

# Section 15 – Members’ Planning Code of Good Practice

## 15.1 Introduction

- 15.1.1 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.
- 15.1.2 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 a Member of the Planning Authority is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons. Members are also a democratically accountable decision-taker who have been elected to provide and pursue policies. Members are entitled to be predisposed to make planning decisions in accordance with their political views and policies provided that all material considerations have been considered and fair consideration has been given to relevant points raised.
- 15.1.3 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.
- 15.1.4 If there are any doubts about the application of this Code to Members’ own circumstances, they should seek advice early,

from the Monitoring Officer or one of their staff, and preferably well before any meeting takes place.

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

- 15.2.1 Do apply the rules in the Members' Code of Conduct first, which must be always be complied with. This is both the rules on disclosable pecuniary interests (and other interests) and the general rules giving effect to the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- 15.2.2 Do then apply the rules in this Members' Planning Code, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning control. If this Members' Planning Code is not abided by, it could put:
- (a) the Council at risk of proceedings on the legality or maladministration of the related decision; and
  - (b) Members' at risk of either being named in a report made to the Standards Committee or Council or, if the failure is also likely to be a breach of the Localism Act 2011, a complaint being made to the police to consider criminal proceedings.

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

- 15.3.1 Do disclose the existence and nature of the interest as required by the Members Code of Conduct.
- 15.3.2 Do take into account when approaching a decision that the Principle of integrity is defined in terms that "*Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to*

*influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships".* It is therefore advisable that Members:

- 15.3.3 Don't 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, where they have a disclosable or other personal conflict of interest in a proposal, using their position to discuss that proposal with Officers or Members when other members of the public would not have the same opportunity to do so.
- 15.3.4 Do note that they are not prevented from seeking to explain and justify a proposal in which they may have a conflict of interest to an appropriate Officer, in person or in writing, but that the Members' Code of Conduct may place additional limitations on them in representing that proposal.
- 15.3.5 Do notify the Monitoring Officer in writing where it is clear to them that they have a disclosable pecuniary interest or other personal conflict of interest and note that:
- (a) the notification should be sent no later than submission of that application where possible;
  - (b) the proposal will always be reported to the Committee as a main item and not dealt with by Officers under delegated powers;
  - (c) Members must not get involved in the processing of the

application; and

- (d) it is advisable that they employ an agent to act on their behalf in respect of the proposal when dealing with Officers and in public speaking at Committee.

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

(natural justice, predisposition and predetermination)

- 15.4.1 Members should not fetter their discretion and therefore their ability to participate in planning decision making at the Council by approaching the decision with a closed mind. Fettering 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, pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- 15.4.2 Members should be aware that in their role as an elected Member they 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.
- 15.4.3 Members should keep in mind the following when they come to make a decision:
  - (a) keep an open mind and hear all of the evidence presented, both the officers' presentation of the facts and their advice and the arguments from all sides;

- (b) Members are not required to cast aside views on planning policy held when seeking election or when otherwise acting as a Member, in giving fair consideration to points raised;
- (c) Members are only entitled to take account a material consideration and must disregard considerations irrelevant to the question and legal context at hand; and
- (d) Members are to come to a decision after giving what they feel is the right weight to those material considerations.

15.4.4 Members should be aware that they can be biased 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. (This is more than a matter of membership of both the proposing and planning determination committees, but that through significant personal involvement in preparing or advocating the proposal they 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.)

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

- (a) the proposal does not substantially effect the well being or financial standing of the consultee body;

- (b) it is made clear to the consultee body that:
  - (i) any views are expressed on the limited information only;
  - (ii) personal judgement is reserved and the independence to make up your own mind on each separate proposal, based on the 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
  - (iii) you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee.

15.4.6 Members should explain that they do not intend to speak and vote as a member of the Committee because they 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.

15.4.7 Members should take the opportunity to exercise their separate speaking rights as a Ward Member where they have represented their views or those of local electors and fettered their discretion, but do not have a disclosable or other personal conflict of interest. Where a conflict of interest arises, Members should:

- (a) advise the proper officer or Chair that they wish to speak in this capacity before commencement of the

- item;
- (b) remove themselves from the seating area for members of the Committee for the duration of that item; and
- (c) ensure that their actions are recorded.

## **15.5 Contact with Applicants, Developers and Objectors**

- 15.5.1 Members should refer those who approach them for planning, procedural or technical advice to Officers.
- 15.5.2 Members should not agree to any formal meeting with applicants, developers or groups of objectors where they can avoid it. If a Member feels that a formal meeting would be useful in clarifying the issues, they should seek to arrange that meeting through a request to the Head of Service for Planning and Building Control 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.
- 15.5.3 Members should otherwise:
  - (a) follow the rules on lobbying;
  - (b) consider whether or not it would be prudent in the circumstances to make notes when contacted; and
  - (c) report to the Head of Service for Planning and Building Control 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.

15.5.4 In respect of presentations by applicants/developers:

- (a) Members should not attend a planning presentation without requesting an Officer to be present.
- (b) Members should ask relevant questions for the purposes of clarifying their understanding of the proposals.
- (c) Members should 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.
- (d) Members should be aware that a presentation is a form of lobbying and, whilst they may express any view on the merits or otherwise of the proposal presented, Members should never state how you or other Members would intend to vote at a committee.

## **15.6 Lobbying of Councillors**

15.6.1 Members should explain to those lobbying or attempting to lobby them that, whilst they can listen to what is said, it may subsequently prejudice their impartiality, and therefore their 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.

- 15.6.2 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 improperly favour, or appear to improperly favour, any person, company, group or locality.
- 15.6.3 Members should 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, including its addition to your register of interests where relevant.
- 15.6.4 Members should copy or pass on any lobbying correspondence they receive to the Head of Service for Planning and Building Control at the earliest opportunity.
- 15.6.5 Members should promptly refer to the Head of Service for Planning and Building Control any offers made to them of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- 15.6.6 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 to follow the matter up.
- 15.6.7 Members should note that, unless they have a disclosable or overriding other personal conflict of interest, they will not have fettered their discretion or breached this Planning Code through:

- (a) listening or receiving viewpoints from residents or other interested parties;
- (b) making comments to residents, interested parties, other Members or appropriate officers (making clear that they must keep an open mind);
- (c) seeking information through appropriate channels; or
- (d) being a vehicle for the expression of opinion of others in their role as a Ward Member.

## **15.7 Lobbying by Councillors**

- 15.7.1 Members should not become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If they do, they will be seen to have fettered their discretion on the grounds of bias.
- 15.7.2 Members can join general interest groups which reflect their 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 they 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 they have reserved judgement and the independence to make up their own mind on each separate proposal.

- 15.7.3 Members should not excessively lobby fellow councillors regarding their 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.
- 15.7.4 Members should 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.

## **15.8 Site Visits/Inspections**

- 15.8.1 Members should try to attend site visits organised by the Council where possible.
- 15.8.2 Members should not request a site visit unless they feel it is strictly necessary because:
- (a) 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
  - (b) there are significant policy or precedent implications and specific site factors need to be carefully addressed.
- 15.8.3 Members should ensure that they report back to the Committee any information gained from the site visit that they feel would benefit all Members of the Committee
- 15.8.4 Members should ensure that they treat the site visit only as an

opportunity to seek information and to observe the site.

- 15.8.5 Members should ask the Officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- 15.8.6 Members should not 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 Members 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.
- 15.8.7 Members should not express opinions or views on the site visit.
- 15.8.8 Members should not enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
  - (a) they feel it is essential to visit the site other than through attending the official site visit;
  - (b) they have first spoken to the Head of Planning and Building Control about their intention to do so and why (which will be recorded on the file); and
  - (c) they can ensure you will comply with these good practice rules on site visits.

## **15.9 Public Speaking at Meetings**

- 15.9.1 Members should not allow members of the public to communicate with them during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking or through the Chairman, as this may give the appearance of bias.
- 15.9.2 Members should ensure that they comply with the Council's procedures in respect of public speaking.

## **15.10 Officers**

- 15.10.1 Members should not put pressure on Officers to put forward a particular recommendation. (This does not prevent Members from asking questions or submitting views to the Head of Service for Planning and Building Control, which may be incorporated into any committee report).
- 15.10.2 Members should 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.
- 15.10.3 Members should 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.

## **15.11 Decision Making**

- 15.11.1 Members should ensure that, if they request a proposal to go before the Committee rather than be determined through officer delegation, that their planning reasons are recorded and repeated in the report to the Committee.
- 15.11.2 Members should come to meetings with an open mind and demonstrate that they are open-minded.
- 15.11.3 Members should 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.
- 15.11.4 Members should come to their decision only after due consideration of all of the information reasonably required upon which to base a decision. If Members feel there is insufficient time to digest new information or that there is simply insufficient information before them, request that further information. If necessary, defer or refuse.
- 15.11.5 Members should not vote or take part in the meeting's discussion on a proposal unless they have been present to hear the entire debate, including the Officers' introduction to the matter.

- 15.11.6 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].
- 15.11.7 Members should make sure that if they are proposing, seconding or supporting a decision contrary to Officer recommendations or the development plan that they 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 Members may have to justify the resulting decision by giving evidence in the event of any challenge.

## **15.12 Training**

- 15.12.1 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.
- 15.12.2 Members should endeavour to attend any other specialised training sessions provided, since these will be designed to extend Members' knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist them in carrying out your role properly and effectively.
- 15.12.3 Members should participate in the annual review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations.