

MEMBERS' PLANNING CODE OF GOOD PRACTICE

BACKGROUND

This Code of Good Practice has been prepared to support the drive to attain and maintain high ethical standards in local government. It is based upon a model prepared by the Association of Council Secretaries and Solicitors in consultation with the Standards Board for England, the District Audit Service and the Local Government Ombudsman.

INTRODUCTION

The aim of this code of good practice is to ensure that in the operation of 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 the development and use of land in the public interest.

Your role as a member of the Planning Authority 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. It applies equally to planning enforcement or planning policy issues as it does to planning applications. (This includes, where applicable, when acting as a Member of decision-making meetings of the Council 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. In addition to meetings of the Council, it will include meetings of the Development Control Panel, Cabinet, Section 106 Agreement Advisory Group and Development Plan Policy Advisory Group and any other formal or informal meeting of members relating to the planning process.)

References to officers in this Code of Good Practice relate to employees of the Council.

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 his staff, 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: these must always be complied with.
- ◆ **Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of dealing with all planning matters. If you do not abide by this Code of Good Practice, you may put:
 - the Council at risk of proceedings as to the legality or maladministration of the related decision; and
 - yourself at risk of either being named in an Ombudsman's report made to the Standards Committee or Council or, if the failure is also likely to be a breach of

the Code of Conduct, a complaint to the Standards Board for England.

2. Development Proposals and Interests under the Members' Code

- ◆ **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with employees and other members.
- ◆ **Do** then act accordingly. **Where your interest is personal and prejudicial:-**
 - **Do** disclose the interest and withdraw immediately from the room or chamber where a meeting is being held for the duration of any discussion and/or voting in the matter.
 - **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 the views of your Ward if you have played an active role in supporting or opposing an application for development. Ask another member to do so in your place. (This applies equally to planning policy matters, such as local plan allocations.)
 - **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. 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.
 - **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 observe the meeting's consideration of it from the public gallery.)
 - **Do** notify the Monitoring Officer in writing of your own interest and note that:
 - notification to the Monitoring Officer should be made no later than submission of the application;
 - the application will always be submitted to the Development Control Panel for determination and not dealt with by officers under delegated powers; and
 - it is advisable that you employ an agent to act on your behalf on the proposal in dealing with officers.

3. Fettering Discretion in the Planning Process

- ◆ **Don't** fetter your discretion and therefore your ability to participate in planning decision-making at the Council 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 the meeting of the planning authority and of hearing the officer's presentation and evidence and arguments on both sides. Fettering your discretion 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 pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- ◆ **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 a proposal. (This is more than a matter of membership of both the proposing and planning determination bodies, but because through your significant personal involvement in preparing or advocating the proposal you will be, or could 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 Members' Code of Conduct provides for a presumption that you may regard yourself as not having a prejudicial interest in matters which relate to the organisations mentioned below -
 - 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
- you must exercise your discretion in deciding whether or not to participate in each case and where:
 - you have been **significantly** involved in the preparation, submission or advocacy of a planning proposal on behalf of such a body; or
 - you are a trustee or company director of the body submitting the proposal and were appointed by the Council
- you should always disclose a prejudicial as well as personal interest and withdraw.
- ◆ **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the town or parish council, for example, or both a district and county councillor), provided:
 - the proposal does not substantially affect 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 then before you;
 - 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 the Development Control Panel or the District Council and you have had the opportunity to consider all of the relevant information. (This applies equally to planning policy matters considered by the Cabinet); and
 - you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Development Control Panel or the District Council; and
- you disclose the personal interest regarding your membership or role when the Development Control or District Council comes to consider the proposal.
- ◆ **Don't** speak and vote on a proposal where you have fettered your discretion. You do not also have to withdraw, but it would be preferable for you to do so.
 - ◆ **Do** explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.
 - ◆ **Do** take the opportunity to exercise your separate speaking rights as a member under the Council Procedure Rules where you have represented your views or those of local electors before the meeting and fettered your discretion, but do not have a personal and prejudicial interest. Where you do:
 - you must give written notice to and obtain the prior permission of the Chairman that you wish to speak in this capacity before the meeting commences;
 - remove yourself from the member seating area for the duration of that item, and
 - ensure that your actions are recorded.

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 meeting with applicants, developers or groups of objectors where you can avoid it. Pre-application meetings are normally at officer level only, but where you feel that a meeting may be useful in clarifying the issues, you should never seek to arrange that meeting yourself. You should refer the request to the Head of Planning Services or Development Control Manager to organise it. When a meeting is arranged, the officer(s) will ensure that those present 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 Council or Development Control Panel.

- ◆ **Do otherwise:**
 - follow the rules on lobbying in this Code of Good Practice;
 - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
 - report to the Head of Planning Services or Development Control Manager 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 and in respect of presentations by applicants/developers:

- ◆ **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 Panel or Council in public.
- ◆ **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.

5. Lobbying of Councillors

- ◆ **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 decision making process 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.
- ◆ **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 Monitoring Officer where its value is over £25 in accordance with the Members' Code of Conduct.
- ◆ **Do** copy or pass on any lobbying correspondence you receive to the Head of Planning or Development Control Manager at the earliest opportunity in order that it can be placed on the appropriate planning file and is open for inspection before a decision is made.
- ◆ **Do** promptly refer to the Head of Planning Services or Development Control Manager 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 personal and prejudicial 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 as long as you make yourself equally available to those of differing viewpoints if requested to do so;
 - making 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;
 - seeking information through appropriate channels; or
 - being a vehicle for the expression of opinion or speaking at the meeting as a ward member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward 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.

6. Lobbying by Councillors

- ◆ **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to 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.
- ◆ **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 Development Control Panel or Council that you have reserved judgement and the independence to make up your own mind on each separate proposal.
- ◆ **Don't** excessively lobby fellow members 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 planning application or policy matter 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

- ◆ any planning issue.

7. Site Visits

- ◆ **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 site visits can cause delay and additional cost. They should only be arranged where the expected benefit is substantial. This may be where
 - 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 formal site inspection; or
 - there are significant policy or precedent implications and specific site factors need to be carefully addressed.
- ◆ **Do** ensure that any information which you gained from the site visit is reported back to the Development Control Panel or Council so that all members have the same information.
- ◆ **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 a ward member who should 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 to anyone.
- ◆ **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 an official site visit, 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 Development Control Panel or Council's proceedings (orally or in writing) 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 Head of Planning Services or Development Control Manager which may be incorporated into any Development Control Panel or Council report. Your

attention is drawn to the danger of fettering your discretion on a matter which is covered in Section 3 of this Code.)

- ◆ **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with the Head of Planning Services or Development Control Manager or those officers who are authorised by them 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 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 Panel/Council or their members.

10. Decision-Making

- ◆ **Do** ensure that, if you request a proposal to go before the Development Control Panel under the scheme of delegation contained in the Council's constitution rather than be determined through officer delegation, your planning reasons for doing so are recorded and reported to the Panel.
- ◆ **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- ◆ **Do** comply with section 54A of the Town and Country Planning Act 1990 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 and, if necessary, defer consideration of the proposal until the information has been provided and you have had an opportunity to consider it.
- ◆ **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** 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.

11. Training

- ◆ **Don't** participate in decision making at meetings dealing with planning matters if you have not attended suitable planning training provided by the Head of Planning Services.
- ◆ **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 Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.