

CODE OF GOOD PRACTICE – PROTOCOLS FOR MEMBERS OF PLANNING AND DEVELOPMENT COMMITTEE

1. Introduction

- 1.1 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, partial or not well founded in any way.
- 1.2 The key purpose of Planning:** to control development in the public interest.
- 1.3 Your role as a Member of the Planning Authority:** to make planning decisions openly, impartially, with sound judgment and for justifiable reasons.
- 1.4 When the Code of Good Practice applies:** this code applies to Members at all times when involving themselves in the planning process. (This includes when taking part in the 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 or site specific policy issues 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 from the Borough Solicitor.

2. Relationship to the Members' Code of Conduct

- 2.1** The rules in the Members' Code of Conduct should apply first as the Code must be always be complied with.
- 2.2** Once you have applied the rules of the Members' Code of Conduct, 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:
 - a. the Council at risk of proceedings on the legality or maladministration of the related decision; and
 - b. yourself at risk of breaching the Code of Conduct, a complaint being made to the Standards Committee.

3. Development Proposals and Interests under the Members' Code of Conduct

- 3.1** You must disclose the existence and nature of any interests at the relevant meeting(s), 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.

3.2 Where your interest is personal and prejudicial:-

- **Do not** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.
- **Do not** try to represent ward views, get another Ward Member to do so instead.
- **Do not** get involved in the processing of the application.
- **Do not** 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, where you have a personal and prejudicial interest in a proposal, using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.
- **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate officer, in person or in writing, the Code place limitations on you in representing that proposal. You may address the Committee but only to make a presentation in the same manner than would apply to a normal member of the public, after which you must leave the room whilst the meeting considers it (you may not remain to observe the meeting's considerations on it from the public gallery.).

4. Fettering Discretion in the Planning Process.

- 4.1 Do not fetter your discretion and therefore your ability to participate in planning decision making by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the planning authority and to your hearing the officer's presentation and evidence and arguments on both sides.
- 4.2 Fettering your discretion in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- 4.3 You can take part in the debate on a proposal when acting as part of a consultee body (where you are also for example, a County Councillor), provided that the proposal does not substantially affect the well being or financial standing of the consultee body and you make it clear to the consultee body that:
- your views are expressed on the limited information before you only;
 - you must reserve judgment and the independence to make up your own mind on

each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Committee and you hear all of the relevant information; and

- you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee; and
- you disclose the personal interest regarding your membership or role when the Committee comes to consider the proposal.

4.4 Do not speak and vote on a proposal 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.

4.5 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.

4.6 Do take the opportunity to exercise your separate speaking rights as a Ward Member where you have represented your views or those of local electors and 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.

5. Contact with Applicants, Developers and Objectors

5.1 Do refer those who approach you for planning, procedural or technical advice to officers.

5.2 Do not 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 Manager 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.

5.3 Consider whether or not it would be prudent in the circumstances to make notes when contacted and report to the Development Control Manager any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

5.4 In addition in respect of presentations by applicants/developers:

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- Do not 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 clarifying 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. Lobbying of Councillors

- 6.1** You must explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and therefore your ability to participate in the Committee's decision making to express an intention to vote one way or another or such a firm point of view that it amounts to the same thing.
- 6.2** You must 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.
- 6.3** Do not accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and remember to register of interests where its value is over £25 (in accordance with the authority's rules on gifts and hospitality).
- 6.4** Copy or pass on any lobbying correspondence you receive to the Development Control Manager at the earliest opportunity.
- 6.5** Promptly refer to the Development Control Manager any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- 6.6** Inform the Borough Solicitor 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.
- 6.7** It should be noted that, unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this 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 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 or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

7. Lobbying by Councillors

- 7.1** Do not 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 may have fettered your discretion and are likely to have a personal and prejudicial interest.
- 7.2** You may join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society, but disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgment and the independence to make up your own mind on each separate proposal
- 7.3** Do not 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
- 7.4** Do not decide or discuss 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.

8. Public Speaking at Meetings

- 8.1** Do not allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the Chair, as this may give the appearance of bias.
- 8.2** You must ensure that you comply with the Council's procedures in respect of public speaking.

10. Officers

- 10.1** Do not 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 Manager, which may be incorporated into any committee report).
- 10.2** You must 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.

11. Decision Making

- 11.1** You must ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation("call-in"), that your reasons are recorded and repeated in the report to the Committee.
- 11.2** You must come to meetings with an open mind and demonstrate that you are open-minded.
- 11.3** You must make decisions in accordance with the Development Plan Documents unless material considerations indicate otherwise.
- 11.4** You must come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer.
- 11.5** You must not vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- 11.6** There must be a record of the reasons for Committee's decision to defer any proposal
- 11.7** You must 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.

12. Training

- 12.1** You must not participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.
- 12.2** You should 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 Plan Documents beyond the minimum and thus assist you in carrying out your role properly and effectively.