

Response ID ANON-53DC-H35H-7

Submitted to **Consultation on a possible revision of the Councillors' Code of Conduct**

Submitted on **2021-02-08 17:02:36**

Questions

1 Do you agree that there is a need to revise the Councillors' Code of Conduct?

Yes

Please provide information to support your response::

Our members welcome revision to the Code in order to ensure clarity and consistency in decision making particularly in relation to planning applications across all local authority areas.

2 Do you have any comments on the changes proposed for Section 1: Introduction to the Code of Conduct?

Not Answered

Please provide your comment::

No comment.

3 Do you have any comments on the changes proposed for Section 2: Key Principles of the Code of Conduct?

Not Answered

Please provide your comment::

No comment.

4 Do you have any comments on the changes proposed for Section 3: General Conduct?

Not Answered

Please provide your comment::

No comment.

5 Do you have any comments on the changes proposed for Section 4: Registration of Interests?

Not Answered

Please provide your comment::

No comment.

6 Do you have any comments on the changes proposed for Section 5: Declaration of Interests?

Not Answered

Please provide your comment::

No comment.

7 Do you have any comments on the changes proposed for Section 6: Lobbying and Access?

Yes

Please provide your comment::

Our members have strong concerns about the language used in the Explanatory Notes supporting Section 6. While our members agree with the general principles, they are concerned about the suggestion that developers and their agents may give selective information in favour of their proposals. They are also concerned at the weight given to councillors being aware that commercial developers and their agents are motivated by financial gain. Our members make significant financial commitments and take on and manage substantial risk in order to develop the offices people work in, the health facilities that they visit, the shops they buy from, the homes they live in and the appearance of the spaces around these buildings. Their commitment to the built environment and the public good should be recognised. Our members also frequently work in partnership with the public sector.

Private companies generally aim to make a profit on investments, otherwise they would be likely to fail as a business. This profit also needs to reflect the risk undertaken for often very long-term investments that are made in the built environment. It would not be helpful to the process if Council Members were to be given the impression that they are likely to be misled by developers or their agents, which would not be in anybody's interests. Our members provide very detailed and accurate information in support of development proposals, which is all available for scrutiny in the public domain. They also work hard to promote a spirit of partnership and consult widely on proposals as part of the planning process, it is not their aim to mislead anybody.

Our members have also raised concerns that the Code does not clarify the process of engagement where an application for planning permission has been received from a council or other public body.

The real estate sector is a key catalyst for jobs, investment and creating places and the text in the Code does not take account of the positive contributions made by the sector. The SPF is therefore firmly of the view that there must be an understanding by decision makers of development economics and viability in order to attract investment and assist with the recovery from COVID-19.

While we agree that a councillor's priority should always be what is good for the area as a whole, without a successful economy, Scotland will find it is increasingly difficult to deliver the wider vision for inclusivity and well-being.

There is nothing at all wrong with developers making commitments to deliver community benefits. Guidelines state that the offer of benefits should not affect the decision-making process, and this is supported by our members. However, they are often asked for benefits that go beyond what is strictly required to make the development acceptable in planning terms. It can be difficult to separate those commitments, which are genuinely required to make the development acceptable, from those which are required in practice to secure community (and sometimes political) acceptance. Community benefits are transparent and a matter of public record, therefore the document should not suggest that these are inappropriate.

Councillors, along with all participants in the planning application process, whether they are applicants, third party objectors or local planning authorities, should remain vigilant in testing the validity of requested or offered planning benefits or 'contributions'. It is only those that are true material considerations that can be taken into account in the decision-making process. (Ref. Regina (Wright) v Forest of Dean District Council (Secretary of State for Housing, Communities and Local Government intervening) [2019] UKSC 53) and Elsick Development Company Limited v Aberdeen City and Shire Strategic Development Planning Authority).

SPF also considers that the onus must be on the local planning authorities to advise Councillors on the 'materiality' of any community and especially off-site benefits. There is a risk that considerations, which do influence planning decisions, but are not expressly addressed in reaching those decisions, will undermine the openness and transparency of the planning system. Equally, developers may become less likely to offer community benefits, which genuinely seek to address any adverse effects of development for the wider public good.

8 Do you agree to the changes proposed for Section 7: Taking Decisions on Quasi-Judicial or Regulatory Applications?

Not Answered

Please provide your comment::

Please see our comments at question 7 above.

9 Overall, how clear do you find the proposed revised Code?

Mostly clear

Please tell us where you think the clarity of the Code could be improved, and how::

10 Do you have any other comments or suggestions about any aspect of the revised Code?

Please comment here::

As stated above, private companies generally aim to make a profit on investments, otherwise they would be likely to fail as a business. This profit also needs to reflect the risk undertaken for often very long-term investments made by the development industry. Our members also take on significant risks to deliver the buildings that Scotland needs and have a high degree of commitment to excellence in the built environment. They are therefore firmly of the view that the wording used in the proposed document is very unbalanced in this context. There is a risk that this could foster a prejudicial perspective being taken by councillors against private sector applicants, by reinforcing a negative and rather stereotypical perception of the real estate industry. Our members submit detailed packages of information in support of applications, which is a matter of public record and open to scrutiny. There would be no benefit it providing inaccurate information.

Our members are also concerned that there is also no reference to the positive contributions made by the real estate sector. While a councillor is expected to weigh up and balance a number of issues, there is no reference to the need for homes, jobs and investment in notes accompanying the text under Section 6 for example.

About you

What is your name?

Name:

Mandy Catterall

What is your email address?

Email:

mcatterall@bpf.org.uk

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Scottish Property Federation

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy.

I consent

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Very dissatisfied

Please enter comments here.:

The Scottish Property Federation (SPF) is a voice for the real estate industry in Scotland. We include among our members: property investors, including major institutional pension and life funds; developers; landlords of commercial and residential property; and professional property consultants and advisers. The design, format and functionality of the consultation makes it very challenging to gather comments from our members and offer an industry view. An editable template would make it easier to consult and offer a collective response from our membership.

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Very dissatisfied

Please enter comments here.:

Please see the comments above.