

### 3.5 Members' Planning Code Of Conduct

If you have any doubts about the application of this code to your own circumstances you should seek advice, preferably well before any meeting takes place.

#### About This Code:

This code:

- is based on a Model Code which was prepared by the former Association of Council Secretaries and Solicitors;
- supplements the Members' Code of Conduct; and
- applies to:
  - o Members **at all times** when involving themselves in the planning process
  - o at less formal occasions such as meetings with officers or the public and at consultative meetings
  - o both planning application matters and to enforcement matters.

#### The Planning System – The Members' Role

The key purpose of the planning system is to manage development in the public interest. The Members' role is to make planning decisions

- openly and transparently
- impartially
- for justifiable planning reasons.

**This Code aims** to ensure that all decisions are made in accordance with these principles.

#### Key Points (Golden Rules)

Planning decisions involve a balance between private and public interests where opposing views are often strongly held.

Your overriding duty is to the whole community not just to the people in your ward.

Decisions must not only **be** impartial they must be **seen to be** impartial. You should not favour, or appear to favour, any person, company, group or locality. You should not give the appearance of pre-judging ("pre-determining") the matter before it is considered by the Committee.

Planning decisions must be made in accordance with the statutory development plan unless material planning considerations indicate otherwise.<sup>1</sup>

The views of officers involved in the determination of planning matters will be presented on the basis of their overriding obligation of professional independence.

You may think that material planning considerations outweigh the development plan, or take a different view of the planning balance than is contained in the officer recommendations. You are fully entitled to do so but you will need to make sure that you can clearly identify and support the planning reasons leading to this conclusion/decision. Advice should still be sought from Planning Officers in relation to setting out the rationale for your decision.

## **Essential – Do's and Don'ts**

### **Disclosable Pecuniary Interests**

**DO**, as soon as you become aware that you have a disclosable pecuniary interest in any matter to be discussed at a meeting, make a verbal disclosure of that interest.

**DO** leave the meeting before that matter is discussed or, if you realise after the discussion has begun, as soon as you have made your disclosure.

**DON'T** participate in the discussion or vote on a matter in which you have a disclosable pecuniary interest unless you have been granted a dispensation.

**DO** notify the Monitoring Officer of your disclosable pecuniary interest in writing within 28 days of your disclosure unless it is already included on your register of interests form published on the Council's web site.

**DO** seek advice from the Monitoring Officer if you are in any doubt about what to do.

### **Where you have a Disclosable Pecuniary Interest**

**DON'T** get involved in the processing of the application.

**DON'T** attend any formal or informal meeting about the application or seek to speak at meetings.

**DON'T** try to represent local views.

**DON'T** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.

**DON'T** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment because of your position as a councillor. This would include, where you have a disclosable pecuniary

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<sup>1</sup>

Section 38(6) Planning & Compulsory Purchase Act 2004

interest in a proposal, using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.

**DO** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a disclosable pecuniary interest to an appropriate officer (in person or in writing), the Code places greater expectations as to conduct than would be imposed on a normal member of the public.

### ***Your Own Proposals***

**DO** notify the Monitoring Officer, in writing, of your own proposals and those where you act as agent for a third party - this notification should be made no later than the submission of the application. These proposals will be reported to the Committee as main items and not dealt with by officers under delegated powers.

### **Where you have no Disclosable Pecuniary Interest**

**You** may take part in the decision making process but need to take account of the following points:-

**Do** keep at the front of your mind that, when you come to make a decision, you:

- are entitled to have and to have expressed your own views on the matter, provided you are prepared to reconsider your position in the light of all the evidence and arguments;
- must keep an open mind and hear all of the evidence before you, both the officers' presentation of the facts and their advice as well as the arguments from all sides;
- are not required to cast aside views on planning policy you held when seeking election or otherwise acting as a member, in giving fair consideration to points realised;
- are only entitled to take into account a material consideration and must disregard considerations irrelevant to the question and legal context at hand; and
- are to come to a decision after giving what you feel is the right weight to those material considerations

### **Bias and predetermination – don't fetter your discretion<sup>2</sup>**

**DON'T** fetter your discretion by approaching the decision with a closed mind. Doing so will prevent you from participating impartially in planning decisions: making up your mind ("**pre-determination**"), or even appearing to make up your mind in advance of the Committee meeting, and of your hearing the arguments on both sides, may put the Council at risk of legal proceedings.

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<sup>2</sup> Members should also have regard to the Council's more detailed guidance: ***Bias and Predetermination: A guidance note for members***

**Remember:**

- Planning decisions should only be taken with knowledge of all the relevant considerations, including responses to consultations where relevant. The officers' reports are intended to bring together all relevant considerations, and further matters may arise at the committee meeting. It is therefore not possible to come to a firm decision in advance of the meeting. You may have a view as to how you will decide a particular matter ("**pre-disposition**") but you must keep an open mind at the meeting.

**Where you have Fettered your Discretion**

- Don't speak and vote on the proposal at the meeting;
- Although you are not required to withdraw from the meeting, you may prefer to do so to avoid any complaint that your presence influenced the decision.

You can still exercise your separate rights as Local Ward Member where you have fettered your discretion. If you do exercise that right:

- advise the Proper Officer or Chairman that you wish to speak in this capacity before commencement of the item; and
- remove yourself from the room for the duration of that item.

**District Council Proposals**

**DO** be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than just a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits). The best advice in these circumstances is not to take part in the decision or vote on the proposals.

**Participation in the Discussions of Consultee Bodies**

Members may have a dual role as both members of organisations that are consulted on planning proposals and as members of the Planning Committee. In those circumstances:-

**You may** take part in discussions of the consultee body on the proposal **IF** you make it clear to the consultee body that:

- your views are expressed on the limited information before you only, **AND**
- you must reserve judgement and the independence to make up your own mind on the proposal based on your overriding duty to the whole community and not just to the constituents of that body, **AND**

- you will not commit yourself as to how you or others may vote when the proposal comes before the Planning Committee.

## **How to Deal with Lobbying**

**DO** remember that your overriding duty is to the whole community not just to the people in your Ward. You need to make decisions impartially. Make sure that you do not favour, or appear to favour, any person, company, group or locality.

**DON'T** declare the way you intend to vote

**DON'T** express any opinion on the merits prior to your formal consideration of the matter at a meeting(s) of the planning authority unless you make it very clear that you will only make up your mind at the meeting after hearing the officers' presentation and evidence and arguments on both sides.

**DO** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality to express a firm point of view or an intention to vote one way or another.

### ***Unless you have a Disclosable Pecuniary Interest, you may:***

- listen/receive viewpoints from residents or other interested parties;
- make comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to pre-determining the issue and you make clear you are keeping an open mind;
- seek information through appropriate channels; or
- be a vehicle for the expression of opinion or speak at the meeting as a local member, provided that, if you are a member of the Committee, you explain your actions at the start of the meeting/item and make it clear that, having expressed the opinion or local view, you will make up your own mind having heard all the facts and listened to the debate.

## **Dealing with Particular Groups**

### **• *Applicants/Developers***

**DO** refer applicants/developers who approach you for planning or procedural advice to officers wherever practicable.

**DON'T** agree to a meeting with applicants or developers where you can avoid it, except where this is part of a meeting organised by an officer and at which an officer is present. (Councillors do not normally take part in officers' discussions with applicants before a decision is taken, unless there are clear guidelines published by the Council to protect and assist councillors and officers. Where you do become

involved, you should be advised by the appropriate officers and the discussions should be recorded as a written file note.)

**DO** ensure that you report to the Head of Development Management any significant contact with the applicant and other parties and explain the nature and purpose of the contacts and your involvement in them. Ensure that this is recorded on the planning file.

**DO** make it clear that you will **only** be in a position to make a final decision on the application after having heard all the relevant evidence and arguments at Committee.

**DO** consider whether it would be prudent to make notes of what is said if no officer is present.

- ***Lobby Groups***

**DON'T** become a member of, lead or represent a lobby group seeking to promote or oppose planning proposals. If you do and you are a member of the Committee, you will have fettered your discretion.

- ***Political Groups***

**DON'T** decide how to vote at any sort of political group meeting, or press any other Member to do so, in advance of the meeting at which any planning decision is to be taken.

- ***Presentations***

**DON'T** attend presentations unless they have been organised by officers and an officer is present.

**DO** ask relevant questions for the purposes of clarifying your understanding of the proposals.

**DO** remember that the presentation is not part of the formal process of debate and determination of any subsequent application; this will be carried out by the appropriate Committee of the planning authority.

**DO** be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other Members might vote.

- ***Undue or Excessive Lobbying***

**DO** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality). The Monitoring Officer will in turn advise the appropriate officers to follow the matter up.

**Gifts and Hospitality**

**Be careful about accepting** gifts or hospitality wherever possible. If some hospitality is unavoidable, ensure that it is not excessive or inappropriate. Whilst not a disclosable pecuniary interest, a member, nevertheless, has the option of registering this so as to demonstrate openness and transparency to avoid any allegation of corruption or impropriety.

### **Dealings with Officers**

**DON'T** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views on the proposal, which may be incorporated into any committee report.)

**DO** recognise that officers are part of a management structure and only discuss a proposal, except in any formal meeting, with a Head of Service or those officers who are authorised by their Head of Service to deal with the proposal at a Member level.

**DO** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

### **Site Visits**

**DO** ensure that you treat the site inspection only as an opportunity to seek information and to observe the site.

**DON'T** express opinions or views to anyone.

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

**DO** ask questions or seek clarification of matters that are relevant to the site inspection.

**DON'T** hear representations from the applicant or third parties.

**DON'T** visit a site on your own, even in response to an invitation, as this may give the impression of bias. Exceptionally, where there is no organised site visit, and with the prior approval of the Head of Development Management, the local ward member or in appropriate circumstances other members, may ask for an individual site visit accompanied by an officer (there is nothing preventing you from viewing a particular site from the public highway).

### **Communication with the Public at Committee Meetings**

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

### **Making Decisions**

**DO** comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.

**DO** come to your decision only after due consideration of all of the information reasonably required to base a decision upon. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request it. If necessary, defer or refuse.

**DON'T** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.

**DO** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, your reasons are recorded and repeated in the report to the Committee.

**DO** have recorded the reasons for any Committee decision to defer a proposal.

### **Where the Officers' Recommendation is not Accepted**

Decisions on planning matters (unless delegated to officers) are ultimately for members to make. But decisions, whoever makes them, must be made in accordance with the development plan unless material considerations indicate otherwise<sup>3</sup>.

If the officers' recommendation is not to be followed, equally robust planning reasons for the decision must be given at the meeting and minuted. Those reasons must be capable of being defended at any subsequent appeal.

Officer reports will include a recommendation based on an assessment of the proposal against the development plan and material considerations, including those arising from the representations made by the applicant and consultees. The reasons for the recommendation will be set out in the report. If members take a different view at the meeting, they will need to provide equally argued planning reasons. If on reading the officers' report, you form an initial impression that leads you to be pre-disposed to go against the recommendation, it may help to discuss tentative reasons with officers before the meeting.

**DO** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the **planning reasons** leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

### **Procedure if Officers' Advice is not to be Followed:**

**Proposer** to set out planning reasons for the proposal.

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<sup>3</sup>

Section 38(6) Planning & Compulsory Purchase Act 2004



**Officers** to be given time to comment on those reasons and their ability to withstand challenge through the appeal procedures.

**Chairman** may adjourn briefly for proposer and seconder to discuss and formulate reasons with officers, reconvening for a vote and for reasons to be fully recorded. If Chairman concludes that there are opposing views amongst Committee members he may take a vote on the proposal without adjourning for discussion with officers. In such circumstances the planning reasons for the proposal should be set out in detail before the vote is taken.

## **Training**

**DON'T** participate in decision making at meetings dealing with planning matters if you have not attended any mandatory planning training prescribed by the Council.

**DO** try to attend any other specialised training sessions provided. These will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.

In accordance with Government guidance, it is Council policy that every Member of the Council must receive formal training in the planning system before serving on the Planning Committee. Similarly, any present or newly elected Member participating in the determination of a planning application by full Council, must receive such training before taking part.

If training is declined or not undertaken for any reason, then the Member concerned would not be able to participate in Planning Committee meetings or at meetings of full Council when it is determining a planning application.

## **Sanctions**

### **Sanctions (including offences)**

If you do not follow this code, you may put:

- The Council at risk of proceedings on legality or of maladministration;
- Yourself at risk of breaching the Members' Code of Conduct.

It is a criminal offence (without reasonable excuse), if you are aware that you have a disclosable pecuniary interest in a matter being considered at a meeting:

- Not to disclose that interest (unless it is already registered)
- To participate in any discussion or vote on that matter.

## **External Sanctions**

These include:

### ***Local Government Ombudsman***

The Ombudsman can investigate the process by which a planning decision has been taken (though not the decision itself). If injustice caused by maladministration is

found, the report may name the Member involved and give particulars of the breach. The report may be made publicly available.

***Appeals to the Secretary of State***

If an appeal is lodged and the Council is found to have been unreasonable (for example by making a decision for inadequate planning reasons) the appellant's costs may be awarded against the Council.

***Judicial Review***

If the Council can be shown to have not followed the correct procedures in determining an application or to have taken into account irrelevant considerations, the court may quash the decision. The claimant's costs would normally be awarded against the Council.