-practice-post-bill-work-programme/](http://www.gov.scot/publications/transforming-planning-practice-post-bill-work-programme/)

<sup>27</sup> Ibid.

<sup>28</sup> [www.ombudsman.wales/wp-content/uploads/2018/03/Code-of-Conduct-Community-Councils-August-2016-ENGLISH.pdf](http://www.ombudsman.wales/wp-content/uploads/2018/03/Code-of-Conduct-Community-Councils-August-2016-ENGLISH.pdf)



## 3. Nolan principles

This section sets out requirements for councillors. Therefore, you may want to refer colleagues/Councillors to these guidelines.

The Committee on Standards in Public Life<sup>29</sup> third report, 'Standards of Conduct in Local Government in England, Northern Ireland, Scotland and Wales' (1997) outlined which apply to anyone who works as a public office holder across the devolved administrations. This includes people who are elected councillors to or appointed to public office, nationally and locally, and all people appointed to work in local government, and these principles apply equally to planning officers working in local authorities.

1. **Selflessness** - Holders of public office should act solely in terms of the public interest.
2. **Integrity** - Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
3. **Objectivity** - Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
4. **Accountability** - Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
5. **Openness** - Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
6. **Honesty** - Holders of public office should be truthful.
7. **Leadership** - Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

The Code of Conduct for Councillors in Wales includes three additional duties: a duty to uphold the law, proper stewardship of the Council's resources and equality and respect for others<sup>30</sup>.

<sup>29</sup> Committee on Standards in Public Life [www.gov.uk/government/organisations/the-committee-on-standards-in-public-life](http://www.gov.uk/government/organisations/the-committee-on-standards-in-public-life)

<sup>30</sup> The Code of Conduct for members of local authorities in Wales Guidance from the Public Services Ombudsman for Wales [www.ombudsman.wales/wp-content/uploads/2018/03/Code-of-Conduct-Community-Councils-August-2016-ENGLISH.pdf](http://www.ombudsman.wales/wp-content/uploads/2018/03/Code-of-Conduct-Community-Councils-August-2016-ENGLISH.pdf)

## 4. Local authority development

Local authorities can apply for planning permission for their own developments, for example for schools, leisure facilities, housing and regeneration projects. Where this occurs, it is vital that adequate safeguards are put in place to protect against any questions of bias by the local authority towards their own development. This is important in order to maintain trust in the planning system. The RTPI practice advice 'Local authority direct delivery of housing'<sup>31</sup> provides advice for planners on how to support local authority led housing delivery, and includes advice on how to avoid such conflicts of interest.

This style of delivery has undergone a recent resurgence. A 2019 RTPI research paper<sup>32</sup> found that 69% of local authorities in England were directly engaged in delivering housing. Local authorities in Scotland and Wales are also increasingly active in building homes. These council led developments are carried out using a number of different models; including through council owned housing companies.

Transparency and promoting public confidence means the process should be led by the underlying principle that the separation of interests is clearly seen, recognised and transparent. Within the context of this growing trend local authorities can on occasions be both the promotor of a development and the decision-maker in terms of whether planning permission should be granted. Therefore local authorities need to adopt an appropriate separation between the council as landowner and/or developer and the council in its role as local planning authority, including how information is handled internally.

### Tips on maintaining internal information barriers

The local planning authority is required to conduct its statutory planning functions without interference and therefore decisions need to be made independently from the corporate view of the local authority in supporting the proposal. The following advice is helpful to follow:

- Establish a distinct separation between the local authority officers sponsoring the development and the local authority planning staff considering the application (in its role as local planning authority);
- Ideally the proposed development should be promoted through the local plan. However, if not and the development in principle meets the spatial policies and strategic plan for the area, the Local Planning Authority are encouraged to proactively promote the development regardless of whether it comes from the public or private sector;

<sup>31</sup> RTPI (2019), [Local authority direct delivery of housing](#)

<sup>32</sup> Morphet, J. and Clifford, B. (2019), [Local authority direct delivery of housing: continuation research](#), RTPI

- As with any developer, pre-application discussions with planning officers are encouraged as best practice to clarify the proposal's prospects for securing planning permission, possible improvements to the scheme and the anticipated timetable for reaching a decision;
- The developing/sponsoring department might want to seek professional planning representation from a consultancy, to help take the proposal forward. Alternatively it may be appropriate to obtain such professional expertise by seconding planning staff who are already employed by the council<sup>33</sup> into the developing/sponsoring department. In doing so clear boundaries should be set between existing staff and ensuring that posts vacated are backfilled to maintain a well-resourced planning department. In cases where, for example, the development site has not been allocated in a local plan (i.e. the principle of the development has not been tested through independent scrutiny) it may be preferable to employ external planning consultants;
- Ensure the necessary in-house experience, skills and expertise is available to support council delivery programmes<sup>34</sup>.

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<sup>33</sup> Ibid.

<sup>34</sup> Haringey Council (2014), APPENDIX 1, Scrutiny Project Council Led Development [www.haringey.gov.uk/sites/haringeygovuk/files/council\\_led\\_development\\_-\\_final\\_report\\_19102015\\_overview\\_and\\_scrutiny\\_committee.pdf](http://www.haringey.gov.uk/sites/haringeygovuk/files/council_led_development_-_final_report_19102015_overview_and_scrutiny_committee.pdf)

## 5. Working relationships with councillors

### Advice for planners

The Planning Advisory Service notes that, “Councillors and officers have different but complementary roles within this system, and effective communication and a positive working relationship between officers and councillors is essential to delivering a good planning service”<sup>35</sup>. This is useful to bear in mind across all planning systems and jurisdictions.

The Local Government Association and Planning Advisory Service guidance on ‘Probity in planning: advice for councillors and officers making planning decisions’ clarifies how councillors can get involved in discussions on plan making and on applications, on behalf of their communities in a fair, impartial and transparent way. While this guidance specifically relates to local government practices in England, it should provide general principles of use for all RTPI Members.

The interface between councillors and planning officers is key to the operation of an efficient planning system. One of the overriding motives for elected members to put themselves forward to become a councillor is because they care about their community and want to see it thrive. Councillors may have made promises in election campaigns on a pro or anti-development agenda. There is a clear link between being passionate about your area and working in partnership with the planning system to help it develop sustainably by considering the economic, environmental and social impacts of new development.

Clearly there may be tensions between the role of a local councillor, wishing to represent the views of particular constituents or groups, and their role as a planning committee member, where their responsibility is to the whole community and not individual constituents or particular interests.

Therefore, RTPI Members need to remember it is the councillor who makes the final planning decision. However, a planner can reasonably ask them to justify a decision using appropriate planning reasons. Where a possible conflict is anticipated, it may be helpful to adopt an approach of listing potential courses of action and the associated planning dimensions so that the decision maker can weigh up the options and outcomes available to them. This would also apply when working for private clients.

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<sup>35</sup> Local Government Association and Planning Advisory Service (2019), Probity in planning, Advice for councillors and officers making planning decisions [www.local.gov.uk/sites/default/files/documents/34.2\\_Probity\\_in\\_Planning\\_04.pdf](http://www.local.gov.uk/sites/default/files/documents/34.2_Probity_in_Planning_04.pdf)

## Codes of conduct for councillors

Individual local authorities have their own codes of conduct for both staff and councillors. Each local authority in England, Ireland, Northern Ireland, Wales and Scotland is required to adopt a local code of conduct that sets out the expectations as to the conduct of elected members in carrying out their official duties<sup>36</sup>.

<b>Public duty</b>	<b>Selfishness</b>	<b>Integrity</b>	<b>Accountability</b>	<b>Objectivity</b>	<b>Respect</b>
<b>Openness</b>	<b>Honesty</b>	<b>Leadership</b>	<b>Equality</b>	<b>Good relations</b>	<b>Working relationships</b>

The themes covered in councillor codes include many of the Nolan principles (covered on page 9 of this advice) in addition to further points below:

The following examples of local authority code of conducts include:

### Case study: Barnet Borough Council - Members' Planning Code<sup>37</sup>

The code of conduct for councillors includes the following important points:

- One of the key aims of the planning system is to balance private interests in the development of land against the wider public interest;
- Opposing views are often strongly held by those involved;
- The expectation is that members who sit on planning committees will be fair and reasonable when making decisions;
- Planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the committee or its members;
- Members must not put pressure on officers to put forward a particular recommendation or deal with a planning matter in a particular way;

<sup>36</sup> ENGLAND Localism Act 2011, Section 27, (2), Duty to promote and maintain high standards of conduct:

[www.legislation.gov.uk/ukpga/2011/20/section/28/enacted](http://www.legislation.gov.uk/ukpga/2011/20/section/28/enacted)

Local Government Act, 2001

IRELAND, Section 169, [www.irishstatutebook.ie/eli/2001/act/37/section/169/enacted/en/html#sec169](http://www.irishstatutebook.ie/eli/2001/act/37/section/169/enacted/en/html#sec169)

NORTHERN IRELAND The Northern Ireland Local Government Code of Conduct for Councillors. [www.communities-ni.gov.uk/sites/default/files/publications/doe/the-northern-ireland-local-government-code-of-conduct-for-councillors.pdf](http://www.communities-ni.gov.uk/sites/default/files/publications/doe/the-northern-ireland-local-government-code-of-conduct-for-councillors.pdf)

SCOTLAND Standards Commission for Scotland (2018), [www.standardscommissionscotland.org.uk/codes-of-conduct](http://www.standardscommissionscotland.org.uk/codes-of-conduct)

WALES The Local Authorities (Model Code of Conduct) (Wales) Order 2008

[www.legislation.gov.uk/wsi/2008/788/contents/made](http://www.legislation.gov.uk/wsi/2008/788/contents/made)

<sup>37</sup> Barnet Council, Members' planning code

<https://barnet.moderngov.co.uk/documents/s49793/22.%20Members%20Planning%20Code%20of%20Practice.pdf>

- This does not prevent a councillor from asking questions or submitting views to an officer. These views, when received in written form, will be placed on the planning file and considered together with other material planning considerations.

### Case study: Cardiff Council - Protocol on Member/Officer relations<sup>38</sup>

- Council officers are employees of the whole Council and have an obligation to give impartial advice and to carry out the Council's lawful decisions. They have operational responsibilities which are generally set out in the Council's scheme of delegations, or in their job descriptions. These will generally be of a managerial, technical or administrative nature, and are part of the normal day-to-day work of all Council employees;
- The Member Code of Conduct describes how Members should act when taking decisions and in particular in relation to advice from officers;
- "A member ... must reach decisions having regard to any relevant advice by the authority's officers...";
- In advising, officers are free to give their professional advice wherever appropriate. Councillors may wish to test this advice by questioning and challenging something they do not agree with, but they should not, by their conduct or actions, make employees feel intimidated or threatened. If Councillors remain dissatisfied with the advice given, then they may refer the matter to the Leader, the appropriate Cabinet Member or the relevant Committee Chairperson;
- Employees should remember that councillors are democratically elected to secure their objectives and fully entitled to question advice given, and to receive a full and complete explanation. Employees should always seek to meet the Council's objectives when advising, provided that this can be done legally and within financial resources;
- This Council operates a system which requires advice on the legality; and
- Achievability (including financial matters) of the decision in advance of its consideration, and for that advice to be captured in reports to Members, Cabinet, Committees or the Council.

### Training for councillors

This advice aims to encourage professional, productive working relationships between planners and councillors. One way of supporting informed and proper decision-making is by increasing the uptake of councillor training on planning issues.

In England the RTPI has suggested that councillors need to be given compulsory planning training

<sup>38</sup> Cardiff Council, (2015) Codes and protocols protocol on member/officer relations [cardiff.moderngov.co.uk/documents/s22902/Protocol ar Gysylltiadau AelodauSwyddogion.pdf](http://cardiff.moderngov.co.uk/documents/s22902/Protocol%20ar%20Gysylltiadau%20AelodauSwyddogion.pdf)

for two reasons<sup>39</sup>:

- Better outcomes could be secured from planning if councillors knew more about the merits of permitting development for the local community, the local shops, local schools, and the broader local economy;
- The process of planning would operate more smoothly if councillors knew more about the contents of the National Planning Policy Framework, what a material consideration is and how planning committees should function.

In Scotland, the Planning (Scotland) Act (2019)<sup>40</sup> covers training for taking planning decisions. This states that a member of a planning authority who has not fulfilled specified training requirements is prohibited from exercising any of the authority's specified functions on their behalf, or being involved in exercising any of those functions on the authority's behalf as a member of a committee or any other body. Regulations are to be published covering the training requirements on the basis that the content and provider of the training must be accredited by the Scottish Ministers.

In Wales, RTPI Cymru commissioned the 'Study into the operation of planning committees in Wales'<sup>41</sup> which also recommended compulsory training for councillors.

It is important to note that in many places councillors are well informed. However, there needs to be some means by which a minimum standard can be maintained and more places brought up to the standard of the best. Local elections often lead to changes in membership of the planning committee, which increases the need for training at these times. There is also a benefit of refresher sessions for existing committee members to update them on changes in legislation, policy or case law. You may also wish to ensure all members sitting on a planning committee have been required to undertake training at the start of the term of the committee.

## Role of councillors

Local authority councillors are involved in planning matters to represent the interests of the whole community and must maintain an open mind when considering planning applications. Councillors might come from a previous background in parish or town councils, where their role and understanding of the Development Management and local plans processes might have been very different to what is required when they sit on a local planning authority planning committee. Where members take decisions on planning applications they must do so in accordance with the development plan unless material considerations indicate otherwise. Members must only take into account material planning considerations, for example, public views where they relate to relevant

<sup>39</sup> RTPI (2019) Green Paper 'Accelerating Planning': Key Asks from the Royal Town Planning Institute, [www.rtpi.org.uk/knowledge/policy/policy-papers/green-paper,-%E2%80%98accelerating-planning%E2%80%99-main-asks-from-the-rtpi/#compulsorytraining](http://www.rtpi.org.uk/knowledge/policy/policy-papers/green-paper,-%E2%80%98accelerating-planning%E2%80%99-main-asks-from-the-rtpi/#compulsorytraining)

<sup>40</sup> Planning (Scotland) Act 2019 [www.legislation.gov.uk/asp/2019/13/contents/enacted?view=plain](http://www.legislation.gov.uk/asp/2019/13/contents/enacted?view=plain)

<sup>41</sup> RTPI Cymru. Study into the Operation of Planning Committees in Wales. Final Report [www.rtpi.org.uk/media/585576/study\\_into\\_planning\\_committees\\_in\\_wales\\_report.pdf](http://www.rtpi.org.uk/media/585576/study_into_planning_committees_in_wales_report.pdf)

planning matters. Local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless it is founded upon valid material planning reasons<sup>42</sup>.

The sharing of professional knowledge, training opportunities and supporting the development of councillors should lead to better decisions for the local community. It is often most effective when viewed as an ongoing process of engagement with regular refresher and update sessions, particularly following elections where the composition of the planning committee can change.

## Dealing with committee overturns

What is often termed a 'committee overturn' occurs when a planning committee overturns the recommendation of planning officers. The RTPI Code states that, "Members must not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions, nor knowingly enter into any contract or agreement which requires them to do so"<sup>43</sup>. This can then sometimes require careful management of relationships with councillors, particularly at committee, where for example, it becomes clear that the officer recommendation is likely to be overturned.

For RTPI Members employed by a public body (such as a local planning authority) in particular, you may be asked to defend a decision that differs from the public report you wrote recommending an alternative view. A similar situation may arise for RTPI Members employed in a private consultancy, a client may commission you to represent or 'advocate' their interests where, on balance, in your opinion the proposal that is being tabled at appeal needs improvement. In these situations there may be a need to avoid conflicting relationships.

RTPI Members representing a decision that is a committee overturn and therefore contrary to their officer report should take care to avoid giving the impression any evidence they are presenting is their own professional view. Instead you may feel comfortable stating information as the 'council's view' and therefore acting as an advocate for the case.

Clearly the RTPI Member whose professional opinion does not conform with recommendations the evidence is supposed to support is unlikely to be the best witness in such circumstances. You should discuss this possible situation with your manager who will want to consider the consequences for the employer if any difference in professional judgement comes to light during the appeal process. Concerns should be raised in good time to allow for any changes in personnel to be arranged.

The authority may still consider asking the officer to give technical evidence at the inquiry, but call someone else who is in the position to speak with conviction of the planning reasons for the

<sup>42</sup> Determining a planning application, [www.gov.uk/guidance/determining-a-planning-application](http://www.gov.uk/guidance/determining-a-planning-application)

<sup>43</sup> Find out more about the Code of Professional Conduct [https://i.emlfiles4.com/cmpdoc/6/2/1/9/5/1/files/59082\\_rtpi-code-of-professional-conduct-feb\\_2016\\_new-cover-2017.pdf](https://i.emlfiles4.com/cmpdoc/6/2/1/9/5/1/files/59082_rtpi-code-of-professional-conduct-feb_2016_new-cover-2017.pdf)



authority's decision. This could be either another council employee who is quite appropriately able to form a different professional view or, in some instances, the local politician who, as Chair of the Planning Committee, made the decision.

A local planning authority may alternatively employ a planning consultant to undertake the task if, on weighing up the information, development plan policy and material considerations form a different professional view to that of officers of the local planning authority.

## Planning committees

The way in which planning committees are run, and the processes for managing public engagement are undertaken are both essential to supporting planners and promoting public confidence in the planning system. Setting out the following in advance of the committee can assist in the smooth running of meetings:

- Managing the public's expectations and experience of the committee. If people know how long they will be allowed to speak, for example, and who gets to ask questions of whom, then there's less chance that surprise at the meeting will turn into frustration;
- To provide details in advance to increase public confidence in the system, committee reports prepared by planning officers could detail the following:
  - a) whether the applicants had participated and engaged in pre-application discussions;
  - b) whether Councillors were also invited to take part in the process; and
  - c) the advice that was given at the pre-application stage.

## Early elected member involvement

By engaging effectively in the planning application process, members can better represent their constituents and enrich local democratic debate. People can therefore elect their councillor confident in the knowledge that they will be able to act on the issues they care about and have campaigned on.

At pre-application discussions, Members bring their local expertise along with an understanding of community views. Involving members can therefore help identify issues early on and reduce the likelihood that applications are delayed or refused because of issues that only come to light for the first time at committee. Local planning authorities with a Cabinet system might have planning Portfolio Holders who officers might seek early involvement with alongside local ward members for major or controversial schemes.

Taking planning committee members on site visits to previously implemented developments can highlight the impact of planning decisions and this knowledge can be used to inform future decisions. Such site visits do not necessarily need to be within the local authority area, particularly

if there are examples of good, innovative development outside their area.

It is good practice for officers to issue planning committee members with regular papers that update them on any relevant changes in legislation, policy or case law, and on the outcomes of planning appeals in their area.

The following case study highlights tips for engaging councillors in the planning application process. It provides valuable insights into the matters considered as part of a planning application and an opportunity to address councillor concerns early on.

### **Case Study: West Dunbartonshire Council - Early elected member involvement**

West Dunbartonshire Council established a Pre-Application Stage initiative in 2014. This introduced a process to allow the early engagement of elected members on major applications and complex developments that are key to the strategic priorities of the Council and to the economic prosperity of the area.

In 2012, officers presented a report to planning committee which first agreed the principle of elected member involvement at the pre-application stage and agreed procedures for the meeting and a protocol for the process. The procedures were reviewed in 2014 following the guidance issued by the Scottish Government in conjunction with The Convention of Scottish Local Authorities (COSLA) and the Commissioner for Ethical Standards in Public Life<sup>44</sup>.

The central element of the engagement process is a meeting led by planning officials which brings together elected members and developers/agents. Planning officers prepare a briefing note and this is circulated to all elected members, usually 7 days before the meeting. This sets out planning policies and identifies the main issues, but does not provide a recommendation. A senior planning manager chairs the meeting and gives a short presentation on the main points of the development proposal. Developers and/or the agents are invited to make a short presentation and an opportunity is then given for members to ask questions and seek clarification on various issues and also raise issues which may not have been covered.

The meeting is separate from planning committee meetings and all elected members are invited, not just those who sit on the planning committee. A protocol and a written procedure note have been developed. This is a public meeting and minutes are recorded and made available on the council website. The underlying aim of the initiative is to encourage a conversation, rather than an interrogation at the planning committee

It was a winner in the Scottish Awards for Quality in Planning in 2018.

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<sup>44</sup> [www.ethicalstandards.org.uk/](http://www.ethicalstandards.org.uk/)

## Further information and advice

### For more information on professional standards see:

- RTPI Learn module on professional ethics [www.rtpi.org.uk/education-and-careers/rtpi-learn/](http://www.rtpi.org.uk/education-and-careers/rtpi-learn/) (additional log in required);
- If you feel that you may need to raise a concern, Protect (formerly Public Concern at Work) can provide free, confidential advice within the UK <https://protect-advice.org.uk>;
- The free RTPI Employment Law and HR Helpline [www.rtpi.org.uk/membership/member-benefits/](http://www.rtpi.org.uk/membership/member-benefits/) is available to RTPI Members facing difficulties at work;
- The RTPI's Member Conduct Service [www.rtpi.org.uk/membership/professional-standards/](http://www.rtpi.org.uk/membership/professional-standards/) deals with complaints and queries regarding standards of practice and ethics. RTPI Members seeking advice should contact the Service by email or phone the RTPI on 020 7929 8194. Please note it operates between 9-5pm on Mondays and Tuesdays;
- Local Government Association and Planning Advisory Service (2019), Probity in planning, advice for councillors and officers making planning decisions <https://www.local.gov.uk/probity-planning-advice-councillors-and-officers-making-planning-decisions>



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**Written by**

Max Tolley

**RTPI - Royal Town Planning Institute**

**practice@rtpi.org.uk**

**Tel: 020 7929 9494**

Royal Town Planning Institute,  
41 Botolph Lane, London, EC3R 8DL

Registered in England (262865) & Scotland (SC037841)

