

# Members' Planning Code of Good Practice

Approved by the Council at its meeting on 3<sup>rd</sup> March, 2004.

March, 2004 – Version 1

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## **Members' Planning Code of Good Practice**

### **Background**

This Code of Good Practice is based on a model prepared by the Association of Council Secretaries and Solicitors. It responds to the Local Government Association's Guidance Note on the preparation of Local Codes of Good Practice on Planning Matters. It also takes into account the introduction of the new ethical framework. The model was prepared in consultation with the District Audit Service, Local Government Ombudsman and the Standards Board for England.

### **Introduction**

**The aim of this code of good practice is** to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

**The key purpose of Planning is** to control development in the public interest.

**Your role as a Member of the Development Control Committee or a Cabinet/PAG Member considering policy formulation is** to make decisions openly, impartially, with sound judgement and for justifiable reasons.

### **This Code of Good Practice applies**

- to Members at all times when involving themselves in the planning process
- to meetings of the Development Control Committee
- to meetings of the Cabinet/Policy Advisory Groups when considering planning policy issues or site specific matters such as development briefs
- primarily to those members who take decisions in the planning process, rather than members carrying out a constituency role in representing their constituents' views to Development Control Committee or Cabinet. *But the rules about declarations of interest under the Code of Conduct still apply to members in their constituency role.*
- to less formal occasions, such as meetings with officers or the public and consultative meetings.
- as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

References in this code to Development Control Committee should be read as Applying equally to the Cabinet/PAG's when considering planning matters.

**If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Head of Legal Services or one of her staff, and preferably well before any meeting takes place.**

## 1. Relationship to the Council's Local Code of Conduct

- **Do** apply the rules in the Local Code of Conduct first, which must be always be complied with.
- **Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Local Code of Conduct for the purposes of planning control. If you do not abide by this Code of Good Practice, you may put:
  - the Council at risk of proceedings on the legality or maladministration of the related decision; and
  - yourself at risk of either being named in a report made to the Standards Committee or, if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Standards Board for England.

## 2. Development Proposals and Interests under the Local Code of Conduct

- **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter.
- **Do** then act accordingly.
- **Do** notify the Head of Legal Services as Monitoring Officer in writing if you have a personal and prejudicial interest in a development proposal and note that:
  - notification to the Head of Legal Services should be made as soon as members become aware of their interest and in respect of applications by members themselves, no later than submission of the application;
  - the Head of Legal Services will inform the Head of Planning as appropriate to ensure relevant staff are aware
  - the proposal will always be reported to Development Control Committee and not dealt with by officers under delegated powers
  - in other cases officers may choose not to exercise delegated powers; and
  - it is advisable that you employ an agent to act on your behalf in dealing with officers and any public speaking at Committee.
- Where your interest is personal and prejudicial:-
  - **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.
  - **Don't** try to represent ward views, get another Ward Member or in single member wards, another member, to do so instead.
  - **Don't** get involved in the processing of the application.
  - **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor.

*For example, this would include, where you have a personal and prejudicial interest in a proposal, using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.*

- **Don't** make comments on your Council headed paper or use your title in any correspondence.
- **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate officer, in person or in writing, the Code places greater limitations on you in representing that proposal than would apply to a normal member of the public.  
*For example, where you have a personal and prejudicial interest in a proposal to be put before a meeting, you will have to withdraw from the room or chamber whilst the meeting considers it, whereas an ordinary member of the public would be able to make use of the public speaking scheme to address the meeting on the proposal and observe the meeting's consideration of it from the public gallery.*

### 3. Keeping an Open Mind

- **Don't** prejudice your ability to participate in planning decisions by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at Development Control Committee/Cabinet and of your hearing the officer's presentation and evidence and arguments on both sides.

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

- **Don't** speak and vote on a proposal where you have already made up your mind. You do not also have to withdraw, but you may prefer to do so for the sake of appearances.
- **Do** be aware that you are likely to have pre-determined a matter 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.  
*For example where as part a panel or advisory group you have a significant personal involvement in preparing or advocating the proposal so you will be, or be perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.*
- **Do** also be aware that, whilst the Local Code of Conduct contains a presumption that you may regard yourself as not having a prejudicial interest in matters which relate to other public authorities and bodies, you must exercise your discretion in deciding whether or not to participate in each case.  
*For example you are advised to disclose a prejudicial as well as personal interest and withdraw where:*

- *you have been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of:*

- *another local or public authority of which you are a member; or*
- *a body to which you have been appointed or nominated by the Council as its representative; or*
- *you are a trustee or company director of the body submitting the proposal and were appointed by the Council*

#### 4. **Where you represent two Councils**

- Do consider yourself able to take part in the debate on a proposal by a consultee body (*for example where you are also a member of the parish council, or both a district and county councillor*) provided:
  - the proposal does not substantially effect the well being or financial standing of the consultee body;
  - you make it clear to the consultee body that:
    - your views are expressed on the limited information before you only;
    - you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before Development Control Committee and you hear all of the relevant information; and
    - you will not in any way commit yourself as to how you or others may vote when the proposal comes before Development Control Committee; and
  - you disclose the personal interest regarding your membership or role when the Development Control Committee comes to considers the proposal.
- **Do** explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged the matter elsewhere, so that this may be recorded in the minutes.
- **Do** take the opportunity to exercise your separate speaking rights as a Local Member where you have represented your views or those of local electors and would be perceived as pre-determining the proposal, but do not have a personal and prejudicial interest. Where you exercise this right **do**:
  - advise the Chairman that you wish to speak in this capacity before commencement of the item;
  - remove yourself from the member seating area for the duration of that item; and
  - ensure that your actions are recorded by the Committee Administrator.

## 5. **Contact by Members of Development Control Committee with Applicants, Developers and Objectors**

- **Don't** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting is necessary to clarify the issues you should discuss whether a meeting is appropriate with the Development Control Manager/Head of Planning. If a meeting is appropriate a planning officer will need to be present and you ask the Development Control Manager/Head of Planning to organise it. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is available for public access on the planning file.
- **Do** refer those who approach you for planning, procedural or technical advice to officers.
- **Do**
  - follow the rules on lobbying in paragraph 6 below;
  - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
  - report to the Development Control Manager/Head of Planning any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, so this can be recorded on the planning file.

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

- **Don't** attend a planning presentation unless an officer is present and/or it has been organised by officers.
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application. This will be carried out by the Development Control Committee.
- **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.

## 6. **Lobbying of Members of Development Control Committee**

- **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and remember to register the gift or hospitality with the Head of Legal Services in accordance with the Local Code of Conduct.

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and therefore your ability to participate in the Committee's decision making to express an intention to vote one way or another or such a firm point of view that it amounts to the same thing.
- **Do** remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Do** copy or pass on any lobbying correspondence you receive to the Development Control Manager at the earliest opportunity.
- **Do** promptly refer to the Development Control Manager/Head of Planning any offers made to you of planning gain or constraint of development, through a proposed Planning Obligation or otherwise.
- **Do** inform the Head of Legal Services where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- **Do** note that, unless you have a personal and prejudicial interest, you can:
  - listen or 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-judging 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 you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

## 7. Lobbying by Members of Development Control Committee

- **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby, promote or oppose planning proposals. If you do, you will have fettered your discretion and are likely to have a personal and prejudicial interest and have to withdraw.
- **Don't** excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken



- **Don't** decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue.
- **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the CPRE, Ramblers Association or a local civic society, but disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal

## 8. Site Visits

- **Don't** request a site visit unless you feel it is necessary because particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection.
- **Don't** hear representations from any other party, with the exception of the Local Member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.
- **Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
  - you feel it is essential for you to visit the site other than through attending the official site visit,
  - you have first spoken to the Development Control Manager/Head of Planning about your intention to do so and why (which will be recorded on the file) and
  - you can ensure you will comply with these good practice rules on site visits.
- **Do** give reasons for requesting a site visit.
- **Do** try to attend site visits organised by the Council where possible.
- **Do** ensure that any information which you gained from the site visit is reported back to the Development Control Committee, so that all Members have the same information.
- **Do** ensure that you treat the site visit only as an opportunity to seek information, observe the site and inform your views.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.

- **Do** remember that as a Member you have no **legal** right to enter private land or buildings
- **Do** have regard to your safety and security when considering whether to make private or unaccompanied site visits away from public areas

## 9. Public Speaking at Meetings

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

## 10. Officers

- **Don't** put pressure on officers to put forward a particular recommendation. This does not prevent you from asking questions or submitting views to the Head of Planning /Development Control Manager in your constituency role, which may be incorporated into any committee report.
- **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with a Head of Service, the Development Control Manager, planning case officer or their manager.
- **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 Employees 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 Development Control Committee or its Members.

## 11. Decision Making

- **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 Development Control Committee rather than be determined through officer delegation, that your reasons are given in writing so they can be included in the report to Committee.
- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **Do** make decisions in accordance with the Development Plan unless material considerations indicate otherwise and only take planning considerations into account.

- **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or if the lead planning officer at the meeting advises it would be appropriate, refuse.
- **Do** identify the reasons for proposing that the Committee defers a decision on any proposal
- **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

## 12. Training

- **Don't** participate in decision making at meetings dealing with planning matters unless you have attended planning training provided by the Council.
- **Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.

