

2. MEMBERS’ PLANNING CODE OF GOOD PRACTICE

Background

The Planning Code of Good Practice was first prepared in response to the Local Government Association’s Guidance Note on the preparation of Local Codes of Good Practice on Planning Matters in the light of the introduction of the new ethical framework. The Code is consistent with the principles relating to public life set out in s28 of the Localism Act 2011 and supplements the Council’s Code of Conduct for Members.

Introduction

The aim of this code of good practice: 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: to control development in the public interest.

Your role as a Member of the Planning Authority: to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.

When the Code of Good Practice 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 the Deputy Monitoring Officers, and preferably well before any meeting takes place.

1. Relationship to Members’ Code of Conduct

- **Do** apply the rules in the Members’ Code of Conduct first, which has statutory effect and sets out the conduct that is expected of Members when acting in their official capacity.
- **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 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 a complaint being made to the Monitoring Officer if the failure is also likely to be a breach of the Code of Conduct.

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 officers and other Members.
- **Do** always disclose your interest at the beginning of the meeting or as soon as you become aware of it and not just at the commencement of the discussion on that particular matter.
- **Do** then act accordingly. **Where your interest is pecuniary:** -
 - **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 to do so instead, explaining that you have such an interest. Don't seek to influence him or her.
 - **Don't** get involved in the processing of the application and don't 'promote' the application to Committee in your capacity as Ward Member.
 - **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 pecuniary 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 pecuniary interest to an appropriate officer, in person or in writing and in your private capacity, the Code places limitations on you in representing that proposal.
 - **Do** notify the Monitoring Officer in writing and note that:
 - you should send the notification no later than submission of that application where you can;
 - the proposal will always be reported to the Committee as a main item 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 and any public speaking at Committee.

3. Separating Your Professional and Public Roles

Do take care to separate your professional life from your work as a councillor and be sure to make it clear to others in which capacity you are acting.

Do register with the Monitoring Officer any employment, office, trade, profession or vocation carried on for gain.

Do notify the Corporate Planning Manager in writing if you are, or are likely to be, an applicant for planning permission in the Council's area or have a significant association with such an application, whether as an agent or as a member of a professional team involved in the preparation or submission of the application. These applications will always be reported to the Development Management

Committee for determination and will not be dealt with by officers under delegated powers.

Do disclose to a meeting at which you are present any pecuniary interest in a planning application, whether arising as above or in any other way, and then withdraw from the meeting.

Don't use your position as a councillor to lobby, promote or influence the outcome of a planning application in which you have a pecuniary interest. You should not, in these circumstances, use channels of communication or access to Members and officers that are not available to applicants and agents in the normal course. You should not indicate to others, including potential clients if you are employed as a planning agent, that you can use your position as a councillor to secure more favourable planning outcomes than might otherwise be the case.

4. Fettering Discretion in the Planning Process.

- **Don't** fetter your discretion and therefore your ability to participate in planning decision making at this 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 your 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 the proposal. (This is more than a matter of membership of both the *proposing and planning determination* Council, Cabinet or Development Management 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 when acting as part of a consultee body (where you are also a member of the county council, for example), provided:
 - you do not have a pecuniary interest in the matter;
 - 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 or ward, as and when it comes before the 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 the Committee; and
- you disclose the personal interest regarding your membership or role when the Committee 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 you may prefer to do so to avoid any appearance of impropriety.
- **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. Use the disclosure form provided for disclosing interests.
- **Do** take the opportunity to exercise your separate speaking rights as a Ward/Local Member where you have represented your views or those of local electors and fettered your discretion, but do not have a pecuniary interest. Where you do take such an opportunity to speak after fettering your discretion:
 - advise the proper officer or 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

5. 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 with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Corporate Planning Manager 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 disclosed when the application is considered by the Committee.
- **Do** otherwise:
 - follow the rules on lobbying;
 - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
 - report to the Corporate Planning 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 in respect of presentations by applicants/developers:

- **Do** be aware that a presentation is a form of lobbying, and you must not express any view that might suggest predetermination or state how you or other Members might vote.

- **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 Management Committee.

6. 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 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 as a member of the Development Management Committee 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/ward.**
- **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 it in the Register of Interests where its value is over £50 (in accordance with the authority's rules on gifts and hospitality).
- **Do** copy or pass on any lobbying correspondence you receive to the Corporate Planning Manager at the earliest opportunity.
- **Do** promptly refer to the Corporate Planning 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 or Deputy Monitoring Officers 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 pecuniary 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, 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/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 Councillors

- **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals without considering the risk of bias or predetermination. You are entitled to have a predisposition in favour of particular decisions but not a closed mind. Action, campaign or lobby groups are most likely to be formed specifically to promote or oppose planning proposals. Membership of an established residents' association, political party or similar body that may have adopted a particular line in respect of a development proposal does not, by itself, fetter the discretion of an individual Member and all such cases should be considered on their particular facts.
- **Do**, if you wish, 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 such as the Aldershot 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
- **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.

8. 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:
 - 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;
 - matters raised by the applicant and/or objectors cannot be assessed from the application or supporting material;
 - there are significant policy or precedent implications and specific site factors need to be carefully addressed; or
 - the proposal is particularly contentious
- **Do** ensure that any information which you gained from the site visit is reported back to the Committee, 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. 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 the official site visit,
 - you have first spoken to the Corporate Planning Manager 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.

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 Corporate Planning Manager, 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 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.

11. Decision Making

- **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your reasons are first submitted to the Chairman in writing in accordance with the Council's Scheme of Delegation and recorded and repeated 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(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 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 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** have recorded the reasons for Committee's decision 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. 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

- **Do** take advantage of all training opportunities provided by the Council in matters of conduct and propriety.
- **Don't** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed 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.