MEMBERS PLANNING CODE OF GOOD PRACTICE

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: to manage and direct 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 and preferably well before any meeting takes place.

1. Relationship to the Members' Code of Conduct

1.1. Do apply the rules in the Members' Code of Conduct first, which must be always be complied with.

1.2. 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:

1.2.1. the Council at risk of proceedings on the legality or maladministration of the related decision; and

1.2.2. yourself at risk of either being named in a report made to the Standards and Adjudication Committee or Council 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 Members' Code

2.1. 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. (Use the Council's disclosure form provided for disclosing interests.)

2.2. Do then act accordingly. Where you have a Disclosable Pecuniary Interest, an Other Registrable Interest, or any other interest under the Member's Code of Conduct, which requires you not to participate in the matter:-

2.2.1. Don't participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.

2.2.2. Don't try to represent ward views, get another Ward Member to do so instead.

2.2.3. Don't get involved in the processing of the application.

2.2.4. 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 which requires you not to participate in the matter, 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.

2.2.5. Do be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have such an interest to an appropriate officer, in person or in writing, the Code places limitations on you in representing that proposal. You may address the Committee only where you are entitled to do so in the same way as a member of the public under the approved public speaking procedure. After doing so, you must withdraw from the room while the matter is considered and must not remain to observe the Committee's consideration of it.

2.3. In the case of your own planning applications:

2.3.1. They may be referred to the Planning Committee rather than determined by officers under delegated powers.

2.3.2. If the application is considered by the Planning Committee, you must disclose any relevant Disclosable Pecuniary Interest, Other Registrable Interest, or other interest under the Member's Code of Conduct, and must withdraw from the meeting after exercising any right to address the Planning Committee under the public speaking procedure.

2.3.3. You may think it advisable to employ a spokesperson to act on your behalf on the proposal in dealings with officers and any other public speaking at the Planning Committee.

SUMMARY NOTE: You are not prevented from seeking to explain and justify a proposal in which you have an interest under the Member's Code of Conduct, including your own application, to an appropriate officer, in person or in writing, where members of the public would have the same opportunity to do so. You may also exercise any right to address the Committee under the public speaking procedure but must then withdraw from the room while the Committee considers the matter. This means you cannot remain in the public gallery to observe the Committee's consideration.

3. Fettering Discretion in the Planning Process.

3.1. 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.

3.2. Fettering your discretion in this way (commonly referred to as pre-determination or bias) 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.

3.3. 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. (i.e. 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.)

3.4. 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 parish council, for example), provided:

3.4.1. the proposal does not substantially effect the wellbeing or financial standing of the consultee body;

3.4.2. you make it clear to the consultee body that:

3.4.2.1. your views are expressed on the limited information before you only;

3.4.2.2. 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 Committee and you hear all of the relevant information; and

3.4.2.3. you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee; and

3.4.3. you will disclose your membership or role, and any interest arising from it, when the Committee comes to consider the proposal.

3.5. Don't speak and vote on a proposal where you have fettered your discretion. You do not also have to withdraw, but it is recommended that you do so in order to give the public and colleagues the clear indication that you are not seeking to improperly influence the debate or the decision.

4. Contact with Applicants, Developers and Objectors

4.1. Do refer those who approach you for planning, procedural or technical advice to officers.

4.2. 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 Development Control 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.

4.3. Do otherwise:

4.3.1 follow the rules on lobbying;

4.3.2 consider whether or not it would be prudent in the circumstances to make notes when contacted; and

4.3.3 report to the Director of Economy, Environment and Infrastructure 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:

4.4. Don't attend a planning presentation unless an officer is present and/or it has

been organised by officers.

4.5. Do ask relevant questions for the purposes of clarifying your understanding of the proposals.

4.6. 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.

4.7. 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

5.1. 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.

5.2. 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.

5.3. 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 £25 (in accordance with the Code of Conduct).

5.4. Do copy or pass on any lobbying correspondence you receive to the Director of Economy, Environment and Infrastructure at the earliest opportunity.

5.5. Do promptly refer to the Director of Economy, Environment and Infrastructure any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.

5.6. 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.

5.7. Do note that, unless you have an interest under the Members' Code of Conduct which prevents you from participating, you will not have fettered your discretion or breached this Planning Code of Good Practice through:

5.7.1. listening or receiving viewpoints from residents or other interested parties;

5.7.2. 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;

5.7.3. seeking information through appropriate channels; or

5.7.4. 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.

6. Lobbying by Councillors

6.1. 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 may have fettered your discretion and may also have an interest under the Members' Code of Conduct which prevents you from participating.

6.2. Do join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Ramblers Association or a local civic society, but disclose your membership or involvement, and any relevant interest arising from it, 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.

6.3. 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

6.4. 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.

7. Site Visits

7.1. Do try to attend site visits organised by the Council where possible.

7.2. Don't request a site visit unless you feel it is strictly necessary because:

7.2.1. 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

7.2.2. there are significant policy or precedent implications and specific site factors need to be carefully addressed.

7.3. 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

7.4. Do ensure that you treat the site visit only as an opportunity to seek information and to observe the site.

7.5. Do ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.

7.6. 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.

7.7. Don't express opinions or views to anyone.

7.8. 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:

7.8.1. you feel it is essential for you to visit the site other than through attending the official site visit,

7.8.2. you have first spoken to the Development Control Manager about your intention to do so and why (which will be recorded on the file) and

7.8.3. you can ensure you will comply with these good practice rules on site visits.

8. Public Speaking at Meetings

8.1. Don't allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the approved public speaking procedure, as this may give the appearance of bias.

8.2. Do ensure that you comply with the Council's procedures in respect of public speaking, as set out in the Constitution.

9. Officers

9.1. 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 relevant planning officer, which may be incorporated into any committee report).

9.2. Do recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with a Director or those officers who are authorised by their Director to deal with the proposal at a Member level.

9.3. 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.

9.4. Do always be mindful of the principles set out in the Protocol on Member/Officer relations set out in the Constitution.

10. Decision Making

10.1. Do come to meetings with an open mind and demonstrate that you are open-minded.

10.2. 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.

10.3. 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.

10.4. 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.

10.5. Do have recorded the reasons for Committee's decision to defer any proposal

11. Training

11.1 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.

11.2 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.