

## Part 4F

### Members' Planning Code

#### 1. Purpose of this code

- 1.1 This Planning Code has been prepared to guide Members and Officers in the discharge of the Council's statutory planning functions. This Code will also inform potential developers and the public generally of the high standards of ethical conduct expected of the Council in the exercise of its planning powers.
- 1.2 Members should abide by both this Planning Code and also the Code of Conduct for Members.
- 1.3 The provisions of this Planning Code are designed to ensure that planning decisions are taken on proper planning grounds in an open and transparent manner. The Planning Code is also designed to assist Members and Officers in dealing with approaches from property owners, developers and residents.
- 1.4 If Members have any doubts about the application of this Planning Code they should seek early advice preferably well before any meeting takes place from the Monitoring Officer.

#### 2. Context

- 2.1 The planning process has the potential to deliver sustainable planned growth aspirations for the borough and planning decisions are often based on balancing competing interests (social, economic and environmental). Decision makers must make decisions in accordance with Local Plan policies unless material planning considerations indicate otherwise regardless of personal or political allegiances.
- 2.2 Planning decisions can be controversial. The risk of controversy and conflict are heightened by the openness of a system which invites public engagement as part of the decision-making process. It is important that the decision-making process is open and transparent.
- 2.3 One of the key aims of the planning system is to balance private interests in the development of land against the wider public interest. Opposing views are often strongly held by those involved. Whilst Councillors who sit on planning committees 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. The expectation is that members who sit on planning committees will be fair and reasonable when making decisions.
- 2.4 The aim of this Code is therefore to ensure that the Council's processes are sound and that decisions are lawful, consistent and procedurally correct.

#### General roles of Councillors and officers

- 2.5 Councillors and officers have different but complementary roles. Both serve the public. Officers are responsible to the Council as a whole through the Chief Executive, whilst Members are responsible to the electorate.
- 2.6 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.

- 2.7 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.
- 2.8 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. Member interests

3.1 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.

~~3.13.2~~ Members should declare pecuniary and non-pecuniary interests at the start of the meeting or as soon as they become aware of the interest. If in doubt about their interests they should consult with the legal adviser, preferably in advance of the meeting.

~~3.23.3~~ Where a Member has a pecuniary interest relating to an item under discussion, the Councillor may not participate in any discussion of the matter at the meeting or participate in any vote on the matter. Councillors who have a pecuniary interest must leave the room. There is no obligation for that Councillor to withdraw from the Chamber although this is advisable so that it is transparently clear that the Member concerned has not taken part in the determination of this particular item. This also means that a Councillor with a pecuniary interest is precluded from making representations orally to the committee, either as a Councillor or in a private capacity, and precluded from making representations on behalf of a party to the hearing.

~~3.33.4~~ A Councillor with a pecuniary interest can still present their views to the committee through other means:

- make written Representations to officers; in accordance with the normal consultation process for planning applications. The existence and nature of the interest should be disclosed in such representations and the Councillor should not seek preferential consideration for their representations;
- arrange for another Member to represent the views of the Councillor's constituents.

~~3.43.5~~ Conflicts of Interest: all Members must be seen as impartial; this may be a particular issue for Members who have in-borough property related business activity and who are more likely than others to be uncomfortable in the role of planning committee member by reason of the combined pressures of their private local business interests, the Ward Member advocate role, and the constraints of the planning system. Members with a property-related background may also give rise to a perception by residents that such Members are more likely to be in favour of the development even where they are determining cases completely impartially.

~~3.53.6~~ In order to minimise the risk to the Council and the Member concerned s/he should discuss any conflict of interest with the Monitoring Officer if they are nominated to a planning committee.

**4. Predisposition, predetermination and bias**

- 4.1 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 legal requirement that the decision maker must respect.
- 4.2 A distinction needs to be made 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 The law 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 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 the matter or have given that impression, they should avoid being part of the decision-making body for that application.
- 4.7 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.

4.8 A Member should stand down from any agenda item where they have a relevant and current or recent private business or personal relationship and association with any applicant or applicant's representative. If in doubt about this Members should speak with the Monitoring Officer or his/her representative before any decision is made.

## **5. Applications Submitted by the Council, Councillors or Officers**

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

5.1 Proposals for the 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.

### ***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 ~~1~~APP 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.

## **6. Lobbying**

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.

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- 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.
- 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 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 (e.g. 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.

## 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. If potential applicants seek to meet Planning Committee Members then any such pre-application meeting should be 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 recorded in the planning file. ~~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 Planning Committee Member 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.
- 8.5 Councillors should report any substantive discussion with applicants to the chief planning officer.

## 9. Site visits

- 9.1 The purpose of a site visit conducted by Members and officers is to gain information relating to the land or buildings which are the subject of the planning application and which would not be apparent from the planning application to be considered by the Planning Committee. A site visit may also assist Members in matters relating to the context of the application in relation to the characteristics of the surrounding area. Discussions on site visits shall be confined to the application as currently submitted.
- 9.2 The Chairman (or Member chairing the visit) shall explain the purpose of the visit and how it will be conducted to all persons present at the site visit.
- 9.3 Under the Chairman's guidance the role of the Planning Officer attending the site visit will be to brief Members on the planning application relevant to the visit.
- 9.4 Officers shall ensure, where practical, that applicants and Members are invited to attend the visit and that they are able to view all key parts within or adjoining the site.
- 9.5 Whilst on site visits, Members of Planning Committee should not express an opinion on the planning application or its merits, -and should avoid making comments or acting in a way which makes it clear beyond doubt that they have a completely closed mind, as this would amount to predetermination. They should avoid discussions with either the applicant or objector on site visits.
- 9.6 Members should make every effort to attend site visits organised by officers. Members of the planning committee who were not present at a pre-arranged site visit should not seek to defer consideration of the planning application.
- 9.7 A site visit should not be arranged on the basis of exposing Members of the Planning Committee to local opinion but should be to explore the planning issues in the application.

### 9.79.8 Members should only attend site visits with Officers.

## 10. Planning Appeals

- 10.1 Appeals against 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.

- 10.2 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 officers 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.
- 10.3 Where the Strategic Planning Committee or an ~~Area~~ Planning Committee refuses an application against the officer's recommendation one Member of the Committee should support the planning officer assigned to the appeal with the Council's case. attend any appeal on behalf of the Council and other Members may attend as observers if they so wish. ~~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 with such assistance from the nominated Committee Member as may be required. The inspector is required to determine the appeal on its planning merits and therefore all representations should be so directed.~~
- 10.4 Where the decision of planning committee members is 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 engaged employed by the Council.

## 11. Planning Enforcement

- 11.1 Councillors should bring to the attention of the Planning Service suspected breaches of planning law 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.

## 12. Councillor training

- 12.1 All new Planning Committee Members, ~~newly appointed Chairmen and returning Members of the Council's Planning Committees~~ must attend annual induction training immediately after a Borough election or refresher training at the earliest date possible and ideally before the first committee meeting and are encouraged to attend all other planning training which takes place. Other Members are encouraged to attend the training so that they can ensure that they keep up-to-date on these matters.

## 13. Meetings of the Planning Committee

- ~~13.1 No material revision to any planning application submitted by the applicant which might lead to a change in the officer recommendation shall be considered at Planning Committee unless it has been submitted at least 14 clear days before the relevant Planning Committee meeting, and has been the subject of a written report prepared by the planning department and any necessary public consultation has taken place.~~
- 13.1 If the Planning Committee seeks to make a decision contrary to the planning officer's recommendation an agreed procedure will be followed. The Courts have expressed the view that the planning reasons for the contrary decision should be clearly recorded which means that members may be required to openly state in the meeting as to how and why they reached a contrary view.

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13.2 Where there is any doubt as to the voting or of the actual counting of votes in relation to any particular application, clarification should be immediately sought by the Chair~~man~~ prior to dealing with the next agenda item.

13.3 The Chair~~man~~ should ensure:

- Members' comments at Committee only relate to the planning merits of the application before them;
- reference at Committee to non-planning issues by the public / Members are discouraged as this can lead to decisions being made on non-material planning considerations and the decision of the committee being challenged;
- the cross-questioning of speakers should only take place if there is need for clarification of what a speaker has already outlined;
- Residents and applicants understand that the late submission of evidence could lead to the deferral of the item and may not be permitted without agreement of all parties.