

# Part 5H – Members’ Planning Code of Good Practice

## 1.0 Introduction

1.1 The aim of this code of good practice ~~and~~ 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 One of the key purposes of the planning system is to regulate the development and use of land in the public interest. ~~The role of~~ ~~Your role as~~ a Member of the Planning Authority is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons. ~~Members~~ ~~You~~ are also a democratically accountable decision-taker who ~~have~~ been elected to provide and pursue policies. ~~Members~~ ~~You~~ are entitled to be predisposed to make planning decisions in accordance with ~~their~~ ~~your~~ political views and policies provided that ~~you have considered~~ all material considerations ~~have been considered~~ and ~~have given~~ fair consideration ~~has been given~~ to relevant points raised.

1.3 ~~When the Code of Good Practice applies: this~~ ~~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.

1.4 If ~~you have~~ ~~there are~~ any doubts about the application of this Code to ~~Members~~ ~~your~~ own circumstances, ~~they~~ ~~you~~ should seek advice early, from the Monitoring Officer or one of ~~his or her~~ ~~their~~ staff, and preferably well before any meeting takes place.

## 2.0 Relationship to the Members’ Code of Conduct

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appropriate Officer, in person or in writing, but that the Members' Code of Conduct may place additional limitations on theyyou in representing that proposal

- 3.5 Do notify the Monitoring Officer in writing where it is clear to theyyou that theyyou have a disclosable pecuniary interest or other personal conflict of interest and note that:

- 3.5.1 ~~you should send~~ the notification should be sent, no later than submission of that application where possiblyyou can;
- 3.5.2 the proposal will always be reported to the Committee as a main item and not dealt with by Officers under delegated powers;
- 3.5.3 Membersyou must not get involved in the processing of the application; and
- 3.5.4 it is advisable that theyyou employ an agent to act on theyyour behalf in respect of the proposal when dealing with Officers and in public speaking at Committee.

### 43.0 Fettering Discretion in the Planning Process

(natural justice, predisposition and predetermination)

• 4.1 Members should not ~~Don't~~ fetter theyyour discretion and therefore theyyour ability to participate in planning decision making at theis Council by approaching the decision with a closed mind. Fettering your discretion in this way and taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of bias, predetermination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

• 4.2 Members should ~~Do~~ be aware that in theyyour role as an elected Member theyyou are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the Localism Act 2011.

• 4.3 Members should keep in mind the following when they come to make a decision: ~~Do keep at the front of your mind that, when you come to make the decision, you~~

- 4.3.1 ~~must~~ keep an open mind and hear all of the evidence presentedbefore you, both the officers' presentation of the facts and their advice and the arguments from all sides;

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~~4.3.2~~ Members are not required to cast aside views on planning policy you held when seeking election or when otherwise acting as a Member, in giving fair consideration to points raised;

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~~4.3.3~~ Members are only entitled to take account a material consideration and must disregard considerations irrelevant to the question and legal context at hand; and

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- ~~4.3.4~~ Members are to come to a decision after giving what theyyou feel is the right weight to those material considerations.

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• ~~4.4~~ Members should be ~~Do be~~ aware that theyyou can be biased where the Council is the landowner, developer or applicant and theyyou 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 theyyou 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.)

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• ~~4.5~~ Members are ~~Do consider yourself~~ able to take part in the debate on a proposal when acting as part of a consultee body (where theyyou are also a member of the parish council, for example, or both a district/borough and county councillor), provided:

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- ~~4.5.1~~ the proposal does not substantially effect the well being or financial standing of the consultee body;

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- ~~4.5.2~~ you make it is made clear to the consultee body that:

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• anyyour views are expressed on the limited information before you only;

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• you must reserve personal judgement is reserved, and the independence to make up your own mind on each separate proposal, based on theyyou 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

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- ~~4.5.3~~ you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee.

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• ~~4.6~~ Do Members should explain that theyyou do not intend to speak and vote as a member of the Committee because theyyou will be perceived as having judged (or you reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes. (~~Use the disclosure form provided for~~

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*disclosing interests.)*

• 4.7 Members should ~~Do~~ take the opportunity to exercise their/you separate speaking rights as a Ward ~~Local~~ Member ~~(where this is granted by the authority's standing orders or by the consent from the Chair and Committee)~~ where they/you have represented their/you views or those of local electors and fettered their/you discretion, but do not have a disclosable or other personal conflict of interest. Where a conflict of interest arises, Members should you do:

- advise the proper officer or Chair that they/you wish to speak in this capacity before commencement of the item;
- remove themselves yourself from the seating area for members of the Committee for the duration of that item; and
- ensure that their/you actions are recorded.

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## 54.0 Contact with Applicants, Developers and Objectors

• 5.1 Members should ~~Do~~ refer those who approach them/you for planning, procedural or technical advice to Officers.

• 5.2 Members should not ~~Don't~~ agree to any formal meeting with applicants, developers or groups of objectors where they/you can avoid it. If a Member feels that a formal meeting ~~Where you feel that a formal meeting~~ would be useful in clarifying the issues, they/you should seek to arrange that meeting yourself through a request to the Head of Service for Planning and Building Control ~~[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 Members should ~~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 Head of Service for Planning and Building Control ~~[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 ~~[a profoma has been supplied to you for this purpose].~~

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

- **5.4.1 Members should not** ~~Don't~~ attend a planning presentation without requesting an **O**fficer to be present.
- **5.4.2 Do** ~~Members should~~ ask relevant questions for the purposes of clarifying **their** ~~your~~ understanding of the proposals.
- **5.4.3 Members should** ~~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.
- **5.4.4 Members should** ~~Do~~ be aware that a presentation is a form of lobbying and, whilst **they** ~~you~~ may express any view on the merits or otherwise of the proposal presented, **Members** ~~you~~ should never state how you or other Members would intend to vote at a committee.

**6.05. Lobbying of Councillors**

- **6.1 Members should explain** ~~Do explain~~ to those lobbying or attempting to lobby **them** ~~you~~ that, whilst **they** ~~you~~ can listen to what is said, it may subsequently prejudice **their** ~~your~~ impartiality, and therefore **their** ~~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 Members should** ~~Do~~ remember that **the** ~~your~~ overriding duty is to the whole community not just to the people in **their** ~~your~~ ~~[ward]~~~~[division]~~ **Ward** and, taking account of the need to make decisions impartially, that **they** ~~you~~ should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **6.3 Members should not** ~~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, including its addition to your register of interests where relevant.
- **6.4 Members should** ~~Do~~ copy or pass on any lobbying correspondence **they** ~~you~~ receive to the **Head of Service for Planning and Building Control Development Control Manager** at the earliest opportunity.

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• ~~6.5 Members should~~ **Do** promptly refer to the ~~Head of Service for Planning and Building Control Development Control Manager~~ any offers made to ~~theyyou~~ of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.

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• ~~6.6 Members should~~ **Do** inform the Monitoring Officer where ~~theyyou~~ feel ~~theyyou~~ have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate ~~O~~officers to follow the matter up.

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• ~~6.7 Members should~~ **Do** note that, unless ~~theyyou~~ have a disclosable or overriding other personal conflict of interest, ~~theyyou~~ will not have fettered ~~theyyour~~ discretion or breached this Planning Code through:

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- ~~6.7.1~~ listening or receiving viewpoints from residents or other interested parties;

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- ~~6.7.2~~ making comments to residents, interested parties, other Members or appropriate officers (making clear that ~~theyyou~~ must keep an open mind);

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- ~~6.7.3~~ seeking information through appropriate channels; or

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- ~~6.7.4~~ being a vehicle for the expression of opinion of others in ~~theyyour~~ role as a ~~{Ward}{Division}~~ Member.

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## **760. Lobbying by Councillors**

• ~~7.1 Members should not~~ **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If ~~theyyou~~ do, ~~theyyou~~ will be seen to have fettered ~~theyyour~~ discretion on the grounds of bias.

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• ~~7.2 Members can~~ **Do** join general interest groups which reflect ~~theyyour~~ 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 ~~theyyou~~ should normally disclose that interest on the grounds of transparency where the organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that ~~theyyou~~ have reserved judgement and the independence to make up ~~theyyour~~ own mind on each separate proposal

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• ~~7.3 Members should not~~ **Don't** excessively lobby fellow councillors regarding ~~theyyour~~ concerns or views nor attempt to persuade them that they should

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attending the official site visit,

- 8.8.2 ~~they~~you have first spoken to the ~~Head of Service for Planning and Building Control Development Control Manager~~ about ~~their~~your intention to do so and why (which will be recorded on the file) and

- 8.8.3 ~~they~~you can ensure you will comply with these good practice rules on site visits.

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## 98.0 Public Speaking at Meetings

- 9.1 ~~Members should not~~ **Don't** allow members of the public to communicate with ~~them~~you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking or through the Chair, as this may give the appearance of bias.
- 9.2 ~~Do~~Members should ensure that ~~they~~you comply with the Council's procedures in respect of public speaking.

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## 109.0 Officers

- 10.1 ~~Members should not~~ **Don't** put pressure on ~~e~~Officers to put forward a particular recommendation. (This does not prevent ~~Members~~you from asking questions or submitting views to the ~~Head of Service for Planning and Building Control Development Control Manager~~, which may be incorporated into any committee report).
- 10.2 ~~Members should~~ **Do**-recognise that ~~O~~Officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with a Head of Service or those ~~O~~Officers who are authorised by their Head of Service to deal with the proposal at a Member level.
- 10.3 ~~Members should~~ **Do** recognise and respect that ~~O~~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.

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## 11.0 Decision Making

- 11.1 Members should Do ensure that, if theyyou request a proposal to go before the Committee rather than be determined through officer delegation, that theyyour planning reasons are recorded and repeated in the report to the Committee.
- 11.2 Members should Do come to meetings with an open mind and demonstrate that theyyou are open-minded.
- 11.3 Members should Do comply with section 38 of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- 11.4 Members should Do come to theyyour decision only after due consideration of all of the information reasonably required upon which to base a decision. If Membersyou feel there is insufficient time to digest new information or that there is simply insufficient information before theyyou, request that further information. If necessary, defer or refuse.
- 11.5 Members should not Don't vote or take part in the meeting's discussion on a proposal unless theyyou have been present to hear the entire debate, including the Oofficers' introduction to the matter.
- 11.6 Do have recorded the reasons for Committee's decision to defer any proposal should be recorded [and that this is in accordance with the Council's protocol on deferrals].
- 11.7 Members should Do make sure that if theyyou are proposing, seconding or supporting a decision contrary to Officer recommendations or the development plan that theyyou 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 Membersyou may have to justify the resulting decision by giving evidence in the event of any challenge.

## 12.0 Training

- 12.1 Members should not Don't participate in decision making at meetings dealing with planning matters if theyyou have not attended the mandatory planning training prescribed by the Council.
- 12.2 Members should Do endeavour to attend any other specialised training

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sessions provided, since these will be designed to extend ~~Members`~~your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist ~~them`~~you in carrying out your role properly and effectively.

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• 12.3 Members should ~~Do~~ participate in the annual review of a sample of planning decisions to ensure that Members` judgements have been based on proper planning considerations.

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