

Part 5H - Members' Planning Code of Good Practice

This Code of Practice supplements the Council's Code of Conduct for Members and where appropriate Members should refer to the Code of Conduct which is also set out in Part 5 of the Council's Constitution. The Council's Monitoring Officer's advice may be sought on the interpretation of the Code of Conduct or this Code.

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, nor impartial or not well founded in any way.

The key purpose of Planning: to plan for the future needs of the district and its residents and to manage development proactively in the public interest.

The role of a Member of the Planning Authority (those members who sit on Development Management Committee): to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.

The role of a Member of the Council: when involved in decisions about planning policy, development management or other matters related to planning which are not in the remit of the Planning Authority, members should follow the principles in this code and act openly, impartially, with sound judgement and for justifiable reasons.

1.0 Introduction

1.1 Planning affects land and property interests, including the financial value of land and the quality of their settings. It is not an exact science. It is often highly contentious because decisions affect the daily lives of everyone and the private interests of members of the public, landowners and developers. Opposing views are often strongly held by those involved. A key role of the planning process is balancing the needs and interests of individuals and the community.

- 1.2 The planning system can only function effectively if there is trust amongst those involved. There must be trust between Members and Officers and between the public and the Council. The Third report of the Committee on Standards in Public Life (the Nolan Committee) (1997) recommended that each local authority's practices and procedures were set out in a local code of planning conduct to avoid allegations of malpractice in the operation of the planning system.
- 1.3 The Council is committed to open, fair and transparent decision-making. Planning decisions should be made impartially, with sound judgement and for justifiable reasons.
- 1.4 This Code of Practice sets out practices and procedures that Members and Officers shall follow when involved in planning matters. Planning matters include the consideration of planning applications (development management), the preparation of development plans and other planning policy work and the enforcement of planning control.
- 1.5 Failure to follow this Code without good reason could be taken into account in investigations into possible maladministration against the Council, or have implications for the position of individual elected Members and officers. Breaches of this Code may also amount to breaches of the Council's Code of Conduct for Members. If in doubt about what course of action to take, a member or officer should seek the advice of the Council's Monitoring Officer.
- 1.6 This Code of Practice sets out principles to guide Members and officers in determining planning applications and making other decisions within the terms of reference of Development Management Committee. Although of particular relevance to members of Development Management Committee it applies to all Members of the Council who may become involved in planning and development matters through any of its decision making processes that deal with planning matters

2.0 The Role and Conduct of Members and Officers

- 2.1 Members and Officers have different, but complementary roles. Both serve the public but Members are responsible to

the electorate, while Officers are responsible to the Council as a whole.

- 2.2 The role of a Member of the Development Management Committee is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.
- 2.3 Whilst Members have a special duty to their ward constituents, including those who did not vote for them, their overriding duty is to the whole community. This is particularly pertinent to Members involved in making a planning decision. A key role of the planning system is the consideration of development proposals against the wider public interest.
- 2.4 Members' decisions shall not discriminate in favour of any individuals or groups and, although they may be influenced by the opinions of others, they alone have the responsibility to decide what view to take. Members must, therefore, consider all of the **material issues** in the light of Development Plan policies, Government advice and their own individual judgement and make a decision in the interests of the area as a whole.
- 2.5 Whilst Members should take account of all views expressed, they shall not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.
- 2.6 Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's (RTPI) Code of Professional Conduct. Breaches of that code may be subject to disciplinary action by the Institute.
- 2.7 Officers in their role of advising Members shall provide:
 - (a) Impartial and professional advice;
 - (b) Consistency of interpretation of planning policy; and
 - (c) Complete written reports covering all necessary information for a decision to be made.

2.8 The Council endorses the statement in the RTPI Code of Professional Conduct (Feb 2016) that, 'RTPI members must not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions', and extends it to apply to all officers in the authority advising on planning matters.

3.0 Interests of Members

3.1 Where the interest is such that Members of the public may feel that the Member will not be able to approach matters with an open mind and consider the application on its planning merits, Members should consider withdrawing from the Committee for that item.

3.2 The Code of Conduct for Members provides guidance as to Disclosable Pecuniary Interests which may affect a Member's ability to take part in the decision-making process.

3.3 Members should also consider carefully whether in any particular case they could reasonably be seen to approach the planning matter with an open mind. If the Member considers that this is not possible, the Member should withdraw from consideration of that matter.

3.4 The integrity of the planning system requires openness on the part of Members; it must operate fairly and be seen to operate fairly.

3.5 Members must:

(a) disclose the extent and nature of their interest at any relevant meeting, including informal meetings or discussions with officers and other Members. Members should preferably disclose their interest at the beginning of the committee meeting and not just at the commencement of discussion on that particular matter.

(b) then act accordingly

3.6 Prejudicial Interests

(a) Where an interest is prejudicial, members must not:

- (i) participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.
 - (ii) try to represent ward views; get another ward member to do it instead.
 - (iii) get involved in the processing of an application.
 - (iv) seek or accept any preferential treatment, or place themselves in a position that could lead the public to think they are receiving preferential treatment, because of their position as a Councillor. This would include using their position to discuss personally with officers an application in which they have a personal or prejudicial interest when other members of the public would not have the opportunity to do so.
- (b) Members must be aware that:
- (i) whilst they are not prevented from seeking to explain and justify a proposal in which they have a prejudicial interest to an appropriate officer (in person or in writing), the Code places greater limitations on them in representing the proposal than it would a normal member of the public. For example, where a member has a personal and prejudicial interest in a proposal, they will have to be absent from the meeting, including not being able to speak as a member of the public.
 - (ii) they should notify the Monitoring Officer in writing of their own proposals and those where they act as agent for a third party – this notification should be made no later than submission of the application or related matter. Where this relates to a planning application, such applications will always be reported to and determined by the Development Management Committee and will not dealt with by officers under delegated powers.

3.5 Members should seek guidance from officers where appropriate.

3.6 **Fettering Discretion in the Planning Process**

- (a) Members should not fetter their discretion and therefore their ability to participate in planning decision making at the Council by judging, or appearing to judge, a planning matter in advance elsewhere, including whilst serving on another body. Furthermore they may put the Council at risk of legal proceedings if they do so.
- (b) Members should be aware that this includes where the Council is the landowner, developer or applicant and they 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. This would include participation as a member of the Committee meeting which undertook to sponsor the proposal.
- (c) Members should be aware that this includes where they could be perceived as being an advocate for a proposal where it has been submitted by another public authority of which they are a member or in which they hold a position of general control or management. (This would include, for example, a proposal from:
 - (i) a County, Town or Parish Council for which they are also a Councillor; or
 - (ii) a school or college for which they are a governor, where they have acted in relation to the proposal.)
- (d) Under the Members' Code of Conduct, a member may choose not to regard themselves as having a prejudicial interest in relation to their position on another public authority, but it is recommended they **do so when determining planning proposals**.

- (i) Members should not speak and vote on an application/matter where this is the case. They do not also have to withdraw, but they may prefer to do so for the sake of appearances.
- (ii) Members should explain that they do not intend to speak and vote because they have or they 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. Members should use the disclosure of interest form provided.
- (iii) Members should take the opportunity to exercise their separate rights as a Ward Member where they have fettered their discretion but do not have a personal and prejudicial interest. If they do they should:
- (iv) Members should advise the proper officer or Chairman that they wish to speak in the capacity before commencement of the item;
- (v) Members should remove themselves from the member seating area for the duration of that item
- (vi) Members should decide where they wish to exercise their decision-making powers.

4.0 Lobbying of and by Members

- 4.1 Lobbying is a normal part of the political process. The applicant, supporters or those who may be affected by a proposal will often seek to influence the decision by an approach to their local Member or Members of the Development Management Committee. However, reacting to lobbying can lead to the impartiality of a Member being called into question.
- 4.2 The information provided by lobbyists is likely to represent an incomplete picture of the relevant considerations in respect of a planning matter. The views of consultees, neighbours and the assessment of the case by the planning officer all

need to be considered before a Member is in a position to make a balanced judgement on the merits of the case. Members should provide officers with copies of any lobbying material they may have received, whether in favour or against a proposal.

- 4.3 The time for individual Members of the Development Management Committee to make a decision on a proposal is at the Committee meeting when all available information is to hand and has been duly considered.
- 4.4 A Development Management Committee member shall be free to listen to a point of view about a planning proposal and to provide procedural advice (in particular referring the person to officers). Even though they may agree with a particular view, Development Management Committee members should take care about expressing an opinion indicating they have made up their mind before the decision-making meeting. To do so, without all the relevant information and views, would be unfair and prejudicial. A decision is at risk of being challenged if Members do not retain open minds and are not genuinely susceptible to persuasion at the decision-making meeting. Members who are lobbied should:
- (a) make clear that they reserve their final decision on a proposal until the committee meeting;
 - (b) only give procedural advice;
 - (c) consider referring those lobbying to the relevant Officer who can provide further advice; and
 - (d) not seek to meet an applicant or potential applicant alone.
- 4.5 Members should remember that their overriding duty is to the whole community not just to the people in their ward and, taking account of the need to make decisions impartially, that they should not favour, or appear to favour, any person, company, group or locality.

- 4.6 Members should not discuss any applications 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.
- 4.7 Members of the Development Management Committee shall not organise support or opposition for a proposal, or lobby other Members (other than when addressing the Development Management Committee). Members shall not put pressure on officers for a particular recommendation.
- 4.8 The local Member who is not a member of the Development Management Committee will be allowed to attend and speak at the decision-making meeting representing the views of their ward but may not vote. A Member of an adjacent ward substantially affected by the proposal shall, at the discretion of the Chairman of the Development Management Committee be allowed to attend and speak at the decision-making meeting (if they are representing the views of their ward) but not vote.
- 4.9 The local member should speak after objectors but before the Applicant or their representative. This enables the Applicant to respond to comments made by the Objector or Members in their presentation and ensures the Applicant has the last word in respect of the application.
- 4.10 Subject to the provisions of this Code, Members of the Development Management Committee must be free to vote as they consider appropriate on planning matters.
- 4.11 Members should inform the Monitoring Officer where they feel they 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.
- 4.12 Members should avoid accepting gifts or hospitality wherever possible. If a degree of hospitality is unavoidable, members should ensure it is of a minimum, its acceptance is declared as soon as possible and that where the value is over £25 it is registered with the Monitoring Officer.

4.13 Unless a member has a pecuniary and nonpecuniary interest, this does not prevent them from:

- (a) being able to listen/receive viewpoints from residents or other interested parties;
- (b) 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 the member makes clear they are keeping an open mind;
- (c) seeking information through appropriate channels; or
- (d) being a vehicle for the expression of opinion or speaking at the meeting as a ward member, provided they explain their actions at the start of the meeting/item and make it clear that, having expressed the opinion or ward view, they will make up their mind having heard all the facts and listened to the debate.

5.0 Pre- and Post- Application Discussions and Negotiations

5.1 Discussions between an applicant and a planning authority, prior to the submission of an application can be of considerable benefit to both parties and is encouraged. Continued discussions and negotiations between these parties, after the submission of proposals, is a common and important facet of the planning process. However, they should take place within clear guidelines, as follows.

5.2 It should always be made clear at the outset that the discussions at the pre application stage will not bind the Council to making a particular decision and that any views expressed are those of the Officer only, and are provisional.

5.3 Advice should be consistent and based upon the Development Plan and relevant material considerations. There should be no significant difference of interpretation of planning policies by individual planning officers.

5.4 A written note should be made of all potentially contentious meetings. Two or more officers should attend potentially

contentious meetings. A note should also be taken of potentially contentious telephone discussions.

5.5 Members need to preserve their role as impartial decision makers. When requested by officers, Members may be involved in pre and post application processes which are run through and co-ordinated by Officers (including through the masterplanning process where Members are actively encouraged to become involved). These processes will be part of a structured arrangement with Officers, including a senior planning officer. Members must avoid indicating the likely decision on an application or otherwise committing the authority during contact with applicants.

5.6 Members may receive information from applicants and give information to applicants and members of the public but, to safeguard their impartiality, they should maintain a clear distinction between receiving information and negotiating. Any information received by Members should be provided to the officers dealing with the application. Members who are approached for planning, procedural or technical advice should refer the applicant to the relevant officer.

5.7 Applicant presentations

In respect of presentations members should:

- (a) be aware that a presentation is a form of lobbying and they must not express any strong view or state how they or other Members might vote.
- (b) **not** attend presentations unless they have been organised by officers or an officer is present, unless they are events where the general public are in attendance (such as consultation events).
- (c) ask relevant questions for the purposes of clarifying their understanding of the proposals.
- (d) 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.

6.0 Officer Reports to Committee

- 6.1 The Head of Planning and Building Control (or their delegate) will submit written reports to the appropriate Development Management Committee on planning applications to be determined by the Council. The reports will give the background to the application including any relevant planning history of the site, a description of the proposals and their likely effects, and the relevant Development Plan and Government policy considerations, together with any other material considerations. Where a planning application requires an environmental impact assessment the Head of Planning and Building Control shall include in his/her report a summary of the environmental statement, comments by bodies consulted and representations from members of the public together with his/her own comments. The reports will include a summary of representations made about the application. The Head of Planning and Building Control in his/her report will give a reasoned assessment of the proposals and a justified recommendation.
- 6.2 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.
- 6.3 Oral reports (except to present and update a report) should be extremely rare and fully minuted when they do occur.
- 6.4 The Head of Planning and Building Control will have available for inspection by Members the full planning application, environmental statement (where required) and representations from bodies consulted and members of the public.

7.0 Planning Considerations

- 7.1 Planning decisions should be made on planning considerations and should not be based on immaterial considerations.
- 7.2 Members of Development Management Committee must attend the training sessions which are designed to ensure that members are adequately equipped to make sound planning decisions. No Member may sit on Development Management Committee unless they have attended such training as agreed necessary by the Council (see paragraph 11 below for further detail). All other Members are encouraged to attend.
- 7.3 Local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless that opposition or support is founded upon valid planning reasons which can be substantiated.
- 7.4 Having identified all the material planning considerations and put to one side all the immaterial considerations, Members must come to a carefully balanced decision which can be substantiated, if challenged on appeal.

8.0 The Decision Making Process

- 8.1 Members shall recognise the law requires that where the Development Plan is relevant, decisions should be taken in accordance with it, unless material considerations indicate otherwise.
- 8.2 Where an environmental impact assessment is required, the Development Management Committee shall take the information provided in the report into consideration when determining the application.
- 8.3 A member should only vote or take part in the meeting's discussion on a proposal if they have been present to hear the entire debate, including the officers' introduction to the matter.

- 8.4 If the report's recommendation is contrary to the provisions of the Development Plan, the material considerations which justify this must be clearly stated.
- 8.5 Where the Development Management Committee decide to adopt the recommendation of the Head of Planning and Building Control, the reasons contained in his/her report will be minuted, together with any additional reasons determined by the Committee.
- 8.6 Where the Development Management Committee is minded to approve or to refuse a planning application, contrary to the recommendation of the Head of Planning and Building Control, or the Development Plan, any member who is proposing, seconding or supporting such a decision should clearly identify and understand the **planning reasons** leading to this conclusion/decision. These reasons must be given prior to the vote, be recorded and officers be afforded an opportunity to provide advice in relation to them before a vote is taken. Members should be aware that they may have to justify the resulting decision by giving evidence in the event of any challenge.
- 8.7 The reasons for Committee's decision to defer any proposal should also be recorded.

9.0 Site Visits

- 9.1 Members should ensure that they are sufficiently familiar with land and sites in relation to which they are making a decision. In most circumstances, this will require a visit to the site and area, prior to the meeting at which a decision is being made. A specific visit may not be necessary if members are already familiar with a site. Prior to a site visit Members should familiarise themselves with the issues which are likely to require their attention at the visit by a first assessment of the Officers report.
- 9.2 The Council, in general, does not organise collective visits to sites. Therefore it is the member's responsibility to ensure they undertake site visits as necessary.

- 9.3 Any visit should only be undertaken from publically accessible land, such as the public highway, public footpaths, public amenity areas. Members should not enter private land unless they have the consent from the land owner to do so. If they do, members should identify themselves.
- 9.4 Any information gained from the site visit should be reported back to the Committee, so that all Members have the same information.
- 9.5 The site visit should be treated 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 matter, which may not be apparent from the report to be considered by the Development Management or other relevant 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.
- 9.6 Members should not hear representations from any party at a site visit. Where a Member is approached by the applicant or a third party, they should advise them that they should make representations in writing to the authority. Members should make a note recording the details of the meeting.
- 9.7 Ensuring that they are aware of the issues likely to be relevant to the site, if members are approached by any party at a site visit, they should consider whether they should then hear representations from other relevant parties, whilst at the site
- 9.8 Do not express opinions or views to anyone. Members should not express an opinion on any planning application and its merits (or otherwise) at the site visit.
- 9.9 Where, on occasion, a collective site visit is organised, a planning officer will be present. The planning officer will, in advance, ensure that all present are aware of the arrangements for the visit, the manner in which it is organised and identify those who are permitted to address Members at the visit.

10.0 Representations on Planning Applications

- 10.1 Wherever possible, objections or representations to planning applications should be made in writing. Written representations received will be made available for public inspection and objections summarised and reported to the Development Management Committee. Members will be given the opportunity to inspect all letters received before the decision on the application is made.
- 10.2 There will be occasions when applicants or objectors, or both, may wish to make representations in person to the Development Management Committee.
- 10.3 The Council has a scheme for public speaking at Development Management Committee. Details of this scheme are on the Council's website.
- 10.4 Members should not allow members of the public to communicate with them (orally, in writing or by any other means) during the Committee's proceedings other than through the public speaking arrangements, as this may give the appearance of bias.

11.0 Training

- 11.1 Members should not participate in decision-making at meetings dealing with planning matters if they have not attended the mandatory planning training prescribed by the Council.
- 11.2 Members should undertake continuous professional development in relation to their role as a member of the DM Committee.