

Constitution 16.3: Planning Code of Good Practice



MEMBERS' PLANNING CODE OF GOOD PRACTICE

Background

The Members' Planning Code of Good Practice is derived from an existing national model code recently revised by Lawyers in Local Government (LLG), in order to promote best practice in the planning process.

The drafting of the original model code was subject to consultation and comment from a number of local authorities through the machinery of the Association of Council Secretaries and Solicitors (now LLG), the Local Government Association, the Local Government Association, the local Government Ombudsman, Audit Commission and from firms of solicitors or counsel acting on their behalf.

The Code takes into account the changes to the Seven Principles of Public Life (the 'Nolan principles') and commentary from the Committee on standards in public life, the changes in the approach to codes of conduct and also to predetermination introduced by the Localism Act 2011 and the guide on 'Openness and transparency on personal interests' published by the Department for Communities and Local Government in 2013.

For further reading please refer to 'Probity in Planning' issued by the Local Government Association.

Introduction

The aim of this Code: 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.

One of the key purposes of the planning system is to regulate the development and use of land in the public interest. **Your role as a Member of the Planning Authority is** to make planning decisions openly, impartially, with sound judgement and for justifiable reasons. You are also a democratically accountable decision-taker who had been elected to provide and pursue policies. You are entitled to be predisposed to make planning decisions in accordance with your political views and policies **provided** that you have considered all material considerations and have given fair consideration to relevant points raised.

When the Code applies: this code applies to Members at all times when involving themselves in the planning process. (This includes when taking part in the 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, from the Monitoring Officer or one of her staff, and preferably well before any meeting takes place.

1. Relationship to the Members' Code of Conduct

- **Do** apply the rules in the Members' Code of Conduct first, which must always be complied with, namely the rules on Disclosable Pecuniary Interests, Pecuniary Interests, Non-Pecuniary Interests and the general rules giving effect to the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- **Do** then apply the rules in this Members' Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct and the law on decision making for the purposes of planning control. If you do not abide by this Members' Planning Code, you may put:
 - the Council at risk of proceedings on the legality of the related decision or maladministration; and
 - yourself at risk of being named in a report made to the Council or, if the failure is also likely to be a breach of the interest provisions of Localism Act 2011, a complaint being made to the police to consider criminal proceedings.

2. Development Proposals and Interests under the Members' Code of Conduct

- **Do** disclose the existence and nature of your interest as required by the Members' Code of Conduct.
- **Do take into account when approaching a decision** that the Principle of Integrity is defined in terms that

*"Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. **They must declare and resolve any interests and relationships**".*

It is therefore advisable that you:

- **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 an interest under the Members' Code of Conduct, 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** note that you are not prevented from seeking to explain and justify a proposal in which you have an interest to an appropriate officer, in person or in writing, but that your role as a councillor may place additional limitations on you in representing the proposal in which you have an interest.

- **Do** notify the Monitoring Officer in writing where it is clear to you that you have a disclosable pecuniary interest (for instance if you are an applicant for planning permission) or other personal conflict of interest and note that:
 - you should send the notification no later than submission of an application where you can;
 - where an application has been submitted by you, your spouse, or by a member of your close family it will always be reported to the Committee as a main item and not dealt with by officers under delegated powers;
 - you must not get involved in the processing of the application; and
 - it is advisable that you consider the appointment of an agent to act on your behalf in respect of the proposal when dealing with officers and in circumstances where you are eligible to address Committee under the Council's public speaking rules in the same way that an ordinary member of the public would.

3. **Fettering Discretion in the Planning Process** (natural justice, predisposition and predetermination)

- **Don't** fetter your discretion by approaching the decision with a closed mind.
- **Do** be aware that in your role as an elected Member you are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the Localism Act 2011.
- **Do** keep at the front of your mind that, when you come to make the 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 raised;
 - are only entitled to take into account material considerations 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,
- **Do** be aware that you may be perceived to be biased where the Council is the landowner, developer or applicant if you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership

of, for example, both Cabinet and Planning Committee, 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.)

- **Do** consider yourself able to take part in the debate on a proposal at Planning Committee where you are also a member of a consultee body (for instance where you are a member of a parish council) provided:
 - you do not have a disclosable pecuniary interest, or pecuniary interest in the proposal (which may arise for instance in circumstances where an application is made by the consultee body itself) and
 - you made it clear at the consultee stage (in circumstances where you chose to comment on the proposal, for instance at a Parish Council meeting), that:
 - your views are expressed on the limited information before you only and these views do not commit yourself as to how you or others may vote when the proposal comes before Planning Committee;
 - you 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 people in that area, ward or parish, as and when it comes before the Planning Committee and you hear all of the relevant information; and
 - you inform the Planning Committee, during its consideration of the proposal, of any prior involvement by you at the consultee stage

- **Do** consider yourself able to take part in the debate on a proposal at Planning Committee where the Council is a consultee on a matter to be determined by another body in circumstances where you serve on the decision making committee of that other body (for instance where the proposal relates to a planning matter to be determined by the County Council and you serve on both the Planning Committee and the County Council's Development Control Committee) provided:
 - you do not have a disclosable pecuniary interest, or pecuniary interest in the proposal
 - you make it clear to Planning Committee that
 - your views are expressed on the information before you and these views do not commit yourself as to how you or others may vote when the proposal comes before you for consideration by the decision making body;
 - you reserve judgement and the independence to make up your own mind on the proposal, based on your overriding duty to the whole community served by the decision making body as and when the proposal comes before that body and you hear all of the relevant information; and
 - you inform the decision making body, during its consideration of the proposal, of any prior involvement by you at the consultee stage”

- **Do** alternatively explain that you do not intend to speak and vote as a member of the Committee because you will be perceived as having judged (or you reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.
- **Do** consider taking the opportunity where you have fettered your discretion but do not have a disclosable pecuniary interest, pecuniary interest or other personal conflict of interest to exercise any separate speaking rights as a Ward Member that you may have, in accordance with the Regulatory Committee Procedure Rules.

4. Contact with Applicants, Developers and Objectors

- **Do** refer those who approach you for planning, procedural or technical advice to officers.
- **Don't** agree to any formal meeting requests from applicants, developers or groups of objectors. Where you feel that a formal meeting would be useful in clarifying the issues, you should not seek to arrange that meeting yourself but should request the Director of Development and Regeneration to organise it. Planning 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 disclosed when the application is considered by the Committee.
- **Do** otherwise:
 - follow the rules in paragraph 5 on lobbying;
 - consider whether or not it would be prudent in the circumstances to make notes when contacted with a meeting request; and
 - report to the Director of Development and Regeneration any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

In addition in respect of public presentations by applicants/developers:

- **Do** attend formal planning presentations by applicants/developers where you feel that this will assist you in understanding planning proposals.
- **Do** ask relevant questions for the purposes of clarifying your understanding.
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application.
- **Do** be aware that a presentation is a form of lobbying. You must take great care when expressing any views on the merits or otherwise of the proposal presented not to fetter, or give the appearance of fettering, your discretion on any subsequent application.

5. Lobbying of Councillors

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it may subsequently prejudice your impartiality, and therefore your ability to participate in the Committee's decision making, to make any sort of promise 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.
- **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. (An offer of hospitality of a bare minimum, such as a tea or coffee may be accepted where this is appropriate in the circumstances of the engagement).
- **Do** copy or pass on any lobbying correspondence you receive to the Director of Development and Regeneration at the earliest opportunity.
- **Do** promptly refer to the Director of Development and Regeneration any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- **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), who will in turn advise the appropriate officers to follow the matter up.
- **Do** note that, unless you have a disclosable or overriding other personal conflict of interest, you will not have fettered your discretion or breached this Planning Code of Good Practice through:
 - listening or receiving viewpoints from residents or other interested parties;
 - making comments to residents, interested parties, other Members or appropriate officers (making clear that you must keep an open mind when it comes to making the decision);
 - seeking information through appropriate channels; or
 - being a vehicle for the expression of opinion of others in your role as a Ward Member.

6. Lobbying by Councillors

- **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby, promote or oppose planning proposals unless you notify the Director of Development and Regeneration of your involvement in the organisation and are prepared to step away from the Committee when it comes to make its decision.
- **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals (such as the Victorian

Society, CPRE, Ramblers Association or a local civic society), but do consider whether you should seek to disclose your membership to aid transparency where the organisation has made representations on a particular proposal.

- **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 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.

7. Site Visits/Inspections

- **Do** try to attend site visits organised by the Council where possible.
- **Don't** request a site visit unless you feel it is strictly 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; or
 - there are significant policy or precedent implications and specific site factors need to be carefully addressed.
- **Do** ensure that you report back to the Committee any information gained from the site visit that you feel would benefit all Members of the Committee
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **Don't** hear representations from any other party, with the exception of the Ward 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** express opinions or views.
- **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 Director of Development and Regeneration 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.

8. 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 or through the Chair, as this may give the appearance of bias.

9. 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 Director of Development and Regeneration, which may be incorporated into any committee report).
- **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.

10. Decision Making

- **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation that you set out your planning reasons in writing. This will then be referred to in the report to the Committee.
- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **Do** comply with section 38 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 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.
- **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 you have sound planning reasons for a request to defer 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. Where you propose a decision contrary to officers' advice you should state clearly and precisely your reason(s) specifying all matters, policies and proposals relevant to your reason(s) including why you disagree with the reasoning in the officer's report which

led to that recommendation. 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.

- **Do** ensure that you co-operate with the following procedures:

Motion to Approve Contrary to Officer Recommendation

Where a motion is to be put to a meeting, which if successful would result in the approval of a planning application contrary to the recommendation of the Director of Development and Regeneration, the Chairman will ensure the following steps have been taken before putting the motion to the vote:

1. Officers have been given the opportunity to explain the reasons why the application has been recommended for refusal and the implications for the Council if the application were to be approved contrary to that recommendation (e.g. setting of precedent, inconsistency of decision making, undermining of local plan policies, risk of legal challenge and the possibility of adverse costs awards).
2. That the motion includes:
 - a) A summary of the reasons why the mover of the motion considers the application should be approved ideally by reference to the Development Plan, local and national planning policies (including the NPPF) and all other relevant material planning considerations.
 - b) Where necessary a summary of the reasons why the mover of the motion disagrees with the reasoning in the officer report which led to the recommendation for refusal is given ensuring, where appropriate, the application is demonstrably shown to meet all relevant policy tests.
 - c) Appropriate delegation to the Director of Development and Regeneration (in consultation with the Chairman or Vice Chairman) in order to ensure that appropriate planning conditions can be drawn up and/or a section 106 planning obligation is entered into (or other matters dealt with) prior to approval.
3. That the motion has been recorded by the Member Services Officer in writing and subsequently read out by the Chairman so members of the Committee and all relevant parties (including members of the public present) are clear as to what has been proposed.

Motion to Refuse Contrary to Officer Recommendation

Where a motion is to be put to a meeting, which if successful would result in the refusal of a planning application contrary to the recommendation of the Director of Development and Regeneration, the Chairman will ensure the following steps have been taken before putting the motion to the vote:

- 1 Officers have been given the opportunity to explain the reasons why the application has been recommended for approval and the implications for the Council if the application were to be refused contrary to that recommendation (e.g. inconsistency of decision making, undermining of local plan policies, risk of appeal by the applicant, legal challenge and the possibility of adverse costs awards).
- 2 That the motion includes:
 - a) A summary of the reasons why the mover of the motion considers the application should be refused ideally by reference to the Development Plan, local and national planning policies (including the NPPF) and all other relevant material planning considerations.
 - b) Where necessary a summary of the reasons why the mover of the motion disagrees with the reasoning in the officer report which led to the recommendation for approval is given ensuring, where appropriate, consideration of all relevant policy tests.
- 3 That the motion has been recorded by the Member Services Officer in writing and subsequently read out by the Chairman so members of the Committee and all relevant parties (including members of the public present) are clear as to what has been proposed.

12. Training

- **Do** make every effort to attend the planning training sessions provided by the Council.
- **Do** endeavour to attend any other relevant training sessions provided by the Council.

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