

**MEMBERS' PLANNING CODE OF GOOD PRACTICE**

**Background**

This code 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.

**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, not impartial 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:** to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.

**When the code applies:** this code of good practice applies to Members at all times when involving themselves in the planning process (including, where applicable, decision making meetings of the Council whenever they exercise the functions of the Planning Authority in determining applications and other issues). It applies as equally to planning enforcement matters 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, preferably well before any meeting takes place.

**1. Relationship to Members' Code of Conduct: General**

- **Do** apply the rules in the Members' Code of Conduct first and then the rules in this Planning Code of Good Practice, which explain and supplement the Members' Code of Conduct for the purposes of planning control.

**2. Development Proposals and Members' Interests**

- **Do** disclose the extent 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 and not just at the commencement of discussion on that particular matter.
- **Do** then act accordingly. Where your interest is prejudicial:-
  - **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.
  - **Don't** try to represent ward views, get another ward/member to do it instead.
  - **Don't** get involved in the processing of the application.
  - **Don't** 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 personally with officers

an application in which you have a personal and prejudicial interest when other members of the public would not have the opportunity to do so.

- **Do** be aware that, whilst you're not prevented from seeking to explain and justify a proposal in which you have a prejudicial interest to an appropriate officer (in person or in writing), the Code places greater limitations on you in representing the proposal than would a normal member of the public. For example, where you have a personal and prejudicial interest in a proposal, you will have to be absent from the meeting, including not being able to speak as a member of the public.
- **Do** notify the Monitoring Officer in writing of your own proposals and those where you act as agent for a third party – this notification should be made no later than submission of the application. These proposals will always be reported to the Committee as main items and not dealt with by officers under delegated powers.

### **3. Fettering Discretion in the Planning Process**

- **Don't** fetter your discretion and therefore your 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 you may put the Council at risk of legal proceedings.
- **Do** be aware that this includes where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, the 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.
- **Do** be aware that this includes where you could be perceived as being an advocate for a proposal where it was been submitted by another public authority of which you are a member or in which you hold a position of general control or management. (This would include, for example, a proposal from:
  - a County or Parish Council for which you are also a Councillor; or
  - a school or college for which you are a governor where you have acted in relation to the proposal.)

Under the Members' Code of Conduct, you may choose to not regard yourself as having a prejudicial interest in relation to your position on another public authority, but it is recommended you do so when determining planning proposals.

- **Don't** speak and vote on an application/matter where this is the case. You do not also have to withdraw, but you may prefer to do so for the sake of appearances.
- **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. Use the disclosure of interest form provided.

- **Do** take the opportunity to exercise your separate rights as Ward Member where you have fettered your discretion but do not have a personal and prejudicial interest. If you do:
  - advise the proper officer or Chairman that you wish to speak in the capacity before commencement of the item; and
  - remove yourself from the member seating area for the duration of that item
- **Do** decide where you wish to exercise your decision-making powers.

#### **4. Lobbying of and by Councillors**

- **Don't** declare the way you intend to vote or express any opinion on the merits prior to your formal consideration of the matter at a meeting(s) of the planning authority and of hearing the officer's presentation and evidence and arguments on both sides.
- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality to express a firm point of view or an intention to vote one way or another.
- **Don't** accept gifts or hospitality wherever possible. If a degree of hospitality is unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and remember to register with the Monitoring Officer the gift or hospitality where its value is over £25.
- **Do** come to a meeting with an open mind and demonstrate that you are open-minded.
- **Do** remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not favour, or appear to favour, any person, company, group or locality.
- **Don't** become a member of, lead or represent a lobby group involved in planning decisions. If you do, you will have fettered your discretion and you are likely to have a personal and prejudicial interest and have to withdraw.
- **Don't** 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.
- **Do** inform the Monitoring Officer where you feel you 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.

- Unless you have a Personal and Prejudicial interest, this does not prevent you from:
  - being able to listen/receive viewpoints from residents or other interested parties;
  - 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;
  - 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/item and make it clear that, having expressed the opinion or ward view, you will make up your own mind having heard all the facts and listened to the debate.

### **5. Contact with Applicants/Developers**

- **Do** refer applicants/developers who approach you for planning or procedural advice to officers wherever practicable.
- **Don't** agree to a meeting with applicants or developers where you can avoid it, except where this is part of a meeting organised by an officer and at which an officer is present. (It is preferable that Councillors do not take part in what should be the officers' pre-application discussions with applicants but, where you do become involved, you should be advised by the appropriate officers and it should be recorded as a written file record.)
- **Do** ensure that you report to the Development Manager or the Head of Planning & Regulatory Services any significant contact with the applicant and other parties and explain the nature and purpose of the contacts and your involvement in them. Ensure that this is recorded on the planning file.
- **Do** ensure that you comply with any general Council protocols/procedures for presentations or discussions.

In addition in respect of presentations:

- **Don't** attend presentations unless they have been organised by officers and an officer is present.
- **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.

**6. Officers**

- **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 officers, which may be incorporated into any Committee report).
- **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with those officers who are authorised by the Head of Planning & Regulatory Services to deal with the proposal at a Member level.
- **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 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.

**7. Decision Making**

- **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.
- **Do** comply with Section 54A of the Town and Country Planning Act 1990 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- **Do** come to your decision only after due consideration of all the information reasonably required to base a decision upon. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request more time/information. If necessary, defer or refuse.
- **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.
- **Do** have recorded the reasons for Committee's decision to defer any proposal and that this is in accordance with the Council's standing orders.
- **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.

**8. Public Speaking at Meetings**

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

- **Don't** allow members of the public to otherwise communicate with you (orally or in writing) during the Committee's proceedings, as this may give the appearance of bias.

**9. Site Visits**

- **Do** try to attend site visits organised by the Council where possible.
- **Do** ensure that you treat the site inspection only as an opportunity to seek information and to observe the site.
- **Do** ask questions or seek clarification of matters which are relevant to the site inspection.
- **Don't** hear representations from the applicant or third parties.
- **Don't** express opinions or views to anyone.
- **Don't** visit a site on your own, even in response to an invitation, unless you have spoken to the Head of Planning & Regulatory Services or case officer about your intention to do so and comply with the above good practice rules.

**10. Training**

- **Don't** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.
- **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.
- **Do** participate in the annual review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations.