

# Members' Planning Code of Good Practice



## Appendix 1

### Background

The Planning Code of Good Practice 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 and replaces the Council's former local code of conduct on planning matters.

This Code is as per the model adopted by the Association of Council Secretaries and Solicitors (ACSeS) and launched on the 14<sup>th</sup> February 2003. The drafting of the model code was subject to consultation and comment from a number of other local authorities through the machinery of the Association of Council Secretaries and Solicitors (ACSeS), the Standards Board for England, the Local Government Ombudsman, Audit Commission and from firms of solicitors or counsel acting on their behalf.

Planning is not an exact science. Rather, it relies on informed judgement within a firm policy context. It is also contentious because its decisions affect the daily lives of everyone and the private interests of individuals, landowners and developers and land values. All this is heightened by the openness of the system and the legal nature of development plans and decision notices.

Consequently, with any application which has been refused or approved in the face of opposition, the decision may well be reviewed in any of the following ways. Any question of a procedural defect, impropriety or misconduct, whether warranted or not, may lead to an application for judicial review or a complaint of maladministration to the Local Government Ombudsman. Even if not taking such action, the aggrieved party may attempt to convince others that the decision was flawed. Of necessity, the planning process must not only be fair, it must be seen to be fair.

### 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, partial 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 of Good Practice applies:** this code applies to Members at all times when involving themselves in the planning process. (This includes when taking part in Planning Committee meetings or when involved on less formal occasions, such as meetings with Officers or the public and consultative meetings and pre-application discussions). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

**The successful operation of the planning system:** relies on mutual trust and understanding of Member and Officer roles. It also relies on Members and Officers ensuring that they act in a way which is not only fair and impartial, but is clearly seen to be so.

**If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer, Deputy Monitoring Officer or Democratic Services Officers, and preferably, well before any meeting takes place.**

## **1. Relationship to the Members' Code of Conduct**

- **Do** apply the rules in the Members' Code of Conduct first, as there must always be compliance with these.
- **Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not abide by this Code of Good Practice, you may put:
  - the Council at risk of proceedings on the legality or maladministration of the related decision; and
  - yourself at risk of either being named in a report made to the Standards Committee or Council or, a complaint being made to the Council's Standards Committee or, in case of serious breaches, a complaint being made to Standards for England (formerly the Standards Board for England).

## **2. Development Proposals and Interests under the Members' Code**

- **Do** 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. *(Use the disclosure form provided for disclosing interests.)*

- **Do** then act accordingly. **Where your interest is personal and prejudicial:-**
  - **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Council as the Planning Authority.
  - **Don't** try to represent Ward views, get another Ward Member to do so 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, where you have a personal and prejudicial interest in a proposal, using your position to discuss that proposal with Officers or Members when other members of the public would not have the same opportunity to do so.
  - **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate Officer, in person or in writing, the Code place limitations on you in representing that proposal. You may address the Planning Committee but only to make a presentation in the same manner than would apply to a normal member of the public, after which you must leave the room whilst the meeting considers it. You may not remain to observe the meeting's considerations on it from the public gallery. In order to be able to address the Planning Committee on a proposal in which you have a personal and prejudicial interest, you must notify Planning Services of your wish to address the Committee in accordance with the Council's public speaking rules.
  - **Do** notify the Monitoring Officer in writing and note that:
    - you should send the notification no later than submission of the application in which you have a personal and prejudicial interest, where you can;
    - the proposal will always be reported to the Committee as a main item and not dealt with by Officers under delegated powers; and
    - it is advisable that you employ an agent to act on your behalf on the proposal in dealing with Officers and any public speaking at Planning Committee.
- **Do** seek advice from the Monitoring Officer or Democratic Services Officers if you are unsure about whether or not you have an interest which needs to be declared, preferably in advance of the meeting at which the interest is likely to arise.

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

- **Don't** fetter your discretion and therefore your ability to participate in planning decision making at this Council by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the planning authority and of your hearing the Officer's presentation and evidence and arguments on both sides.

**Fettering your discretion** in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

- **Do** be aware that you are likely to have fettered your discretion where 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. (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 you 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.)
- **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the Parish Council, for example, or both a Borough and County Councillor), provided:
  - the proposal does not substantially effect the well being or financial standing 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 each separate proposal, based on your 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
    - you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee; and
  - you disclose the personal interest regarding your membership or role when the Committee comes to consider the proposal.
- **Don't** speak and vote on a proposal where you have fettered your discretion (for example, where you have committed yourself to a particular view on a planning issue prior to its consideration at Planning Committee). 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 form provided for disclosing interests. – replace our form??*)
- **Do take the opportunity to exercise your separate speaking rights as a Ward/Local Member (this is granted by the authority's standing orders or by the consent of the Chairman and Committee) where you have represented your views or those of local electors and fettered your discretion, but do not have a personal and prejudicial interest. Where you do:**
  - *advise the proper Officer or Chairman that you wish to speak in this capacity before commencement of the item;*

- remove yourself from the member seating area for the duration of that item; and
- ensure that your actions are recorded.

*[We need to be clear what we're saying about Ward Member role in view of the recent issue with Cllr Clayton]*

#### **4. Contact with Applicants, Developers and Objectors**

- **Do** refer those who approach you for planning, procedural or technical advice to Officers.
- **Don't** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the 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.
- **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 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.
- **Do** comply with the Council's Protocol on Pre-Application Discussions.

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

- **Don't** attend a planning presentation unless an Officer is present and/or it has been organised by Officers.
- **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.
- **Don't** approach applicants, developers or agents with a view to securing changes to an application or achieving planning gain. Any such contact would normally be conducted by and through Officers and should always be reported to Planning Committee.

## 5. Lobbying of Councillors

“Lobbying”, which can be defined as an approach to a Councillor by an applicant, developer, objector or other third party, is considered an important part of the democratic process. The Nolan Report recognised the two roles that Councillors perform in the planning process, namely, the representation of public opinion and the determination of applications.

However, lobbying can, unless care and common sense are exercised by all parties, lead to the impartiality of a Councillor being called into question and the need for an interest to be declared. When being lobbied, all Councillors should take care about expressing an opinion which may be taken as indicating that they have already made up their mind on the application (“*predetermination*”) before they have considered all representations and the planning content. Councillors should not lobby other Councillors to act for them, or act as an agent for other Councillors, or put pressure on Officers for a particular recommendation.

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and therefore 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 (predetermination).
- **Do** give procedural advice, such as recommending that those who are lobbying you should write to the Development Control Manager so that their views can be included in the Officer’s report to Planning Committee.
- **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 improperly favour, or appear to improperly favour, any person, company, group or locality.
- **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 and remember to register [of interests](#) where its value is over £25 (in accordance with the Council’s rules on gifts and hospitality).
- **Do** copy or pass on any lobbying correspondence you receive to the Development Control Manager at the earliest opportunity. **Do** note the contents of the correspondence and advise that it has been passed to Officers.
- **Do** promptly refer to the Development Control Manager any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- **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.

- **Do** note that, unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this Planning Code of Good Practice through:
  - listening or receiving 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 or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

## 6. Lobbying by Councillors

- **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and are likely to have a personal and prejudicial interest.
- **Do** join general interest groups which reflect your 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 disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal
- **Don't** excessively lobby fellow councillors regarding your 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
- **Don't** 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.

## 7. Site Visits

A formal site visit will often be helpful if the impact of the proposed development is difficult to visualise from plans and supporting information including photographs, or there is good reason why the comments of the applicant and objectors cannot be adequately expressed in writing.

- **Do** try to attend site visits organised by the Council where possible.

- **Don't** request a site visit unless you feel it is strictly necessary because:
  - 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
  - there are significant policy or precedent implications and specific site factors need to be carefully addressed.
- **Do** ensure that any information which you gained from the site visit is reported back to the Committee, so that all Members have the same information
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the Officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **Don't** 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 you are approached by the applicant or a third party, advise them that they should make representations in writing to the Development Control Manager and direct them to or inform the Officer present.
- **Don't** express opinions or views to anyone.
- **Don't** 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:
  - you feel it is essential for you to visit the site other than through attending the official site visit,
  - you have first spoken to the Development Control Manager about your intention to do so and why (which will be recorded on the file) and
  - you can ensure you will comply with these good practice rules on site visits.

## 8. Public Speaking at Meetings

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

## 9. Officers

Councillors and Officers have different, but complementary roles. Both serve the public but Councillors are responsible to the electorate, while Officers are responsible to the Council as a whole. As a general rule, instructions will usually be given to Officers through a Council or Committee decision.



Staff must always act impartially. In order to ensure that senior Officers do so, the Local Government and Housing Act 1989 imposes restrictions on their outside activities. The Council will identify which of their Officers are subject to these restrictions. This list will be reviewed regularly. Staff paid on salary grade SO1 and above must also seek permission from their Manager to carry out any private work.

- **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 Development Control Manager, 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 a Head of Service or those Officers who are authorised by their Head of Service 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, 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.

## 10. Decision Making

- **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through Officers' delegated powers, that your reasons are recorded and repeated in the report to the Committee.
- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **Do** comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 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 of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse but **do** make sure that you keep an open mind until all relevant information is to hand to avoid fettering your discretion.
- **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.
- **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.

- **Do** treat proposals for development of Council-owned land in the same way as those submitted by other persons.

## 11. 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.

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**MEMBER'S DISCLOSURE OF INTEREST**

A Member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

<b>MEMBER'S NAME:</b>	
<b>MEETING OF:</b>	
<b>DATE OF MEETING:</b>	

❖ I disclose for the information of the meeting that I have a personal interest in \_\_\_\_\_

(1)

which will be the subject of consideration by the meeting.

THE NATURE OF THAT INTEREST IS (2)

AND (3) [Delete if not applicable] (4)

❖ The personal interest is a prejudicial interest and I shall withdraw from the chamber during deliberation of the item.

OR (4) [Delete if not applicable]

❖ The interest is disclosed on grounds of planning good practice, as I have or have appeared to judge [or reserve the right to judge] the planning matter elsewhere, including whilst serving on another body, and I will not take part in the debate or vote. I [will] [will not] [Delete as applicable] be also withdrawing from the chamber.

**SIGNED:** .....

**Dated** .....

❖ To be read out by the Member when invited to by the agenda or at the commencement of consideration of that item. PLEASE COMPLETE THIS FORM AND PASS IT TO THE COMMITTEE OFFICER DURING THE MEETING.

- (1) State details of the item (agenda item, planning application number, etc.)
- (2) State what the general nature of the personal interest in the matter is. (You do not need to supply specific details unless you wish to).
- (3) State only if this is a prejudicial as well as a personal interest

A Member with a prejudicial interest in any matter must also:

- withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting (or immediately after giving statements or evidence to where the Code and the Council's public participation rules permit it) unless s/he has obtained a dispensation from the Standards Committee;
- not exercise executive functions in relation to that matter; and
- not seek improperly to influence a decision about that matter.

(4) State where you have an interest which flows from fettering one's discretion as described in the Members' Planning Code of Good Practice.

What matters are being discussed at the meeting?

Does the business relate to or is it likely to affect to any of your registered interests?

These will include

- persons who employ you, appointed you or paid your election expenses;
- your business, company ownership, contracts or land; or
- gifts or hospitality received (in the previous three years of this Code)