

MEMBERS' PLANNING CODE OF GOOD PRACTICE

I Introduction

1.1 The aim of this Code of Good Practice is to ensure that planning decisions are made openly, impartially, with sound judgement and for justifiable reasons. Sections in bold type highlight those parts of the Code which require members to do or not do something. Other sections of the Code provide information or clarification.

1.2 This Code applies to all Members and is relevant to all elements of the planning process. In addition to the determination of planning applications at Plans Committee meetings, this includes:

- meetings of the Council exercising the functions of the Planning Authority;
- less formal occasions, such as meetings with officers or the public and consultative meetings;
- planning enforcement matters;
- site-specific planning policy issues.

1.3 References to meetings of the Plans Committee in the Code therefore include, when appropriate, meetings of the Council.

2 Relationship to the Members' Code of Conduct

2.1 The Planning Code of Good Practice clarifies the Code of Conduct and legal requirements as they apply to planning matters and supplements the Code by clarifying issues such as pre-determination and bias which are not features of the Code but are very relevant to planning matters.

2.2 If you do not abide by this Code of Good Practice, you may put:

- the Council at risk from complaints of maladministration or challenges about the legality of the planning decision; and
- yourself at risk of a complaint to the Council's Standards Committee.

2.3 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 Deputy Monitoring Officer and preferably well before any meeting takes place.

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

3.1 If you have a personal interest, as defined in the Members' Code of Conduct, in a planning matter 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.

3.2 You do not need to disclose a personal interest in a matter if the interest relates to your membership or position of general control of another public body or a body to which you have been appointed by the Council if you do not speak on the matter.

3.3 In addition, if your interest is personal and prejudicial, for example in cases where applications are made by you, your close associates or family or by a body of which you are a member, or on land which you own, notify the Monitoring Officer in writing as soon as you are aware of the matter and do not:

- **participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority, except by using your rights to address the Plans Committee under paragraph 12(2) of the Code of Conduct, and disclose a personal and prejudicial interest and leave the meeting after you have exercised any right under paragraph 12(2) if you are present when the proposal is considered by the Plans Committee;**
- **sit in the public gallery when the matter is discussed by the Plans Committee;**
- **try to represent Ward views, get another Ward Member to do so instead;**
- **ask for an application to be considered by the Plans Committee rather than by officers under delegated powers, or ask another member to do so;**
- **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 using your position to discuss that proposal with officers or members in circumstances where**

other members of the public would not have the same opportunity to do so or seeking to unduly influence their decision on the matter.

3.4 In the case of your own development applications:

- **the proposal will always be considered by the Plans Committee and not dealt with by officers under delegated powers;**
- **disclose a personal and prejudicial interest and leave the meeting after you have used any right to address the Plans Committee under paragraph 12(2) of the Code of Conduct if you are present when the proposal is considered by the Plans Committee; and**
- **you may think it advisable to employ a spokesperson to act on your behalf on the proposal in dealing with officers and any public speaking at the Plans Committee.**

3.5 You are not prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest, including your own applications, to an appropriate officer, in person or in writing where the public is able to do the same. You can also exercise your rights to address the meeting considering it under paragraph 12(2) of the Code, but you will then have to withdraw from the room or chamber whilst the meeting considers it. This means that you cannot observe the meeting's consideration of it from the public gallery.

4. Decision Making

4.1 The Council's Scheme of Delegation sets out those matters which can be determined by the Head of Planning and Regeneration under delegated powers and the processes by which Members can request that a planning application be considered by the Plans Committee rather than be determined by officers. If you request that a planning application is considered by the Plans Committee, that fact and the reasons given will be recorded on the planning file.

4.2 When considering planning applications you should:

- **only make decisions in accordance with the Development Plan unless material considerations indicate otherwise;**
- **come to your decision only after due consideration of all of the information before you. If you feel there is insufficient time to digest new information defer**

making a decision to a later meeting or if there is insufficient information before you, request the additional information;

- **ensure that if you are moving, seconding or supporting a proposal contrary to officer recommendations or the Development Plan that you clearly justify the planning reasons for doing so before any vote is taken. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge;**
- **only vote or take part in the meeting's discussion on a proposal if you have been present to hear the entire debate, including the officers' introduction to the matter.**

5. Pre-determination in the Planning Process

5.1 Pre-determination (sometimes referred to as fettering discretion or bias) occurs when you make up your mind, or clearly appear to have made up your mind on how you will vote on a matter prior to its formal consideration at the Plans Committee meeting. This does not mean that you cannot form a view prior to a meeting, but this must be provisional and you must be open to persuasion by the evidence and arguments from all parties to be presented at the meeting.

5.2 If you pre-determine a matter in this way and then take part in the decision it will put the Council at risk of a complaint of maladministration or a legal challenge to the validity of the decision.

5.3 If have already made up your mind on a matter or appear to have done so:

- **do not take part in the Plans Committee's consideration and vote on the matter. You do not have to withdraw from the Plans Committee meeting, but may consider it appropriate to do so; and**
- **disclose at the Committee meeting that you do not intend to speak or vote because you have or you could reasonably be perceived as having pre-determined the matter, so that this may be recorded in the minutes.**

5.4 If 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 you are likely to be seen to have made up your mind.

5.5 You will not have pre-determined the matter or breached this Planning Code of Good Practice simply through:

- listening or receiving views from residents or other interested parties, provided the rules on disclosing contacts in paragraph 8.1 are followed;
- 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, and that the rules on disclosing contacts in paragraph 8.1 are followed;
- voting on a matter at the Plans Committee providing you can demonstrate that you have not closed your mind to considering other views;
- seeking information from appropriate officers, or
- asking for an application to be considered by the Plans Committee.

6 Parish/Town Councils and other consultee bodies

6.1 If you are a member of a parish/town council or other consultee body you are able to take part in both the debate on a proposal when acting as part of a consultee body and the determination of the matter by the Borough Council, provided:

- **the proposal is not made by or does not substantially affect the financial position of the consultee body;**
- **you make it clear to the consultee body that:**
 - **your views are expressed on the limited information before you only;**
 - **you must reserve judgement and the independence to make up your own mind on the proposal when it comes before the Plans Committee, based on your overriding duty to the whole community and not just to the people in that area, ward or parish; and**
 - **you have not in any way committed yourself as to how you or others may vote when the proposal comes before the Plans Committee.**

6.2 If you speak during the consideration of the matter by the Plans Committee you should disclose the personal interest arising from your membership or role in the consultee body whether or not you were part of the consideration by the consultee body.

7 The Role of Ward Members

7.1 When determining planning matters your duty is to the whole community not just to the people in your Ward area. You must ensure that decisions are impartial and you should not improperly favour, or appear to improperly favour, any person, company, group or locality, including the residents of your Ward.

7.2 Members who are not members of the Plans Committee may exercise their separate speaking rights as a Ward Member set out in Council Procedure Rule 42. However if you have a personal and prejudicial interest you will not be able to do this even under paragraph 12(2) of the Members' Code of Conduct. If you do exercise speaking rights:

- **advise the Head of Planning and Regeneration that you wish to speak in this capacity at least 24 hours before the meeting;**
- **you will not be able to vote on the matter; and**
- **you should seat yourself in the place allocated to those addressing the Plans Committee.**

8. Contact with Applicants, Developers and Objectors

8.1 If you are contacted by applicants, developers or objectors:

- **refer those who approach you for planning, procedural or technical advice to officers;**
- **do not agree to any meeting with applicants, developers or objectors if you can avoid it;**
- **if you feel that a meeting or site visit would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Head of Planning and Regeneration 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 Plans Committee.

- report in writing any contact with the applicant, objectors and other parties to the Head of Planning and Regeneration and request that it is recorded on the planning file;
- do not express any strong view or state how you or other Members might vote; and
- if you subsequently take part in the Plans Committee meeting considering this matter, disclose those contacts to the meeting.

8.2 In respect of presentations by applicants/developers:

- only attend a planning presentation if officers are present and it has been organised by officers;
- do ask relevant questions for the purposes of clarifying your understanding of the proposals;
- remember that the presentation is not part of the formal process of debate and that determination of any subsequent application will be carried out by the Plans Committee;
- do not express any strong view or state how you or other Members might vote; and
- comply with the Council's protocol relating to presentations in Part 5 of the Council's Constitution.

9. Lobbying of Councillors

9.1 Do not accept gifts from any person involved in or affected by a planning proposal.

9.2 If a degree of hospitality is entirely unavoidable:

- ensure it is of a minimum;
- its acceptance is declared to the Monitoring Officer as soon as possible; and
- if its value is over £25 it is registered in accordance with the Members' Code of Conduct.

9.3 Explain to those lobbying or attempting to lobby you that you will not be able to participate in the Plans Committee's consideration if you express an intention to vote one way or another or express such a firm point of view that it amounts to the same thing.

9.4 If someone attempts to lobby you:

- **copy or pass on any lobbying correspondence you receive to the Head of Planning and Regeneration at the earliest opportunity;**
- **refer any offers made to you of planning gain or constraint of development, through a proposed Section 106 Planning Obligation or otherwise, promptly to the Head of Planning and Regeneration;**
- **inform the Monitoring Officer in writing if you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality); and**
- **comply with the Council's protocol on presentations.**

10. Lobbying by Councillors

10.1 If you are a member of an organisation which has lobbied to promote or oppose a particular planning proposal, you will have a personal interest in that matter. If you lead or represent such an organisation it is likely that you will have predetermined the matter.

10.2 If you are a member of a general interest group, such as the Victorian Society, CPRE, Ramblers Association or a local civic society, disclose a personal interest if it has made representations on a particular proposal and make it clear to that organisation and the Plans Committee that you have reserved judgement and the independence to make up your own mind on that proposal.

10.3 You must not lobby fellow councillors regarding your concerns or views nor attempt to persuade them to vote in advance of the meeting at which any planning decision is to be taken.

10.4 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 and the party whip should never be used.

11. Site Visits

11.1 The purpose of site visits is to seek information and to observe the site and you should try to attend site visits organised by the Council where possible. Any information gained from the site visit should be reported back to the Plans Committee, so that all Members have the same information.

11.2 Ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.

11.3 Do not hear representations from any other party. If you are approached by the applicant or a third party, direct them to the officer present.

11.4 Do not express opinions or views on the merits of the proposal to anyone on site visits, including fellow councillors.

11.5 Do 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, unless:

- you feel it is necessary for you to visit the site on more than one occasion or you are unable to attend the official site visit;
- you seek advice from an officer and ask them to organise the visit;
- you inform the Head of Planning and Regeneration in writing that you have done so and why (which will be recorded on the file);
- you ensure that you comply with the rules in respect of contacts in paragraph 8.1, and
- you disclose the fact of your visit at the Plans Committee meeting.

12. Public Speaking at Meetings

12.1 Do not allow members of the public or other members in the public gallery to communicate with you during the Plans Committee's proceedings (orally or in writing) other than through the scheme for public speaking.

12.2 Do not respond inappropriately to comments made by members of the public and refer only to issues relevant to the planning matter.

12.3 Ensure that you comply with the Council's procedures in respect of public speaking contained in part 4 of the Constitution.

13. Officers

13.1 Officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Employees 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.

13.2 You may discuss applications with case officers, but do not put pressure on officers to put forward a particular recommendation or consider an application in a particular way. This does not prevent you from asking questions, seeking guidance or submitting views to the Head of Planning and Regeneration which may be incorporated into any committee report.

14. Training

14.1 You cannot participate in decision making at meetings dealing with planning applications if you have not attended the mandatory planning training prescribed by the Council.

14.2 Members are advised to attend any other specialised training sessions provided by the Council, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plan beyond the minimum referred to in paragraph 14.1 and thus assist you in carrying out your role properly and effectively.