

## **APPENDIX G**

### **CODE OF PRACTICE FOR COUNCILLORS AND OFFICERS ENGAGED IN THE DETERMINATION OF PLANNING APPLICATIONS**

#### **INTRODUCTION**

1. This Code of Practice applies to both Councillors and Officers. The successful operation of the planning system relies on mutual trust and an understanding of each other's roles. It also relies on each ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so.
2. This Code applies to decisions on applications for planning consent, Listed Building Consent, Conservation Consent, Advertisement Consent, consent for works to trees in Conservation Areas and trees protected by Tree Preservation Orders, applications for hedgerow removal, enforcement matters, including whether to issue an enforcement notice, or breach of condition notice, and the reasons for taking enforcement action and so on. References within the text to planning applications shall be taken to be a reference to all matters to which this Code applies.

#### **THE NEED FOR GUIDANCE**

3. 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. It affects land values. All this is heightened by the openness of the system and the legal nature of development plans and decision notices.
4. 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.

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## STATUS OF THE GUIDANCE

5. The recommendations in this Code are based upon the National Code of Local Government Conduct, the Royal Town Planning Institute's Code of Professional Conduct, the findings of various Inquiries, together with advice issued by the Audit Commission, the Commission for Local Administration in England and the National Development Control Forum.

## THE GENERAL ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS

6. 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.
7. Both Councillors and Officers are guided by codes of conduct. Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute (RTPI) Code of Professional Conduct. Not all Planning Officers are members of the RTPI and its Code of Professional Conduct should therefore be operated as a Local Code for all planning officers.
8. The National Code of Local Government Conduct sets out the duties and responsibilities of Councillors. It states that, whilst Councillors have a special duty to their ward constituents, including those who did not vote for them, their overriding duty is to the whole community.
9. This is particularly pertinent to Councillors who are responsible for determining planning applications. The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process and opposing views are strongly held by those involved. While Councillors should take account of those views, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.
10. The National Code also goes on to say that, while Councillors may be strongly influenced by the views of others, and of their political group in particular, it is their responsibility alone to decide what view to take on any question which Councillors have to decide. The Local Government Ombudsman has concluded that the use of whipped votes at Committee meetings, or reliance on party political loyalty, to compel a Councillor to vote on a planning application in a particular way will amount to maladministration.

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The Court of Appeal has given judicial endorsement to this approach. Votes in Committee on planning applications are a matter of individual conscience based on planning judgement and should not be influenced or controlled by whipped votes.

11. 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.
12. Councillors and Officers may be offered hospitality from people with an interest in a planning proposal. Such offers should be declined politely. If receipt of hospitality is unavoidable, the recipient should ensure it is of a minimum level and declare its receipt as soon as possible. For Councillors the Democratic Services Manager maintains a voluntary register of gifts and hospitality for this purpose. For Officers, each Directorate maintains a hospitality book.

#### **DECLARATION AND REGISTRATION OF INTERESTS**

13. Councillors should observe strictly the guidance on declaring personal and prejudicial interests as set out in:
  - (a) the statutory provisions on the disclosure of interests;
  - (b) the adopted local Members' Code of Conduct;
  - (c) the Guidance for Good Practice on Members' Interests, published by the Commission for Local Administration;
  - (d) Circular guidance issued from time to time by the Secretary of State.
14. The register of Councillors' interests maintained under the Local Government and Housing Act 1989 is updated after each election. Where any changes occur to Councillors' interests, whether by way of addition or deletion, they should be notified by the Member concerned to the Members' Services Officer as soon as they occur.
15. A prejudicial interest is not necessarily always one of financial advantage. It can also be one of disadvantage. Councillors always need to have regard to planning applications which, if approved, could have an effect on property values in the neighbourhood.
16. In deciding whether or not a personal interest is, or might be regarded by others as, prejudicial, a Councillor should have regard to the guidance given in the Council's Code of Conduct and to any advice given by the Local Government Ombudsman.

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Briefly, the test of whether or not the interest is prejudicial is not the opinion of the Councillor concerned, but whether other people knowing the facts of the situation might reasonably think so. The guiding rule is that a Councillor should not use his or her position to further a private or personal interest, rather than the general public interest, or give grounds for such suspicion.

17. If a Councillor declares a personal and prejudicial interest, he or she should retire from the room before the start of the discussion on the item.
18. If, after consulting the Code of Conduct, a Councillor is still unsure as to whether or not he or she has an interest which needs to be declared, the Councillor should seek advice from the Monitoring Officer or the Borough Director. They should do this preferably before the day of the meeting so that a considered response can be given.
19. An Officer who, were he or she to be a Member, would have a personal interest in a planning application, shall give notice of that interest to the Borough Director or Monitoring Officer. The interest will be entered into a book which will be open to inspection by any Councillor during office hours.

#### **RELATIONSHIPS WITH APPLICANTS, AGENTS AND OBJECTORS**

20. Councillors will almost certainly have a personal and prejudicial interest in applications involving or affecting a relative, close friend or close neighbour or in those in which they are formally acting on behalf of somebody else.
21. With all applications, Councillors must consider whether or not any relationship that they may have with the applicant, or the applicant's agent, or an objector, is such that members of the public knowing the facts of the situation would reasonably think that the relationship might influence the Councillor's decision. If so, the Councillor must declare an interest at the meeting when the application is considered and leave the room.

#### **DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS AND OFFICERS, AND COUNCIL DEVELOPMENT**

22. Applications to their own authority by serving and former Councillors and Officers and their close friends and relatives can easily give rise to suspicions of impropriety.
23. It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism. Serving Councillors and Officers should never act as agents for people pursuing a planning matter with their Authority.

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Should they submit their own application to the Authority they serve, they should take no part in its processing. The Council's Monitoring Officer should be told by the Councillor or member of staff that an application has been made as soon as it is submitted.

24. A Councillor submitting an application will invariably have a personal interest in the application and probably a prejudicial interest as well. He or she must declare this interest at the meeting where the application is under discussion and can only address the meeting under the rules of public speaking.
25. A Councillor who is an applicant or who otherwise has a personal and prejudicial interest in an application should not lobby other Councillors. A guidance note issued by the Ombudsman's office says:

"Councillors who have a personal and prejudicial ~~clear and~~ **substantial**\* interest should not seek to lobby fellow Members about a matter in which he or she has an interest. The Councillor should seek to completely avoid discussing the matter with fellow Members. Other Councillors need to guard against treating their colleagues more favourably than they would other members of the public."

*(\*This terminology relates to the previous National Code of Conduct arrangements, but the implications are still relevant to the current arrangements.)*

26. By virtue of paragraph 18, an Officer submitting an application will have an interest in that application. He or she must also declare an interest if present at the meeting at which the application is discussed. Applications submitted by Councillors or Officers will always be determined by the Planning Committee and not under the Development Control Manager's delegated powers.
27. Proposals for the Council's own development should be treated in the same way as those by private developers and in accordance with Circular 9/92, and any subsequent relevant guidance. This requirement also applies to private applications on Council- owned land (such as a private application prior to a Council land sale being agreed or negotiated).

The planning decisions must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Council if the development is permitted. It is important that the Council is seen to be treating all such applications on an equal footing with all other applications, as well as actually doing so.

## **LOBBYING OF AND BY COUNCILLORS**

28. "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.

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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.

29. 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.
30. In such situations, they should restrict themselves to giving procedural advice including recommending that those who are doing the lobbying should write to the Head of Planning Services so that their views can be included in the Officer's report to the Committee.

A Councillor should not give a firm indication of voting intentions or otherwise enter into an unconditional commitment to oppose or support the application. To do so without all relevant information and views would be unfair, prejudicial and may amount to maladministration.

31. When attending public meetings, Councillors should take great care to maintain their impartial role, listen to all the points of view expressed by the speakers and public and not state a conclusive decision on any pre-application proposals or submitted planning applications.
32. Correspondence received by Councillors should be passed to the Head of Planning Services without delay to ensure that all material considerations are available to those Members or Officers responsible for determining the application. A response by a Councillor should, as a rule, simply note the contents of the correspondence and advise that it has been passed to Officers.
33. Taking account of the need to take decisions impartially, Councillors must weigh up all the material considerations reported at each Committee meeting.

They should not be biased (or appear to be biased) towards any person, company, group or locality. Councillors who commit themselves firmly to a particular view on a planning issue, prior to its consideration at a Committee, must decide whether the public (or other interested body) would believe that they have prejudiced their position and were incapable of weighing up all the material considerations.

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If the Councillor feels that the public would believe he or she had come to a conclusive view on the planning matter or application before the Committee meeting, then he or she should consider not taking part in the debate and not voting on the issue.

34. If planning applications are considered by a succession of Committees or meetings each consideration will require the Councillor to weigh up, afresh, all the reported material factors before reaching a decision at that particular meeting.
35. Whilst Councillors involved in making decisions on planning matters and applications will begin to form a view as more information and options become available, a decision can only be taken by the relevant Committee when all available information is to hand and has been considered.

### **PRE-APPLICATION DISCUSSIONS**

36. Discussion between a potential applicant and with representatives of Council prior to the submission of an application can be of considerable benefit to both parties and is encouraged by the Audit Commission. However, it would be easy for such discussions to become or be seen (especially by objectors) to become part of a lobbying process.
37. In order to avoid such problems, pre-application discussions should take place within clear guidelines.
  - a) It should always be made clear at the outset that the discussions will not bind the Borough Council;
  - b) Advice should be consistent and based upon the Development Plan and material considerations;
  - c) A written note should be made of the meeting. Councillors would be entitled to see this note. At least one Officer should attend potentially contentious meetings and a follow-up letter would usually be sent;
  - d) Care must be taken to ensure that advice is not partial (nor seen to be) otherwise a subsequent report could appear to be partisan;
  - e) To maintain impartiality and its appearance, it is preferable that Councillors do not take part in such discussions. Should there, however, be occasions when Councillors are involved they should always be advised by appropriate professional Officers (which must always include a Planning Officer on at least Scale SO1) and be authorised, on a case by case basis, by the Planning Committee;

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- f) The involvement of Councillors should be recorded in the Committee report.

## **POST-APPLICATION DISCUSSIONS**

38. A Councillor should not approach an applicant for planning permission with a view to securing changes to an application or achieving planning gain. Such an approach would contravene the principles of good practice set out in this Code and would inevitably give rise to allegations of partiality or bias. Any contact with applicants should normally be conducted with and through Officers and should always be reported to the Planning Committee.

## **VISITS BY COUNCILLORS**

39. 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. This could apply when:
- a) the proposal represents a significant departure from the Development Plan;
  - b) the proposal raises wider policy issues;
  - c) there is considerable local concern about a proposal.
40. Site visits are intended solely for the purpose of acquiring information about the nature of a planning application. They should not be used as an opportunity for applicants, agents or objectors to seek to influence the views of Councillors.
41. During formal site visits, Councillors, along with the accompanying Officers, should carry out the inspection in one group. The Chair should ensure that applicants, agents or objectors do not impose themselves on the group or individual members of the group. Councillors should refrain from making comments on the merits or otherwise of the application to any interested party who may be present. Individuals will not be permitted to address Members unless Members require clarification of any matter while on site.
42. Similar principles should apply to informal site visits conducted by individual Members or groups of Members.

## **OFFICER REPORTS TO COMMITTEE**

43. To avoid criticisms of inadequate consideration of issues, of inconsistency or of poor reasoning, regard needs to be had to the following points when preparing reports.
- a) Reports should be accurate and cover all relevant points;



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- b) “Relevant points” will include a clear exposition of the Development Plan, site or related history, and any other material considerations;
  - c) Reports should have a written recommendation. Oral reporting should be extremely rare and carefully minuted;
  - d) Reports should contain a technical appraisal which clearly justifies the recommendation;
  - e) If the report’s recommendation is contrary to the provisions of the Development Plan, the material considerations which justify this must be clearly stated.

### **DECISIONS CONTRARY TO OFFICER RECOMMENDATION AND/OR THE DEVELOPMENT PLAN**

- 44. If a Committee makes a decision contrary to the Officers’ recommendation (whether for approval or refusal), the Committee’s reasons should be minuted and a copy of the Minute placed on the application file. The courts have expressed the view that such reasons should be clear and convincing. The personal circumstances of an applicant will rarely provide such grounds.
- 45. If the report of the Development Control Manager recommends approval of a departure from the Development Plan, the full justification for this recommended departure shall be included in the report.

### **REGULAR REVIEW OF DECISIONS**

- 46. Arrangements will be made for Members of the Planning Committee to visit a sample of implemented planning permissions and allowed appeals annually, so that a regular review of the quality of planning decisions can be undertaken.

### **COMPLAINTS AND RECORD KEEPING**

- 47. Whatever procedures a local authority operates, it is likely that complaints will be made.
- 48. So that complaints may be fully investigated and, in any case, as a matter of general good practice, record keeping should be complete and accurate. The guiding rule is that every planning application file should contain an accurate account of events throughout its life.
- 49. The same principles of good record keeping will be observed in relation to all enforcement and Development Plan matters. Monitoring of record keeping will be undertaken regularly by the Managers in the Planning Services and Development Control Teams.