

Members' Planning Code of Good Practice

Background

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 the light of the introduction of the new ethical framework.

Introduction

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, partial or not well founded in any way.

The key purposed of Planning: to control development in the public interest.

Your role as a Member of the Planning Authority: to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.

When the code applies: this code of good practice applies to Members at all times when involving themselves in the planning process. (This includes, where applicable, when part of decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters as it does to planning applications.

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.

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

- **Do** apply the rules in the Members' Code of Conduct first, which must be always be complied with.
- **Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not abide by this Code of Good Practice, you may put:
 - the Council at risk of proceedings on the legality or maladministration of the related decision; and
 - yourself at risk of either being named in a report made to the Standards Committee or Council or, if the failure is likely to also be a breach of the Code of Conduct, a complaint being made to the Standards Board of England.

2. Development Proposals and Members' Interests

Do disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter.

- **Do** then act accordingly. Where your interest is prejudicial:-
- **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.
- **Don't** try to represent ward views, get another (ward) Member to do so instead.
- **Don't** get involved in the processing of the application.
- **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.
- **Do** be aware that, whilst you're not prevented from seeking to explain and justify a proposal 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 that proposal than would apply to a normal member of the public. (For example, where you have a personal and prejudicial interest in a proposal to be put before a meeting, you will have to withdraw from the room or chamber whilst the meeting considers it, whereas an ordinary member of the public would be able to make use of [the][any] public speaking scheme to address the meeting on the proposal and observe the meeting's consideration of it from the public gallery.)
- **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.

3. Fettering Discretion in the Planning Process

- **Don't** fetter your discretion and therefore your ability to participate in planning decision making at this Council by making up your mind, or appearing to have made up your mind, on how you will vote on any planning matter (including whilst serving on another body) prior to formal consideration of the matter at a meeting(s) of the planning authority and of your hearing the officer's presentation and evidence and arguments on both sides.

Fettering your discretion in this way may put the Council at risk of a finding of maladministration and of legal proceedings in respect of the decision on the grounds of a danger of bias or pre-determination or of a failure to have taken into account all of the factors enabling the proposal to be considered on its merits.

Do be aware that the above included where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal, either on behalf of the Council or in respect of a particular area. Through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public, as being no longer able to determine the application purely on its planning merits or to act impartially in respect of the application.

- **Do** consider, where you have been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of:
 - . another local or public authority of which you are a member; or
 - . a body to which you have been appointed or nominated by the Council as its representative,
 - that
 - it is recommended you disclose a personal and prejudicial interest (the Members Code of Conduct allows for an exemption in that you may choose not to regard yourself as having a prejudicial interest in matters which relate to these organisations); but
 - should you decide to make use of the exemption, you will have fettered your discretion (as described in the paragraph above)
- and you should act accordingly.

- **Don't** speak and vote on an application/matter where you have fettered your discretion. You do not also have to withdraw, but you may prefer to do so for the sake of appearances.
- **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. Use the disclosure of interest form provided.
- **Do** take the opportunity to exercise your separate rights as Ward Member where you have already represented your views or those of local electors in this way and thereby fettered your discretion, but do not have a personal and prejudicial interest. Where you do:
 - advise the proper officer or Chairman that you wish to speak in this capacity before commencement of the item;
 - remove yourself from the member seating area for the duration of that item; and
 - ensure that your actions are recorded.
 - **Do** decide where you wish to exercise your decision-making powers.

4. Lobbying of and by Councillors

- **Don't** declare to any person the way you intend to vote, or express an opinion on the merits in such a way or of such firmness that it implies the same thing, as this will result in you having fettered your discretion.
- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality to express a firm point of view or an intention to vote one way or another.

Don't accept gifts or hospitality from any person involved in or affected by a planning proposal 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 [in accordance with the authority's rules on gifts and hospitality].

- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **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 improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and you are likely to have a personal and prejudicial interest and have to withdraw.
- **Do** join interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, PRE or a local civic society, but declare a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation that you must reserve judgement and the independence to make up your own mind on each separate proposal.
- **Don't** excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.

Don't discuss or decide how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue. There should be no Group meetings within the Council Offices prior to Committee meetings to consider planning applications.

- **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.
- **[Do** comply with the Council's protocol on lobbying presentations or discussions]
- **Do** note that, unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this or Planning Code of Good Practice through:
 - listening or receiving 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 prejudging 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 have not committed

yourself to vote in their interests and will make up your own mind having heard all the facts and listened to the debate.

5. Contact with Applicants, Developers and Objectors

- **Do** refer those who approach you for planning, procedural or technical advice to officers.
- **Don't** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the [Development Control Services Manager][Head of Planning] to organise it. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.
- **Do** otherwise:
 - follow the rules on lobbying;
 - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
 - report to the [Development Control Services Manager/Head of Planning Services] any significant contact with the applicant and other parties, explaining the nature and purposes of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

In addition in respect of presentations by applicants/developers:

- **Don't** attend a planning presentation unless an officer is present and/or it has been organised by officers.
- **Do** ask relevant questions for the purposes of clarify your understanding of the proposals.
- **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.
- **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.

6. Officers

- **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 [Development Control Services Manager], which may be incorporated into any committee report).
- **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.

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, 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.

7. Decision Making

- **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your reasons are recorded and repeated in the report to the Committee.
- **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.
- **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 refuse.
- **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officer's introduction to the matter.

Do have recorded the reasons for Committee's decision to defer any proposal [and that this is in accordance with the Council's protocol on deferrals (if any)].

- **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.

8. Public Speaking at Meetings

- **Do** ensure that you comply with the Council's procedures in respect of public speaking.
- **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.

9. Site Visits

- **Do** try to attend the site visits organised by the Council where possible.
- **Don't** request a site visit unless you feel it is strictly necessary because:
 - particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
 - there are significant policy or precedent implications and specific site factors need to be carefully addressed.

Do ensure that any information which you gained from the site visit is reported back to the Committee, so that all Members have the same information.

- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **Don't** hear representations from any other party [with the exception of the Ward Member(s) whose address must focus only on site factors and site issues]. Where the applicant or a third party approaches you, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.
- **Don't** express opinions or vies to anyone.
- **Don't** enter a site which is the subject to a proposal on your own, even in response to an invitation. Where you do feel it is essential for you to visit the site other than through attending the official site visit, do not do so unless you have first spoken to the Development Control Services Manage or case officer about your intention to do so and can ensure you will comply with the above good practice rules.

10. Training

- **Don't** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.

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.

- **Do** participate in the annual review of a sample of planning decisions to ensure that Members judgements have been based on proper planning considerations.

Approved by Standards Committee on 10th January 2003