

# **Members' Planning Code of Good Practice**

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## **Background**

This Code of Good Practice 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 and in consultation with the District Audit Service and the Local Government Ombudsman.

## **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 purpose of Planning:** to control development in the public interest.

**Your role as a Member of the Planning Authority:** this code 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 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 early, from the Monitoring Officer or one of his or her staff, and preferably well before any meeting takes place.**

## 1.0 **Relationship to the Members' Code of Conduct**

- 1.1 **Do** apply the rules in the Members' Code of Conduct first, which must always be complied with.
- 1.2 **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.

## 2.0 **Development Proposals and Interests under the Members' Code**

- 2.1 **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. An exemption to declaring a personal interest applies when it arises solely from membership, general control or management on any body where they are appointed by the Council or any other body exercising functions of a public nature. In these cases, Members need only to declare if they speak. If they do not speak, they may vote without a declaration

## 3.0 **Fettering Discretion in the Planning Process**

- 3.1 **Don't** fetter your discretion and therefore your ability to participate in planning decision making at this Council 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 of your hearing the officer's presentation and evidence and arguments on both sides.

**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.

- 3.2 **Do** be aware that you are likely to have fettered your discretion 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. (This is more than a matter of membership of both the proposing and planning determination committees, but that 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 act impartially or to determine the proposal purely on its planning merits.)
- 3.3 **Don't** 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.
- 3.4 **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.
- 3.5 **Do** take the opportunity to exercise your separate speaking rights as a Ward Member (*with the consent of the Chairman and Committee*) where you have represented your views or those of local electors and fettered your discretion, but do not have a pecuniary interest. Where you do:
- advise the Legal 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.
- 4.0 **Contact with Applicants, Developers and Objectors**
- 4.1 **Do** refer those who approach you for planning, procedural or technical advice to officers.

4.2 **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 Director of Neighbourhood Services 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.

4.3 **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 Director of Neighborhood Services 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.

4.4 **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 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.

## 5.0 Lobbying of Councillors

- 5.1 **Do** 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 process and to express an intention to vote one way or another or such a firm point of view that it amounts to the same thing.
- 5.2 **Do** remember that your overriding duty is to the whole community not just to the people in your ward area 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.
- 5.3 **Don't** 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.
- 5.4 **Do** copy or pass on any lobbying correspondence you receive to the Director of Neighbourhood Services at the earliest opportunity.
- 5.5 **Do** promptly refer to the Director of Neighbourhood Services any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- 5.6 **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts of hospitality), who will in turn advise the appropriate officers to follow the matter up.
- 5.7 **Do** note that, unless you have a pecuniary interest, you will not have fettered your discretion or breached this Planning Code of Good Practice through:
- listening or receiving viewpoints from residents, applicants or other interested parties;
  - making comments to residents, applicants, 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.

## 6.0 **Lobbying by Councillors**

6.1 **Don't** become a member or, 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.

6.2 **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 judgement and the independence to make up your own mind on each separate proposal.

6.3 **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.

6.4 **Don't** 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.

## 7.0 **Site Visits**

- 7.1 **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.
- 7.2 **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site. The purpose of a site visit is to gain information relating to the land and buildings that is the subject of the planning application, which is not apparent from the report to be considered by the Development Control Committee. A site visit may also assist Members in matters relating to the context of the application in relation to the characteristics of the surrounding area. Members are encouraged to visit sites accompanied by other Members.
- 7.3 **Don't** hear representations from any other party, with the exception of the Ward/Local Member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present. Members should make a note recording the details of the meeting.
- 7.4 **Don't** express opinions or views to anyone. Members should not express an opinion on the planning application and its merits (or otherwise) at the site visit.
- 7.5 **Don't** enter a site which is subject to a proposal unless:
- you feel it is essential for you to visit the site,
  - you can ensure you will comply with these good practice rules on site visits, and
  - identify yourself (if necessary).

## 8.0 **Public Speaking at Meetings**

- 8.1 **Don't** allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking, as they may give the appearance of bias.



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

## 9.0 **Officers**

9.1 **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 of Neighbourhood Services, which may be incorporated into any committee report).

9.2 **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 the Head of Planning and Building Control to deal with the proposal at Member level.

9.3 **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, 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 Committees or its Members.

## 10.0 **Decision Making**

10.1 **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.

10.2 **Do** come to meetings with an open mind and demonstrate that you are open-minded.

10.3 **Do** comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.

- 10.4 **Do** 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 or refuse.
- 10.5 **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 officers' introduction to the matter.
- 10.6 **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.
- 10.7 **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.
- 11.0 **Training**
- 11.1 **Don't** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training (including annual refresher training) prescribed by the Council.
- 11.2 **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.
- 11.3 **Do** participate in the periodic review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations.