

MEMBERS' PLANNING CODE OF GOOD PRACTICE

1. Background

- 1.1 This Code has been prepared in response to:
- the Local Government Association's Guidance Note on the preparation of Local Codes of Good Practice on Planning Matters in light of the introduction of the new ethical framework;
 - Probity in Planning: the Role of Councillors and Officers – Revised Guidance Note on Good Planning Practice for Councillors and Officers Dealing with Planning Matters (published by the Local Government Association 2009)
 - Positive Engagement – a Guide for Planning Councillors (published by the Local Government Association)

2. Introduction

- 2.1 The aim of this Code of Good Practice: to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, not impartial or not well founded in any way.
- 2.2 The key purpose of Planning: to control development in the public interest.
- 2.3 Your role as a Member of the Planning Committee: Councillors on the Planning Committee sit as a non-judicial body, but act in a semi-judicial capacity, representative of the whole local community in making decisions on planning applications. They must therefore act fairly, openly and apolitically. They must approach each planning application with an open mind, avoiding pre-conceived opinions. They must carefully weigh up all relevant issues and determine each application on its individual planning merits. They should avoid undue contact with interested parties and ensure that the reasons for their decisions are clearly stated.
- 2.4 When the Code applies: this Code of Good Practice applies to Members at all times when involving themselves in the planning process (including, where applicable, decision making meetings of the Council whenever they exercise the functions of the Planning Authority in determining applications and other issues). It applies as equally to planning enforcement matters as it does to planning applications.
- 2.5 If you have any doubts about the application of this Code to your own circumstances you should seek advice early, preferably well before any meeting takes place.

3. Relationship to the Members' Code of Conduct: General

Do apply the rules in the Members' Code of Conduct first and then the rules in this Planning Code of Good Practice, which explain and supplement the Members' Code of Conduct for the purposes of planning control.

4. Development Proposals and Members' Interests

- 4.1 Do disclose the extent and nature of your interest at any relevant meeting, including informal meetings or discussions with Officers and other Members. At Committee, Members should, insofar as possible,

declare their interests on the form available for the purpose prior to the meeting. Ideally declarations of interest (including the nature of the interest) need to be made not only at the beginning of Committee but also before the relevant individual application. This is to ensure that any members of the public are fully aware of the reasons why, for example a Councillor with a prejudicial interest or a disclosable pecuniary interest, leaves the meeting and takes no part in the decision making process.

- 4.2 Do then act accordingly. Where your interest is prejudicial, or is a disclosable pecuniary interest:-
- 4.2.1 Don't participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.
 - 4.2.2 Don't try to represent ward views, get another ward member to do it instead.
 - 4.2.3 Don't get involved in the processing of the application.
 - 4.2.4 Don't seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a Councillor. This would include using your position to discuss personally with Officers an application in which you have a personal and prejudicial interest when other members of the public would not have the opportunity to do so.
 - 4.2.5 Do be aware that, whilst you're not prevented from seeking to explain and justify a proposal in writing in which you have a prejudicial interest to an appropriate Officer (in person or in writing), the Code places greater limitations on you in representing the proposal than would a normal member of the public. For example, where you have a personal and prejudicial interest in a proposal, you will have to be absent from any meeting, including not being able to speak as a member of the public.
 - 4.2.6 Do notify the Monitoring Officer in writing of your own proposals and those where you act as agent for a third party – this notification should be made no later than submission of the application. These proposals will always be reported to the Committee as main items and not dealt with by Officers under delegated powers.

5. Pre- determination in the Planning Process

- 5.1 Don't close your mind and therefore your ability to participate in planning decision making at the Committee by judging, or appearing to judge, a planning matter in advance elsewhere, including whilst serving on another body. Furthermore you may put the Council at risk of legal proceedings. Members taking part in the planning decision making process must do so with an open mind. They must reach a final decision only after having heard all of the relevant evidence and arguments at Committee. If a Member pre-judges an application, or it could be perceived that they have pre-judged the application (i.e. where a fair minded and well informed observer looking objectively at

all of the circumstances considers that there is a real risk that the decision maker has refused even to consider a relevant argument or would refuse to consider a new argument), the decision can be unlawful and can amount to maladministration. This can lead to a breach of the Member's Code of Conduct as if the behaviour of a Councillor renders a decision of the Council unlawful that can be regarded as conduct which brings the office of Member and the Council into disrepute.

- 5.2 If you have previously done something that directly or indirectly indicates what view you have taken, or would or might take, in relation to a matter, and that matter is relevant to the decision, this is not to be taken that you have had, or have appeared to have had, a closed mind when making the decision. However, a declaration of the way you intend to vote prior to your formal consideration of the matter at a meeting of the planning authority and hearing the Officer's presentation and evidence and arguments on both sides might give rise to an allegation of bias or predetermination.
- 5.1 Do be aware that this includes where the Council is landowner, developer or applicant and you have acted as, or could be perceived as being, the chief advocate for the proposal, either on behalf of the Council or in respect of a particular area. This would include participation as a member of the Executive/Committee meeting which undertook to sponsor the proposal.
- 5.2 Do be aware that this includes where you could be perceived as being an advocate for a proposal where it has been submitted by another public authority of which you are a member or in which you hold a position of general control or management. This would include, for example, a proposal from:
- a parish council for which you are also a Councillor; or
 - a school or college for which you are a governor
- where you have acted, in relation to the proposal.
- Under the Members' Code of Conduct, you may choose to not regard yourself as having a prejudicial interest in relation to your position on another public authority, but it is recommended you do so when determining planning proposals.
- 5.3 Don't speak and vote on an application/matter where this is the case. You do not also have to withdraw, but you may prefer to do so for the sake of appearances.
- 5.4 Do explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.
- 5.5 Do take the opportunity to exercise your separate rights as Ward Member where you have predetermined a decision but do not have a personal and prejudicial interest. If you do:
- advise the proper Officer or Chairman that you wish to speak in this capacity before commencement of the item; and
 - remove yourself from the member seating area for the duration of that item.

5.6 Do decide where you wish to exercise your decision-making powers.

6. Lobbying of and by Councillors

- 6.1 It is common for applicants and other interested parties (e.g. neighbours, other Councillors) to wish to discuss a proposed development with Members of Planning Committee before and during the consideration of a planning application. Whilst such discussions can help Councillors' understanding of the issues and concerns associated with an application, it is important the Planning Committee Members avoid compromising their positions before they have received all the relevant information. It is accepted that it can be difficult to get the balance right between the duty of a Councillor to be an active local representative and the requirement of a Member of Planning Committee to make decisions in an open minded way. Striking this balance is ultimately the responsibility of the individual Councillor but the Code should not prohibit Members from being able to apply their own judgment.
- 6.2 Do explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it can prejudice your impartiality to express a firm point of view or an intention to vote one way or another. If an opinion is expressed Members should make it clear that they will only be in a position to take a final decision after having heard all the relevant evidence and arguments at Committee
- 6.3 Don't accept gifts or hospitality wherever possible, if a degree of hospitality is unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and remember to register the gift or hospitality where its value is over £25.
- 6.4 Do not be swayed in your judgement by threats of withdrawal of political support for you as a Councillor.
- 6.5 Do come to a meeting with an open mind and demonstrate that you are open-minded.
- 6.6 Do remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not favour, or appear to favour, any person, company, group or locality.
- 6.7 If you become a member of, lead or represent a lobby group involved in planning decisions, there is again a risk of an allegation of bias and predetermination and you are likely to have a personal and prejudicial interest and have to withdraw.
- 6.8 Don't discuss any application or decide how to vote at any sort of political group meeting, or press any other Member to do so, in advance of the meeting at which any planning decision is to be taken. If this does occur it is likely to be regarded as maladministration.
- 6.9 Do comply with all protocols on lobbying which the Council may have.
- 6.10 Do inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate Officers to follow the matter up.

- 6.11 Unless you have a Personal and Prejudicial interest, this does not prevent you from:
- being able to listen/receive viewpoints from residents or other interested parties;
 - making comments to residents, interested parties, other Members or appropriate Officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind.
 - seeking information through appropriate channels; or
 - being a vehicle for the expression of opinion or speaking at the meeting as a ward member, provided you explain your actions at the start of the meeting/item and make it clear that, having expressed the opinion or ward view, you will make up your own mind having heard all the facts and listened to the debate.

7. Contact with Applicants/Developers

- 7.1 Do refer applicants/developers who approach you for planning or procedural advice to Officers wherever practicable.
- 7.2 Don't agree to a meeting with applicants or developers where you can avoid it, except where this is part of a meeting organised by an Officer and at which an Officer is present. Although Councillors can be involved in pre-application discussions with applicants, unless the discussion simply relates to policies and procedures, such meetings should always involve Officers, who can give professional planning advice.
- 7.3 It is essential that Members do not become involved in the negotiation process. Members should not put themselves in a position where they appear to favour a person, company or group – even a 'friendly' private discussion with a developer could cause others to mistrust that Member's impartiality.
- 7.4 Do ensure that you report to the Director - Place any significant contact with the applicant and other parties and explain the nature and purpose of the contacts and your involvement in them. Ensure that this is recorded on the planning file.
- 7.5 Do ensure that you comply with any general Council protocols/procedures for presentations or discussions.

In addition in respect of presentations:

- 7.6 Don't attend presentations unless they have been organised by Officers and an Officer is present.
- 7.7 Do ask relevant questions for the purposes of clarifying your understanding of the proposals.
- 7.8 Do remember that the presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the appropriate Committee of the planning authority.
- 7.9 Do be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other Members might vote.

8. Officers

- 8.1 Don't put pressure on Officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Director - Place, which may be incorporated into any Committee report).
- 8.2 Do recognise that Officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with a Head of Service or those Officers who are authorised by their Head of Service to deal with the proposal at a Member level.
- 8.3 Do recognise and respect that Officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning Officers' views and opinions 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.

9. Decision Making

General Issues

- 9.1 The referral of a planning application for consideration by the Planning Committee can be made by Officers, a member representing the relevant ward or a member of Planning Committee. A member request for such a referral must be made within 28 days of the date that members receive notification of the weekly list on which the application is first listed. Planning applications that receive ten individual letters expressing a view contrary to an Officer's recommendation will be referred to Planning Committee.
- 9.2 Do comply with Section 54A of the Town and Country Planning Act 1990 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- 9.3 Do come to your decision only after due consideration of all of the information reasonably required to base a decision upon. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request it. If necessary, defer or abstain. It is not a sound reason to defer an application to request the applicant to amend their application to remove Members' concerns about it or to try and appease objectors. The applicant has a right to have their application – in whatever terms – to be determined by Committee. If a Member believes that the application, in its present form, should be refused on planning issues then that is what should be moved rather than a deferral.
- 9.4 Don't vote or take part in the meeting's discussion on a proposal unless you have been present or hear the entire debate, including the Officers' introduction to the matter.
- 9.5 Do have recorded the reasons for Committee's decision to defer any proposal.
- 9.6 Do make sure that if you are proposing, seconding or supporting a decision contrary to Officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to

this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

Decisions of the Committee which do not accord with the recommendation of the Director - Place.

- 9.7 Prior to the Planning Committee taking a decision which is contrary to the recommendation of the Director - Place they shall first give an opportunity to the Director - Place or Officer nominated to act on his behalf and where appropriate the legal Officer to explain the implications of the contrary decision.
- 9.8 Having had regard to all material considerations, including the verbal advice of the Officers regarding the implications of a contrary decision, if the Committee is minded to make a decision contrary to the Officers' recommendation the Chair shall ask the members moving and seconding the contrary motion to give an explanation of their reasons for considering that a contrary decision is appropriate. Members are expected to identify what planning policies they rely on, what material considerations they have taken into account and what evidence they have to support their views. This is because reasons for a refusal of an application must be complete, precise, specific and relevant to the application. The Council will be expected to produce evidence to substantiate each reason for refusal, by reference to the development plan and all other material considerations
- 9.9 The vote taken in respect of an application approved or refused contrary to the recommendation of the Director - Place shall be recorded.
- 9.10 A detailed minute of the Committee's reasons for taking a contrary decision as expressed by the members moving and seconding the contrary motion shall be kept, and, a copy placed on the planning application file. In the event that the Committee wish to approve an application which had otherwise been recommended for refusal, the Committee should delegate to the Director - Place in consultation with the Chair and Vice-Chair, such planning conditions as are considered necessary to control and regulate the development and comply with statutory requirements.

10. Public Speaking at Committee Meetings

- 10.1 Do ensure that you comply with the Council's procedures in respect of public speaking.
- 10.2 Don't allow members of the public to otherwise communicate with you (orally or in writing) during the Committee's proceedings, as this may give the appearance of bias.

11. Site Visits

Criteria for Site Visits

- 11.1 Site visits can be requested by Officers, a member representing the relevant ward, or a member of the Planning Committee. One of the following criteria must be established to justify a site visit:

- (a) The impact of the development is particularly difficult to visualise and where plans, drawings or photographs would not provide sufficient clarity;
 - (b) The proposal is particularly contentious;
 - (c) The proposal is a significant development in the green belt;
 - (d) Proposals which relate to new or novel forms of development.
- 11.2 Site visit requests will only usually be appropriate when one of the above factors applies, or where exceptional circumstances apply.
- 11.3 Site visits should not be undertaken to defer difficult decisions on controversial applications, or when applicants, objectors or constituents request them without good planning reasons.

Purpose of Site Visits

- 11.4 The purpose of a Planning Committee site visit is to:
- (a) Enable members of the Planning Committee to evaluate the nature and impact of a proposed development in the context of the application site and surrounding land and buildings;
 - (b) Help members to understand more fully any issues raised by interested parties; and
 - (c) Allow Officers to point out relevant features and will enable questions to be asked out on site for clarification

Prior to the Site Visit

- 11.5 When a site visit is considered necessary, the Democratic Services Officer will confirm the site visit arrangements in writing to members and Officers. This will most often include the provision of a minibus and driver, starting from the Town Hall or other pre-arranged location. Site visits will normally take place on the morning of the Planning Committee meeting.
- 11.6 The applicant/agent will be informed by letter of the need for a site visit by Planning Committee, to ensure that the site will be accessible at the pre-arranged time of the visit (only where necessary)
- 11.7 There will be no prior publicity or formal notification of third parties in respect of site visits.

Protocol

- 11.8 Site visits are subject to the same restrictions as ordinary meetings of the Committee. This means:
- (a) Members should disclose any personal interests before the site visit commences;
 - (b) No Councillor with a prejudicial interest or whose presence would give rise to bias or the appearance of bias should attend a site visit.

Procedure at the Site Visit

- 11.9 Councillors should either travel to the site at the same time as (or with) the planning Officer attending the visit or meet the Officer on site. If present at the site before the visit begins particular care should be taken to ensure that they maintain their objectivity. Hospitality or lifts should not be accepted from applicant or objector as this could be seen to show favour. Nor should any conversations be carried out with third parties

- 11.10 It is expected that Councillors will already be familiar with the planning Officer's report at the site visit. To further assist Councillors, the planning Officer will:
- (a) explain the purpose of the site visit
 - (b) describe the development proposal in relation to the site and any relevant neighbouring land;
 - (c) provide a site location plan/route map
 - (d) advise upon any potential health and safety issues at the site visit;
 - (e) advise upon access arrangements for participants with limited mobility/disabilities
- 11.11 A short document addressing the following matters will be presented to members before each site visit. The content of this document will be agreed at the Chairman's briefing
- 11.12 Neither the applicant/agent or any third parties will be permitted to take an active part in the Planning Committee site visit. The purpose of the site visit is simply to enable members to familiarise themselves with relevant features of the site and surroundings
- 11.13 At no time during the site visit should Councillors debate or comment on the planning merits or otherwise of a proposal. The proper forum for any such discussion is the Committee meeting itself.
- 11.14 No separate discussions must take place between Officers or members and either applicants or agents.
- 11.15 In order to assist in ensuring that Councillors receive the same information, they should keep together in one group with the chairperson and the planning Officer and not break away into small groups, or conduct their own separate inspections of the site.
- 11.16 At the end of the site visit the Councillors should leave the site promptly. If necessary they will drive or be transported to the next site visit where the same procedures as above will apply.

12. **Training**

- 12.1 Don't participate in decision making at meetings dealing with planning matters if you have not attended the initial planning training prescribed by the Council.
- 12.2 Do endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.
- 12.3 Do participate in the annual review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations.