

## Planning Code of Good Practice

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### 1 Introduction

- 1.1 This Code has been prepared using advice in the Local Government Association's revised guidance note on good planning practice for Members and officers dealing with planning matters – Probity in Planning for Councillors and Officers (November 2013).

#### **Key purpose of planning**

- 1.2 Planning has a positive and proactive role to play at the heart of local government in the London Borough of Barnet. It helps councils-the Council to stimulate growth whilst looking after important environmental areas. It can help to translate goals into action. It balances social, economic and environmental needs of the residents of Barnet to achieve sustainable development.
- 1.3 The planning system works best when Councillors and officers involved in planning understand their roles and responsibilities, and the context and constraints in which they operate.
- 1.4 Planning decisions are often based on balancing competing interests and making an informed judgement against a local and national planning policy framework. . Decision makers need to make fair and open decisions that are in the wider public interest on what can be controversial proposals regardless of personal or political allegiances..

#### **Aim of this code**

- 1.5 In today's place-shaping context, early Councillor engagement is encouraged to ensure that proposals for sustainable development can be harnessed to produce the places that communities need. This guidance is intended to reinforce Councillors' community engagement roles whilst maintaining good standards of probity that minimizes the risk of legal challenges.

- 1.6 Planning decisions can be controversial. The risk of controversy and conflict are heightened by the openness of a system which invites public opinion before taking decisions and the legal nature of the development plan and decision notices. Nevertheless, it is important that the decision-making process is open and transparent.
- 1.7 One of the key aims of the planning system is to balance private interests in the development of land against the wider public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. Opposing views are often strongly held by those involved. Whilst Councillors must take account of these views, they should not favour any person, company, group or locality, nor put themselves in a position where they may appear to be doing so. ~~It is important, therefore, that~~ Barnet Council recognises the importance of make planning decisions affecting these interests in an openly and, impartially way, with sound judgement and for justifiable reasons.
- 1.8 The aim of this Code is therefore to ensure that Council's processes will make sure that those participating in the decision are unbiased and that the decision itself is lawful, rational and procedurally correct.

### **When the Code applies**

- 1.9 This code applies to Councillors at all times when they are involved in the planning process. This includes, where applicable, when part of 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. If you have any doubts about the application of this Code to your own circumstances you should seek advice early, and preferably well before any meeting takes place, from the Monitoring Officer.
- 1.10 In this Code when the term "Councillor" or "Member" is used it means that the advice is applicable to all Members of the Council. The term "Planning Committee Member" means a Member or a substitute Member of any of the Council's Planning Committees.

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

- 1.11 Councillors are reminded that this Code is designed primarily for Members of the Council's Planning Committees and Councillors who, for whatever reason, find themselves involved in the planning process. Whilst this Code interprets the Members' Code of Conduct with respect to planning matters it is subordinate to the Members' Code of Conduct and, in the event of any inconsistencies arising between this Code and the Members' Code of Conduct, the Members' Code of Conduct shall prevail.

## **2 ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS**

### **General roles of Councillors and officers**

- 2.1 Councillors and officers have different but complementary roles. Both serve the public. Officers are responsible to the Council as a whole, whilst Members are responsible to the electorate.

2.2 Officers are not appointed to serve any political group and therefore advise all Members and the Council. Officers carry out the daily functions of the Council's business in accordance with Council or Committee decisions or under powers delegated to them pursuant to the Constitution. Officers are governed by the Officers Code of Conduct contained in the Constitution. In addition, planning officers, who are Members of the Royal Town Planning Institute (RTPI), are subject to a professional code of conduct and breaches may be subject to disciplinary action by the RTPI. Similarly, officers who are solicitors are subject to regulation by The Solicitors Regulation Authority. Officers in other professions will have corresponding codes.

2.3 The Localism Act 2011 sets out a duty for each local authority to promote and maintain high standards of conduct by Councillors and to adopt a code of conduct. The Members Code of Conduct in the Constitution is consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. It embraces the standards central to the preservation of an ethical approach to council business, including the need to register and disclose interests, as well as appropriate relationships with other Councillors, staff and the public. The Council's standing orders set down rules which govern the conduct of Council business.

### **Relationship between Councillors and officers**

2.4 Mutual trust, respect and understanding between Councillors and officers are the keys to achieving effective local government. A successful relationship can only be based upon mutual trust and understanding of each other's positions. This relationship, and the trust that underpins it, must never be abused or compromised.

2.5 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.

2.6 Members must not put pressure on officers to put forward a particular recommendation or deal with a planning matter in a particular way. This does not prevent a Councillor from asking questions or submitting views to an officer. These views, when received in written form, will be placed on the planning file and considered together with other material planning considerations.

## **3 INTERESTS: REGISTRATION AND DISCLOSURE**

3.1 A Councillor should refer to the Members' Code of Conduct for assistance in identifying Disclosable Pecuniary Interests or any Other Interests or seek advice from the Monitoring Officer prior to attending a meeting. A failure to properly register a Disclosable Pecuniary Interest or to participate in discussion or voting in a meeting on a matter in which a Councillor or co-opted Member has a Disclosable Pecuniary Interest, are criminal offences. Ultimately, responsibility for fulfilling the requirements rests with each Councillor.

3.2 The provisions of the 2011 Act seek to separate interests arising from the personal and private interests of the Councillor from those arising from the Councillor's wider public life. Councillors should think about how a reasonable member of the public, with full knowledge of all the relevant facts, would view the matter when considering whether the Councillor's involvement would be appropriate.

### **Registration of interests**

3.3 A Councillor must provide the Monitoring Officer with written details of relevant interests within 28 days of their election or appointment to office. Any changes to those interests must similarly be notified within 28 days of the Councillor becoming aware of such changes.

### **Disclosure of interests**

3.4 It is always best to identify a potential interest early on. If a Councillor thinks that they may have an interest in a particular matter to be discussed at a Planning Committee he or she should raise this with the Monitoring Officer as soon as possible.

3.5 If a Councillor has a Non-Disclosable Pecuniary Interest or a Non-Pecuniary Interest, he or she should disclose that interest orally at the committee meeting when it relates to an item under discussion, but then may speak and vote on that particular item. This includes being a member of an outside body; mere membership of another body does not constitute an interest requiring such a prohibition.

3.6 Where a Member has a Disclosable Pecuniary interest relating to an item under discussion, the Councillor may not participate (or participate further) in any discussion of the matter at the meeting or participate in any vote (or further vote) on the matter. There is no obligation for that Councillor to withdraw from the Chamber. This means that a Councillor with a Disclosable Pecuniary interest is precluded from making representations orally to the committee or from making representations on behalf of a party to the hearing.

3.7 A Councillor with a Disclosable Pecuniary interest can still present their views to the committee through other means. For example, the Member can:

- make written Representations in their private capacity in accordance with the Committee Consideration Criteria as set out in the Planning Committee Procedure Rules – the existence and nature of the interest should be disclosed in such representations and the Councillor should not seek preferential consideration for their representations – such written representations should be addressed to officers rather than other Members of the Authority;
- use a professional representative to make a representation on the Councillor's behalf in circumstances where the Councillor's planning application is under consideration; and
- arrange for another Member of the Authority (eg a fellow ward councillor) to represent the views of the Councillor's constituents on matters in which the Councillor has a Disclosable Pecuniary interest.

3.8 Although a Disclosable Pecuniary Interest relating to an item under discussion requires the withdrawal of the Councillor from the committee, in certain circumstances, a dispensation can be sought from the Monitoring Officer to take part in that particular item of business.

#### 4 PREDISPOSITION, PREDETERMINATION AND BIAS

4.1 In addition to being aware and taking appropriate action in relation to interests, Planning Committee Members need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application, on planning policies or on other planning matters, such as enforcement. Avoidance of bias or predetermination or the appearance of bias or predetermination is a principle of natural justice that the decision maker is expected to adhere to.

4.2 The courts have sought to distinguish between situations which involve predetermination or bias on the one hand and predisposition on the other. The former is indicative of a “closed mind” approach and likely to leave the committee’s decision susceptible to legal challenge by Judicial Review.

4.3 Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a Councillor makes it clear they are willing to listen to all the material considerations presented at the committee and keep an open mind before deciding on how to exercise their vote (predisposition). The latter is acceptable, the former is not and may result in a Court quashing such planning decisions.

4.4 Section 25 of the 2011 Act also provides that a Councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter. This reflects the common law position that a Councillor may be predisposed on a matter before it comes to Committee, provided they remain open to listening to all the arguments and changing their mind in the light of all the information presented at the meeting. Nevertheless, a Councillor in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the Councillor was biased.

4.5 For example, a Councillor who states “Windfarms are blots on the landscape and I will oppose each and every windfarm application that comes before the committee” will be perceived very differently from a Councillor who states: “Many people find windfarms ugly and noisy and I will need a lot of persuading that any more windfarms should be allowed in our area”. The former has a closed mind and is predetermined, whereas the latter is predisposed but still has an open mind.

4.6 This distinction is particularly important in the context of the Council's practice of facilitating presentations to Planning Committee by developers of schemes at the pre-application stage. After these presentations, the Committee Members question details of the development so that they have the opportunity to input into the design of these strategic developments. They will therefore express views on aspects of the development (such as its external appearance, impact on neighbours or transport network implications) which will often display predisposition around these elements. What the Members of the Committee should not do at this stage is to express a firm view on the development as a whole, as this could amount to predetermination. Such a view should only be formed at the end of the process when all the material considerations are available to the Members of the Committee to consider and weigh up before finalising their view.

4.7 A Planning Committee Member who has been lobbied and wishes to support their constituents or is a Ward Councillor and wishes to campaign for or against a proposal, will need to consider whether this is likely to be regarded as amounting to bias and going against the fair determination of the planning application. If they have predetermined their position or have given that impression, they should avoid being part of the decision-making body for that application. A Planning Committee Member, could speak at a Planning Committee (in accordance with the Council's public speaking procedures) on behalf of their constituents, having declared their pre-determined position.

4.8 Participation as a Member in a Planning Committee where a Councillor is or may be perceived to be biased, in addition to the risk of a complaint against the individual Councillor, also places the decision of the Committee at risk from legal challenge. As such, if a Planning Committee Member considers that they are or have given the impression that they are biased or predetermined they must carefully consider whether it is appropriate for them to participate in the matter.

## 5 APPLICATIONS SUBMITTED BY THE COUNCIL, COUNCILLORS OR OFFICERS

### **Applications submitted by the Council**

5.1 Proposals for a Council's own development can give rise to suspicions of impropriety. It is perfectly legitimate for such proposals to be submitted to and determined by the Council. Proposals for a Council's own development will be treated no differently from any other application.

5.2 Certain Councillors may through their other roles outside of a Planning Committee, have been heavily committed to or involved in a Council's own development proposal. In such circumstances, when an item comes to be considered at Committee the Councillor concerned, if they sit on the Committee, must consider whether they have an interest or degree of involvement with the proposals that could give the impression of bias. If in doubt, they are encouraged to seek advice from the Monitoring Officer. The most appropriate course of action if that is the case, is that the Councillor concerned may address the Committee in the applicant's speaking slot (see the Planning Committee Procedure Rules) but does not take part in its consideration and determination. It is important that the Councillor should restrict their address to the Committee to relevant planning considerations rather than wider non-planning issues that are not material to the determination of the application.

### **Applications submitted by Councillors or officers**

5.3 It is perfectly legitimate for planning applications to be submitted by Councillors and officers. However, it is vital to ensure that they are handled in a way that gives no grounds for accusations of bias or pre-determination.

5.4 If a Councillor or an officer submits their own proposal to the Council which they serve, they should take no part in its processing and/or determination. A Councillor who acts as an agent or representative for someone pursuing a planning matter with the authority should also take no part in its processing and/or its determination.

5.5 The 1APP planning application form requires an applicant to indicate whether they are a member of staff or an elected Member or a partner/spouse of a Member or Officer of the Council. Where decisions relate to applications made by Members of staff or an elected Member these should be reported to Committee where they relate to the following:

- Members of the Council
- Senior officers of the Council (Service Head and above)
- Officers of the Local Planning Authority.

5.6 The term "Officers of the Local Planning Authority" means officers within the Council who are closely involved in the day-to-day work of the Council's planning function and include all external persons such as lawyers, contractors and advisors who work for the Local planning Authority.

5.7 The procedures to be followed in Committee in such circumstances are as follows:

- The consideration in Committee of an application from a Councillor may be considered a Disclosable Pecuniary interest for that Councillor and Councillors need to be mindful of their obligations in relation to Disclosable Pecuniary Interests as set out in the Members' Code of Conduct.
- If such a Councillor does not have a Disclosable Pecuniary interest they may address the Committee as the applicant in accordance with the Council's public speaking procedures. If however, such a Councillor has a Disclosable Pecuniary Interest they may not participate in the consideration

of the matter and may therefore not speak on the matter. They would need to have a representative speak on their behalf.

- The Members of the Committee must consider whether the nature of any relationship means that they have a Disclosable Pecuniary Interest in relation to the matter and if so, they may not participate in the consideration of that matter.

5.8 The principle in the final bullet point also applies to applications submitted by officers when they are considered in Committee.

## 6 LOBBYING OF AND BY COUNCILLORS

6.1 Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, a site allocation in a development plan or an emerging policy, will often seek to influence it through an approach to their Ward Councillor or to a Member of the Planning Committee.

6.2 As the Nolan Committee's 1997 report stated: "It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the councillors themselves".

6.3 Lobbying, however, can lead to the impartiality and integrity of a Councillor being called into question, unless care and common sense is exercised by all the parties involved.

### **Lobbying of Councillors**

6.4 A Planning Committee Member should explain to those lobbying or attempting to lobby them that, whilst they can listen to what is said, it may prejudice their impartiality and ability to participate in the Committee's decision making if they are asked to express either an intention to vote one way or another or such a firm point of view that it amounts to the same thing. Planning Committee Members should ensure that it is made clear to any lobbyists that they will only be in a position to reach a final decision on any planning matter after they have heard all of the relevant arguments and looked at the relevant information during the sitting of the determining Committee.

6.5 Planning Committee Members should therefore:

- suggest to lobbyists that they write to the Planning Service in order that their views can be included in the officer reports prepared for determination under delegated powers or by Committee;
- pass on any lobbying correspondence received (including plans, data, correspondence etc in respect of an application) to the Planning Service as soon as practicably possible so that it can be taken into account and included in the report on the application;
- remember that their overriding duty is to the whole community not just to the residents and businesses within their ward and that they have a duty to make decisions impartially and should not improperly favour, or appear to improperly favour, any person, company, group or locality;
- not accept gifts or hospitality from any person involved in or affected by a planning proposal, but if a degree of hospitality is unavoidable (eg

refreshments at a meeting), ensure that they comply with the provisions in the Members' Code of Conduct on gifts and hospitality; and

- inform the Monitoring Officer where they feel that 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 where necessary.

6.6 Planning Committee Members should note that, subject to the requirements to ensure that Members comply with the Members' Code of Conduct and the rules regarding bias and pre-determination and ensure that they take appropriate action in relation to Disclosable Pecuniary Interests, they are not precluded from:

- listening or receiving viewpoints from residents or other interested parties;
- making comments to residents, interested parties, other Councillors or appropriate officers, provided they do not consist of or amount to predetermination and they make clear they 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 Councillor, provided they explain their actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, they have not committed themselves to vote in accordance with those views and will make up their own mind having heard all the facts and listened to the debate.

6.7 In the interest of openness, it is recommended that Planning Committee Members declare any lobbying to which they have been subject.

6.8 It is very difficult to convey every nuance of these situations and to get the balance right between the duty to be an active local representative and the requirement when taking decisions on planning matters to take account of all arguments in an open-minded way. It cannot be stressed too strongly, however, that the striking of this balance is, ultimately, the responsibility of the individual Councillor.

### **Lobbying by Councillors**

6.9 Planning Committee Members should not become a member of, lead or represent a national or local organisation whose primary purpose is to lobby to promote or oppose planning proposals. If a Member does, he/she may appear to be biased. Whilst they may be able to address the Committee as a Ward Councillor or an objector, they are not able to participate or vote on any matter in respect of which they have a Disclosable Pecuniary interest unless they have received a dispensation for this purpose from the Monitoring Officer.

6.10 Planning Committee Members can join general groups which reflect their areas of interest and which concentrate on issues beyond particular planning proposals, but they should disclose a personal interest where that organisation has made representations on a particular proposal. A Planning Committee Member should 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.

- 6.11 Councillors should not excessively lobby Planning Committee Members regarding their concerns or views on a planning application, 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.
- 6.12 Councillors should not put pressure on officers for a particular recommendation or decision, and should not do anything which compromises, or is likely to compromise, the officers' impartiality or professional integrity. Nor should they request officers to speed up or delay the determination or assessment of particular applications for their own personal or political convenience or following lobbying by applicants, agents/advisers, local residents or other interested parties.
- 6.13 Call-in procedures, whereby Ward Councillors can require a proposal that would normally be determined under officers' delegated authority, to be determined by a planning committee, require the reasons for call-in to be recorded in writing and to refer solely to material planning considerations. The procedures for this are set out in the Committee Consideration Criteria in the Planning Committee Procedure Rule.
- 6.14 Planning Committee 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.
- 6.15 As previously outlined, Councillors must always be mindful of their responsibilities and duties under their Code of Conduct. These responsibilities and duties apply equally to matters of lobbying as they do to the other issues of probity explored elsewhere in this Code.

## 7 PRE-APPLICATION DISCUSSIONS

- 7.1 Discussions between a potential applicant and the Council prior to the submission of an application can be of considerable benefit to both parties and are encouraged by the National Planning Policy Framework. However, it would be easy for such discussions to become, or to be seen by objectors to become, part of a lobbying process on the part of the potential applicant. For this reason the Council have developed pre-application processes that enables engagement at the pre-application stage.
- 7.2 For major strategic applications the Council offers a service to potential applicants to present their schemes to the Council's Planning Committee. Details of this are set out in the Planning Committee Procedure Rules. This is the way in which Planning Committee Councillors engage with these schemes and there should therefore be no need to attend any other meeting with potential applicants or their agents/representatives.
- 7.3 In other cases potential applicants may seek to meet Councillors. For minor or household applications these can be treated as a form of lobbying and Councillors, including Planning Committee Members, should follow the advice set out above.
- 7.4 Where the application is more substantial, but not subject to pre-application committee presentations, these meetings will be subject to the following procedures:

- No meeting shall be convened without the presence of a Council planning officer for the entire duration of the meeting.
- Both this Code and the Members' Code of Conduct will apply when attending such meetings.
- Any Planning Committee Member involved in such a meeting, who sits on the Committee that subsequently considers any resulting application, should declare their attendance at the meeting in the same way as lobbying would be declared.
- Officers (and any Councillor, if present) should make it clear from the outset that the discussion will not bind the Council to making a particular decision and that any views expressed are personal and provisional.
- Any advice given should be consistent and in accordance with the Development Plan and officers should agree, prior to any meeting, on a consistent interpretation of Development Plan policies as applied to the particular proposal.
- Councillors should not become drawn into any negotiations, which should be done by officers (keeping interested Councillors up to date) to ensure that the authority's position is co-ordinated.
- A contemporaneous note of the meeting should be prepared by the planning officer attending wherever possible and a copy sent to all parties for their agreement.
- The final version of the note of the meeting will form part of the planning file and should a planning application subsequently be received, it will thereby be open to public inspection.

7.5 Although the term 'pre-application' has been used, the same considerations should apply to any discussions which occur before a decision is taken.

7.6 Planning Committee Members should not attend pre-application meetings that are not organised through officers.

## 8 POST-SUBMISSION DISCUSSIONS

8.1 A Planning Committee Member should not usually be involved in discussions with a developer or agent when a planning application has been submitted and remains to be determined. Potentially, these discussions could be interpreted, particularly by objectors to a proposal, as an indicator of predetermination or bias.

8.2 In limited circumstances Planning Committee Members may legitimately engage in post-submission discussions. An example would be in the case of a large-scale development, where it is desirable for there to be a full understanding of the Council's planning and economic objectives. Such meetings will be organised by officers and run under the same procedural rules as pre-application discussions.

8.3 If a Planning Committee Member is contacted by the applicant, their agent or objectors, they should follow the rules on lobbying and consider whether or not it would be prudent in the circumstances to make notes when contacted. A Councillor should report to the Chief Planning Officer any significant contact with the applicant or other parties, explaining the nature and purpose of the contacts and their involvement in them, so that it can be recorded on the planning file.

8.4 Planning Committee Members should not attend post-submission meetings that are not organised through officers.

## 9 PLANNING APPEALS

9.1 Appeals into the planning decisions of the Council are heard by a Planning Inspector appointed by the Secretary of State. Any hearing or inquiry will be open to the public and Councillors are able to attend. Councillors are encouraged to attend such hearings, as they can be a good learning experience. This part of the Code is concerned with Councillors who wish to actively participate in these appeals.

9.2 If a Councillor wishes to attend a public inquiry or informal hearing as a Ward Councillor or as a member of the public, they are free to do so. It is strongly recommended that they discuss their participation with the Chief Planning Officer to ensure that they are aware of the process and that they do not act in a manner which compromises their position as a Member of the Council, brings the Council into disrepute or puts the decision made at risk of challenge.

9.3 A Member of a Planning Committee cannot attend an appeal on behalf of the Council's Planning Committee, even if they sat on the Committee that made the decision, unless this is as part of the Council's case as decided by the Chief Planning Officer. The decision of the Committee will be documented in the minute and set out in the decision notice. The planning officer will present the Council's case on its planning merits, in accordance with the Committee's decision. The inspector is required to determine the appeal on its planning merits and therefore all representations should be so directed.

9.4 Where the appealed decision was contrary to the officer's recommendation, officers are generally able to present the Council's case in a satisfactory manner. Where this may not be possible, the case will be presented by a planning consultant employed by the Council.

## 10 PLANNING ENFORCEMENT

10.1 It is perfectly legitimate for Councillors to bring to the attention of the Planning Service suspected breaches of planning control so that they may be investigated to see whether any action is possible or necessary. They should bring these to the attention of the Chief Planning Officer.

10.2 The Council's planning enforcement service operates to a priority system so that those breaches that cause the most harm are dealt with first. This priority system is designed to produce a fair and responsive enforcement service.

## 11 COUNCILLOR TRAINING

11.1 Councillors may not participate in decision making at meetings of the Council's Planning Committees unless they have attended mandatory training. This will be provided by the Council's planning and legal services and will cover the principles of planning and probity in planning.

11.2 Whilst all new Members of the Council's Planning Committees and new substitute Members have to attend this training before they can participate in the Council's Planning Committees, all other Planning Committee Members and substitute Members are encouraged to attend the training so that they can ensure that they keep up-to-date on these matters.

11.3 All Planning Committee Members should endeavour to attend any other specialised training sessions provided, since these will be designed to extend their knowledge of planning law, policy, procedures, and good practice, which will assist them in carrying out their role properly and effectively.

11.4 Training provided on planning related matters is aimed at Planning Committee Members but is open to any Councillor with an interest to attend.

## 12 AMENDMENTS/VARIATION

12.1 Where amendments/variation to this Code are necessary due to legislative changes, the Head of Governance may make such consequential changes to this Code as are necessary to comply with the law.

## Members' Planning Code of Practice

### Introduction

~~1.1—This Code of Practice applies to any meeting of the Authority, or its committees, sub-committees, joint committees or area committees when considering any Planning matters, including applications or enforcement. All references to 'committee' or 'sub-committee' within this Code will be construed to refer to such meetings.~~

~~1.2—This Code of Practice has been prepared for all Members who may attend Planning meetings, whether as members of the Planning Committee or an Area Planning Committee, or in any other capacity, including making representations to such a committee as a Ward Member, or as an applicant, or an interested party. However, the Code of Practice applies at all times when Members are involving themselves in the Planning process and not just at the committee meetings.~~

~~1.3—The aim of this Code of Practice is to ensure that in the Planning process there are no grounds to suggest that a decision has been in any way biased, partial or ill-founded. It should be applied in accordance with the Member Code of Conduct and, if there is any apparent conflict, the requirements of the Code of Conduct take priority.~~

~~1.4—If a Member were to behave in a way not compliant with this Code of Practice there could be the possibility of:~~

~~Putting the Council at risk of proceedings on the legality or maladministration of the related decision; and/or~~

~~The Member being at risk of an allegation of breach of the Member Code of Conduct.~~

### 2. Planning Decisions

~~2.1—Decisions that the Council makes about Planning applications can be quite controversial. Any development is likely to have significant impact on the neighbourhoods where people live and therefore may be subject to close public scrutiny.~~

~~2.2—Planning decisions can be appealed to the Secretary of State, they can be challenged in the High Court and they can be the subject of a complaint to the Local Government Ombudsman. There is also a risk that Members can be named in a report made to the Group Leader's Panel for breach of this Code. The Barnet Members Code of Conduct requires Members to avoid any possibility of being influenced by their own personal interests. However, for certain types of decision like Planning and Licensing, the requirements of the Code go further than this. Members are required to act in a quasi judicial role, without reference to their political considerations and taking into account the issues that the law says are relevant to the decision.~~

~~2.3—When Members are making Planning decisions, they must be:-~~

~~Open-minded: a Member must not make up his/her mind until s/he has heard all the relevant evidence, which will not happen until the meeting itself. If Members indicate which way they intend to vote before that, they are disbarring themselves from taking part in the decision.~~

~~Open and Transparent: The rules about interests in the Barnet Members Code of Conduct apply with particular relevance to Members who are making Planning decisions. It is very important that, in relation to each matter, Members consider whether they have an interest which should be explained to the public, or which might prevent them from participating in the committee's deliberations and the decision. A Member must seek advice as soon as s/he thinks that there may be any doubt about this.~~

~~Reasonable: Another aspect of the requirement for openness is the requirement on the Council to give clear and accurate reasons for any decision that has been taken. This applies to all decisions, but the need is greatest where permission is refused, or, where an application is approved but either the application appears to be contrary to the Council's policies or an application which appears similar has recently been refused.~~

~~Impartial: Most Planning decisions involve applying policies to particular situations. The policies have to be applied impartially without reference to the identity of the individuals concerned. Planning decisions are decisions about the use of land, not the people who own it. The circumstances of the individuals will only be relevant in very exceptional cases. Members should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so. Members, who do not feel that they can be impartial in this way, should consider whether they are best suited to serve on Planning Committees.~~

~~Consider only the Planning issues: The law requires Planning decisions to be made on the basis of what the legislation calls 'material considerations'. General issues that are not material Planning considerations and should not be considered may include matters such as:~~

~~the ownership of the application site;  
private property rights e.g. rights of way and boundary disputes (such considerations are legal matters on which objectors should consult their solicitors or other advisers since it is not possible for Officers of the Council to advise on such rights);  
the fact that an applicant has carried out unauthorised development in the past;  
moral objections (such as activities that have the potential to become addictive, for instance betting shops, amusement arcades etc);  
effects on property and land values; the belief that an application is submitted by an owner with the intention of selling the property at an enhanced value.~~

~~2.4— This Code of Practice is supplementary to the Barnet Members' Code of Conduct. It is intended to show how the general principles in the Code should be applied to Planning decisions. A breach of this Code may be a breach of the Members' Code of Conduct.~~

~~2.5— This Code of Practice applies equally to co-opted members of Council committees as it does to elected members.~~

~~2.6—The Planning system can be challenged in a variety of ways, both formal and informal, and before, during and after committee. This includes in Planning appeals or in courts of law. Therefore Members must bear the contents of this Code in mind through all the stages of the Planning process.~~

### ~~3.—General Advice~~

~~3.1—The following general advice must be considered by all Members likely to become involved in the Planning process in any way:~~

~~An application relating to a premises in the vicinity where a Member, (or their close associate) lives so that s/he is affected more than the majority of inhabitants of the Ward is likely to involve a non-pecuniary//non-disclosable pecuniary interest **and potentially a disclosable pecuniary interest.**~~

~~A Member being a frequent visitor to the premises in a personal capacity is likely to involve a non-pecuniary/non-disclosable pecuniary interest **and potentially a disclosable pecuniary interest.**~~

~~A Member belonging to a lobby or campaign group that may be directly impacted by the outcome of an application is likely to have a non-pecuniary/non-disclosable pecuniary interest **and potentially a disclosable pecuniary interest.** (see also section 7 on fettering discretion below)~~

~~A Member having any doubts as to how the Planning Code of Practice applies should seek advice from the Monitoring Officer or their representative as early as possible.~~

~~The Council's Member/Officer Protocols must be abided by at all times.~~

### ~~4.—Members of the Planning Committee and Area Planning Committees~~

~~4.1—The role of members of the committees is to make Planning decisions openly, impartially, with sound judgement and for justifiable reasons. This applies equally to policy decisions before the Planning Committee as it does with applications. Therefore, Members:~~

~~Must not make a decision for party political reasons and should avoid any action that may give the perception that this is the case;~~

~~Should make themselves familiar with sites and proposals;~~

~~May listen to points of view expressed to them but must not, if they wish to be free to debate and vote on an application at committee, commit themselves to support or object to any proposal; since to do so is to prejudge the application in the absence of all the relevant information and advice;~~

~~Should listen to the Ward Member if s/he is a member of the Committee, but should not defer to him/her nor give him/her preferential status. (see paragraph 6, below);~~

~~Should determine applications in accordance with the advice given to them by their professional Officers unless they have good Planning reasons, in knowledge of all material considerations, to take a different decision.~~

~~Who receive correspondence about applications should ensure that copies are made available to the Planning Officers as early as possible;~~

~~Must not encourage any member of the public (including but not limited to those speaking at the committee) to communicate with them orally or in writing other than through the committee's procedures;~~

~~Must make their decision only after due consideration of all the information and only after the presentation of the application at the committee and thus must be present for the duration of the presentation, any oral representations, debate and other deliberations upon an item in order to be able to vote on that item;~~

~~Must attend all training relevant to their role as Planning Committee members offered by the Council;~~

~~Should not meet with applicants or objectors other than at meetings arranged through the Council. A written record should be kept of any such discussions that take place prior to the meeting of committee;~~

~~Should, if in any doubt about whether s/he needs to declare an interest, seek the Monitoring Officer's advice as soon as possible and, in any event, prior to the commencement of the committee meeting. Noting that:~~

~~The definitions of interests in the context of Planning are the same as for all other areas of the Council's work, and as, contained within the Council's Constitution;~~

~~A non-pecuniary interest does not need to be declared at a meeting where the interest arises solely from a body to which the Member was appointed by the Council or another public body, unless and until the Member speaks on the item;~~

~~A Member should not, if s/he has a disclosable pecuniary interest in an application sit on the committee when it is considering that application.~~

~~A Member may sit on a committee) and consider an application if s/he has a **non-pecuniary or non-disclosable pecuniary interest;**~~

~~As regulatory matters such as Planning are particularly sensitive, it is recommended that Members adopt a particularly cautious approach.~~

~~When declaring an interest at a Planning committee meeting, taking the recommended cautious approach could include considering that:~~

- ~~a) — It is often not enough for a Member to be unbiased; s/he must also be seen to be unbiased;~~
- ~~b) — Connections through any organisation, whether political, charitable, social or otherwise, can create an illusion of bias, even where it does not exist; thus Members who have connections with applicants need to be transparent and quick to reveal them;~~
- ~~c) — It may be prudent to be on one's guard against accusations of bias particularly in the case of applicants and/or agents who might previously have made mischievous or inappropriate applications;~~
- ~~d) — Ultimately, the decision as to whether or not to declare an interest must be the Member's own.~~

~~Equally, other Members should not automatically impute bias merely because an applicant and a Member know one another.~~

~~4.4—Decisions on Planning applications can only be made following a full explanation of the material Planning considerations and information on the relevance, e.g. the development plan, national guidance and consultations, at Committee. It follows from this statement of principle that it would not be appropriate for a Member to debate or vote on a matter if s/he has not been present to hear the full presentation and debate on the matter including the Officer Update report. If a Member has missed part of the consideration of an item, the Member should abstain when the vote is taken. To avoid Members breaching this guidance inadvertently, the Chairman should be prepared to consider adjourning briefly to allow one or more comfort breaks during meetings.~~

~~4.5—There is a duty to give reasons for Planning application determinations at the time the decision is made where the determination is contrary to the Officers recommendation, or, to an objective policy approved for development control purposes, or, that in the opinion of the legal officer is likely to give rise to a liability to pay compensation or an award of costs on appeal. These reasons should be:~~

~~Established, defined and described at the time;~~

~~Clear and convincing and thus such reasons as “established local need” or “satisfy the personal need” are inadequate;~~

~~Rooted in a clear and convincing statement of reasons for departures from policy or the Officers recommendation;~~

~~Given with an awareness of the difficulties which will be faced in the future by Officers who will have to explain why they must continue to recommend refusal in circumstances where a similar application has been approved against policy;~~

~~Given with an awareness that Members may be asked to appear as a witness for the Local Planning Authority, should an appeal be lodged against the decision and that appeal be heard by way of a Planning Inquiry.~~

## **5.—Members with a pecuniary interest**

~~5.1—If an application is submitted by or on behalf of a Member then s/he must inform the relevant Director in writing.~~

~~**5.2—A Member may exercise a right to speak on his/her own behalf or on behalf of a close associate. Such a Member:**~~

~~Is personally affected by an application and has a disclosable pecuniary interest.~~

~~S/he may make written representations to the committee and may attend the meeting to make representations, answer questions and give evidence in the same way that the public are allowed to attend the meeting for the same purpose. Unlike the public, such Members must withdraw from the committee room immediately afterwards.~~

~~May appoint someone to represent him/her if s/he prefers and are advised that this is often the simplest and therefore the preferable way to proceed;~~

~~Must conform to the usual deadlines for representations;~~

~~Must not seek or accept, or appear to seek, preferential treatment;~~

~~5.3—Any Member who has written formally in respect of a Planning application, either as objector or supporter, is likely to have committed him/herself to refusing or approving the application. Consequently, if a member of the relevant committee, s/he is probably no longer in a position to take the decision because s/he is not seen~~

~~to be open-minded as the law requires. S/he should leave the room whilst the item in question is before the committee.~~

~~5.4—A Member of a committee that is to consider a Planning application, who lives in close proximity to the application site, will have a potentially disclosable pecuniary interest to declare. This means that if s/he has such an interest, with or without exercising a right to speak, s/he can not take part in the decision and must declare the interest and leave the meeting room whilst the application is discussed and decided.~~

## **6.——Ward Members**

~~6.1—Ward Members are inevitably in a difficult position where development is proposed in the locality that they represent. Ward Members are particularly likely to be subject to lobbying by local residents, and to single issue pressure groups. On the other hand, they have been elected to speak for the people in that Ward and they have often canvassed on particular issues which are relevant to a Planning application. Their opinions therefore are valuable and influential.~~

~~6.2—Ward Members have a special duty to their constituents, including those who did not vote for them. It is clearly appropriate for Ward Members to listen to a constituent and it is perfectly proper to be influenced by what a constituent has to say but it is not appropriate to “advocate” on behalf of a constituent. That may make a Member seem to be unfair or prejudiced.~~

~~6.3—Committees should respect the views of the Ward Member but those views should not necessarily prevail; they have to be weighed in the balance with all the other issues.~~

~~6.4—No form of words could cover every nuance of these situations. Each local Member has to observe an appropriate balance between being an active Ward Member and his/her overriding duty to the whole local community.~~

~~6.5—Maintaining that balance means that, while a Ward Member may be influenced by the views of the others, it is his/her responsibility alone to decide what view to take on any Planning determination which committee members have to decide on the basis of the statutory Development Plans and other material Planning considerations.~~

~~6.6—It is those Planning considerations, interpreted in the interest of the whole locality which must be the overriding consideration in debating and determining a Planning application~~

~~6.7—It is up to the Chairman to decide when any Member (including a Ward Member) should speak but it is not appropriate for a Ward Member to speak both first and last.~~

~~6.8—A Ward Member not sitting on the committee and members of the public enjoy speaking rights in accordance with the Council's constitution.~~

## **7.——Avoiding fettering discretion and dealing with lobbying**

~~7.1—Members are frequently approached by applicants and objectors who wish either to ‘lobby’ Members or to ask advice. It is very important that no Member fetters his/her discretion and therefore his/her ability to participate in decision-making by making up his/her mind, or appearing to have done so, prior to the matter’s formal consideration and the hearing of the Officer’s presentation and the evidence and arguments from applicants and interested parties at the meeting.~~

~~7.2—If a member of a committee is approached by any means by persons wanting to lobby them regarding a Planning application to be heard by that committee, then the Member is strongly advised to:~~

~~Explain s/he cannot discuss the matter;~~

~~Refer the person to his/her Ward Member and/or Planning Officer;~~

~~Make and keep a written record of these instances in case the matter proceeds to an appeal;~~

~~Declare the circumstances of the lobbying at the meeting considering the item;~~

~~Pass any correspondence to the Monitoring Officer at the earliest opportunity and encourage the applicant to submit written information to the Planning Officer;~~

~~Avoid giving any commitment or impression of a commitment; that s/he holds any particular view about the matter or how s/he will vote;~~

~~Where possible, provide information on the Council’s general Planning policies and procedures only.~~

~~7.3—Members, if they wish to be free to debate and vote on an application, should avoid organising support for or opposition to a Planning matter to be determined by the committee and should not lobby other Members as such actions can easily be misunderstood by parties to the application and by the general public.~~

~~7.4—If a Member realises that s/he has fettered his/her discretion by some comment or action, then this must be declared and the Member should not take part in the discussion on that item or vote, s/he should withdraw after making their comments. This withdrawal will avoid any suggestion that other members of the committee may have been influenced by his/her continuing presence.~~

~~7.5—An important element of the Members’ Code of Conduct is the general obligation not to “use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.” In terms of the Planning process, lobbying of Members can lead to the impartiality and integrity of a Member being called into question. The acceptance of lobbying can cause public mistrust of Local Planning Authorities. Therefore, the actions and conduct of Members should be seen to be appropriate and above suspicion to an impartial outside observer.~~

~~7.6—Decisions should be taken in the interests of the Borough as a whole and should not be improperly influenced by, or, in favour of any person, company, group or locality. The key is to demonstrate that each Member’s decision was taken on relevant considerations alone.~~

~~7.7—No Member should accept any gifts or hospitality from an applicant or objector in a Planning matter. If a degree of hospitality is entirely unavoidable then the Member should ensure it is of a minimum, its acceptance is declared as soon as~~

~~possible and it must be recorded within 28 days of its receipt in the Member's register of interests if its value is over £25.~~

~~7.8—Members and substitute members of Planning committees should discourage applicants or agents from approaching them, should aim to minimise social contacts with known developers or agents, and refrain from such contacts when an application has been submitted.~~

~~7.9—A Member will not have fettered his/her discretion by:~~

~~Receiving or listening to viewpoints from applicants or objectors;~~

~~Making comments to applicants, interested parties, other Members, or Officers provided the comments do not amount to pre-judging and the Member makes it clear that s/he is keeping an open mind;~~

~~Seeking information through any alternative channel other than the Governance Service;~~

~~Simply being a member of a group or organisation that may make representations on a particular matter before a Committee where there is no direct impact on the Member and s/he is not otherwise fettered by any actions or comments made in relation to the group's representations. However the Member should make it clear to both the group or organisation and the committee that s/he has reserved judgement on the matter prior to its consideration at committee.~~

## **8.—Site Visits**

~~8.1—As a general principle, Members are encouraged to familiarise themselves with the site and surroundings of Planning applications under consideration by a committee.~~

~~8.2—Site visits should normally be pre-arranged and carried out with fellow committee members at an organised date and time. The purpose of the visit is for Members to view the site accompanied by an Officer who will ensure that the issues raised by the application are drawn to the Member's attention.~~

~~8.3—If site visits are made by individual Members then they should be conducted from the public highway or public open space. If a Member believes that s/he cannot make a site visit without entering into private land and the expected benefit is substantial then s/he should contact the case officer and request a pre-committee site visit or, if the application is already on a committee agenda, propose deferral for a committee site visit at the meeting.~~

~~8.4—Invitations to Members from applicants/agents or objectors or other groups to visit the sites or surroundings of Planning applications or attend private meetings or briefings should generally be declined unless it is arranged by Officers as an official committee visit/presentation. If a Member does decide to accept such an invitation s/he should advise the relevant Planning Officer well before the visit takes place and take particular care about expressing an opinion that may be taken as indicating that s/he has already made up his/her mind on the issue before s/he has been exposed to all the evidence and arguments. In such situations, s/he should restrict him/herself to giving procedural advice, including advising those who are lobbying that they should write to the case officer, in order that their opinions can be included in the Officer's report to the committee. The public's expectation is that Members~~

~~taking the decision will take account of all the evidence presented before arriving at a decision and to commit oneself one way or the other before hearing all the arguments makes one vulnerable to an accusation of partiality.~~

## ~~9. — The Ombudsman~~

~~9.1 — The Local Government Ombudsman (more properly known as the Commissioner for Local Administration in England) has a variety of powers.~~

~~9.2 — In essence, however, the Ombudsman cannot challenge the decision made by any Planning committee but can challenge the way in which that decision was made. If a committee fails to address a number of issues properly, then the Ombudsman might decide that this amounted to “maladministration.” If the Ombudsman also considers that injustice has been done, they then have a variety of powers to call for a remedy.~~

~~9.3 — However, that does not mean that the Ombudsman has the power to overturn Planning decisions; only the courts of law and Planning Inspectors can do that and only in strictly defined circumstances.~~

~~9.4 — The potential for maladministration, however, concerns the Council's Monitoring Officer as, amongst other things, this could result in an award of compensation.~~

## ~~10. — Sources:~~

~~This Code follows the following statutory requirements:~~

~~The Local Authorities (Model Code of Conduct) Order 2007  
LGA (2002) Probity in Planning (Update)  
The Relevant Authorities (General Principles) Order 2004  
Localism Act 2011~~

~~and draws on the following guidance:~~

~~LGA — Probity in Planning — May 2009  
The Code of Conduct: Guide for Members — May 2007  
DCLG Report: Councillor Involvement in Planning Decisions — January 2007  
AcSES Press Release: Flawed DCLG Report on Councillor Involvement in Planning Decisions — February 2007  
Cleaner, Greener, Transport and Development Overview and Scrutiny Committee Report: The Quality of Planning Decisions made at Planning Committees Review  
LGA(2005) Member Engagement in Planning Matters  
AcSES Guidance model  
Positive Engagement: A guide for Planning Councillors (2005)  
Connecting Councillors with Strategic Planning Applications  
Localism Act 2011~~