

Section 5E – Code of Good Practice for Councillors involved in the Planning Process

1 Summary

- 1.1 One of the key purposes of the planning system is to balance private interests in the development and use of land against the wider public interest. Planning necessarily affects land and property interests and as such is often highly contentious. It is important therefore that planning decisions are made openly, impartially, with sound judgement and for justifiable reasons. The aim of this Code of Good Practice is to promote public confidence in the planning decision making process.
- 1.2 If Members do not abide by this Code of Good Practice, they may put:
- the Council at risk of proceedings on the legality or maladministration of the related decision; and
 - themselves at risk of being the subject of a standards complaint
- 1.3 Full Council approved this Planning Code of Good Practice on 10 October 2013.

2 When does this Code apply?

- 2.1 This Code of Good Practice applies to Members at all times when they are involved in the planning process. This includes both Planning Committee meetings, any meetings of the full Council when exercising the functions of the Planning Authority, and less formal occasions, such as meetings with officers or the public and consultative meetings. It applies to planning enforcement matters or site specific policy issues as well as to planning applications. Although much of the Code applies only to members (including substitute members) of the Planning Committees, some aspects affect any Member who becomes involved with a planning matter.

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- 2.2 This Code of Practice supplements the Council's Code of Conduct for Members, and gives detailed advice on dealing with planning issues.
- 2.3 If Members have any doubts about the application of this Code to their own circumstances they should seek advice early, from the Monitoring Officer or Deputy Monitoring Officer, and preferably well before any meeting takes place.

Advice to Members:

Do apply the rules in the Members' Code of Conduct first.

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.

Do seek early advice if in doubt

3 Dealing with Interests under the Members' Code

- 3.1 Members must always declare personal, prejudicial and disclosable pecuniary interests in accordance with the Members' Code of Conduct. All Members must follow these rules not just members of the Planning Committees.
- 3.2 A personal interest arises where the business affects the Member, somebody with whom the Member has a close association, one of the outside bodies referred to in the second schedule of the Code of Conduct or someone from whom the Member has received a gift or hospitality valued at £50 or more. Members must declare these interests unless they appear on their register of interests.
- 3.3 A prejudicial interest arises where a Member's personal interest is so significant that it would be likely to prejudice their judgement of the public interest. Members should not participate in the debate or vote where they have such an interest and, if the interest arises in a decision making meeting, they should leave the room. Simply being a member of an outside body will not automatically amount to a prejudicial interest but Members need to think about whether their

involvement is more significant than that and consider taking specific advice.

- 3.4 A disclosable pecuniary interest arises where the business relates to one of the interests prescribed by law and referred to in the first schedule of the Code of Conduct. It is a criminal offence to participate in a Council meeting if Members have such an interest and have not been granted a dispensation.

Advice to Members:

Do disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with Officers and other Members. Disclose your interest at the commencement of discussion on that particular matter.

Where your interest is a prejudicial or disclosable pecuniary interest and you have not obtained a dispensation:-

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 get involved in the processing of the application*.

Don't use your position to discuss the proposal with Officers or Members when other members of the public would not have the same opportunity to do so

*A Councillor who has a prejudicial or disclosable pecuniary interest in a matter is permitted to seek to persuade Planning Officers of the merit of the application in the same way as a member of the public but should be careful to avoid creating an impression of placing pressure on an officer for a particular recommendation. See also paragraph 3.3 for advice on speaking at meetings in these circumstances.

4. Keeping an open mind

- 4.1 Members of a Planning Committee must not make up their minds before they have all relevant material and arguments before them at a Planning Committee meeting. The use of a political whip is not permitted for decisions on planning applications.
- 4.2 Members of a Committee are entitled to feel predisposed towards a particular decision, but must still be able to consider and weigh relevant factors before reaching the final decision. Pre-determination arises when Members' minds are closed (or reasonably perceived to be closed) to the consideration and weighing of the relevant factors. That risks making the whole decision vulnerable to legal challenge. It also risks a public perception being created of unfairness in the planning process.
- 4.3 The Localism Act 2011 has built on clarification of the law provided by the Courts in a number of cases and Members can take some comfort that they are entitled to express views on planning matters prior to a decision being made without being challenged on grounds of predetermination. Nevertheless it remains the case that Members must not have closed their mind to possible alternative decisions and must be prepared to consider representations made and the advice of officers and listen to the debate before reaching a final view.

Advice to Members:

Don't make up your mind, or appear to have made up your mind, on how you will vote on any planning matter until you have heard the officer's presentation and all the evidence and arguments at the Planning Committee when the matter will be considered.

- 4.4 A member of a Planning Committee who is also a Parish Councillor may already have been consulted on a planning application at a Parish Council meeting. It is permissible to express a view at a Parish Council meeting on a matter and still participate at a Planning Committee so long as a Member has not closed their mind to reaching a different view. It is good practice in these cases for the Member to:

- make it clear during the discussion at the consultee body that their views are expressed on the limited information before them only; and
- reserve judgement and the independence to make up their own mind when it comes before the Planning Committee and to hear all of the relevant information; and
- not in any way commit themselves as to how they or others may vote when the proposal comes before the Planning Committee; and
- disclose the personal interest regarding their membership of the Parish Council when the Planning Committee comes to consider the proposal

4.5 If a Member has already made up their mind they must not speak or vote on the business but they are not legally required to withdraw from the meeting (unless they also have a prejudicial or disclosable pecuniary interest). However, they may prefer to do so for the sake of appearances. If they decide to stay in the meeting they should explain that they do not intend to speak and vote because they have (or could reasonably be perceived as having) judged the matter elsewhere, so that this may be recorded in the minutes.

4.6 Executive Members may have been involved in promoting a particular development in their role as Executive Members for the Service. If an Executive Member also sits on Planning Committee it may be difficult for him or her to demonstrate objectivity in dealing with an application relating to that development. In those cases the best course of action would be for the Executive Member to withdraw from the debate and vote.

5 Contact with Applicants, Developers and Objectors

- 5.1 Members of a Planning Committee should discourage applicants or agents from approaching them in any way, should minimise social contacts with known developers and agents and should refrain altogether from such contacts when developments are contemplated or a planning application has been received.
- 5.2 All Members should refrain from involving themselves in discussions with developers or potential applicants at the pre-application stage of

proposals unless such discussions are part of structured and recorded arrangements with Officers.

- 5.3. If an approach is received from an applicant/agent in relation to a particular planning application or a matter that may give rise to a planning application, the Member should:
- Refer the applicant or agent to the relevant officers of the Council, and notify officers of the approach.
 - Avoid giving any commitment or impression of a commitment or that they hold any particular view about the development or the future of the site in question.
 - Confine themselves to providing information on the Council's general planning policies or procedures only, where the Member is fully aware of these.
 - If they do express an opinion they should make it clear that they will only be in a position to take a final decision after having heard all the relevant evidence and arguments at committee.
- 5.4 When any Member speaks at a meeting of the Committee on the subject of a particular planning application, they should disclose the fact that they have been in contact with the applicant/agent, if this is the case. Members are able to articulate their own views on proposals, but should not speak on behalf of the applicant or the agent who will have their own opportunity to speak to Committee.
- 5.5 Any written information received by a Member of the relevant Committee from the applicant or agent, objectors or any other third party, should be passed or copied immediately to the relevant Planning Officer and declared at the start of the consideration of the particular application.

Advice to Members:

Do seek to minimise social contacts with known developers particularly when the developer is known to be contemplating development in the City

Do refer an applicant, developer or objector who approaches you about a planning application to Officers, if they need planning, procedural or technical advice.

6 Contact with neighbours, objectors, supporters, third parties or fellow Councillors

- 6.1 In order for the planning system to work effectively public concerns must be adequately aired. It is an important part of a Member's role to listen to residents' views and put these views forward within the Council. However, it is important that Members of the Planning Committees make decisions based on the full facts having considered all representations made and all other relevant considerations. Members will usually need a report from officers to help them to do this.
- 6.2 Members of a Planning Committee should be wary of giving the impression that they have made up their mind about a particular matter. Discretion is always advisable. A good approach is to say something like: "From what I know at the moment I support (or have reservations about) this application, but I won't make a final decision until I have all the facts before me at Planning Committee".
- 6.3 All Members should advise anyone lobbying them that the Committee can only effectively consider representations if they are made in writing to the Assistant Director (Planning and Public Protection). Members can also advise objectors of the rights they have for speaking at meetings. If there are technical issues or alternatives to be considered, then Members should either ask the applicant/objector to raise these matters with officers or ask officers to consider such matters when reporting to Committee.
- 6.4 No Member should accept gifts or hospitality of any value from anyone who is lobbying them. Members should inform the Monitoring Officer if they feel they have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality).
- 6.5 No Member should take part in negotiations with applicants or potential applicants regarding their proposals for development except

where such negotiations are part of a structured arrangement with officers.

Advice to Members:

If you are lobbied

Do explain that you are not in position to express a firm intention to vote one way or the other

Do explain how representations can be made formally

Don't accept any gifts or hospitality

7 Lobbying by Members

- 7.1 Members are quite entitled to join general interest groups which may have an interest in planning matters such as the Civic Society or the Victorian Society. If Members are present at a Committee meeting where a group to which they belong has adopted a view on a particular matter then they need to declare a personal interest when the matter is discussed.
- 7.2 There may be circumstances where a political group has a policy commitment to a particular development. It may have been contained within the party's manifesto. This alone does not prevent a Member participating in decision making so long as they have not closed their mind to considering the planning arguments.
- 7.3 If a Councillor, whether or not a member of the Planning Committee, speaks on behalf of a lobby group at a Committee meeting they should withdraw from the meeting after the public speaking session.

8 Site Visits

- 8.1 Site visits can play an important role in ensuring that Members make decisions on a sound understanding of the relevant issues. However care must be taken to ensure that site visits are not misused as a lobbying device to help ensure a particular outcome in respect of controversial applications or to defer consideration of an application to a subsequent meeting. Site visits should only be requested where there is a clear and substantial benefit in having one.

- 8.2 Members will have the opportunity to ask questions of officers, the applicant and objectors at the site visit but they should avoid expressing opinions at this stage.
- 8.3 In addition it is important for officers and Members to hear all the discussion and visit all parts of the site as a single group so as to ensure that any information which they gained from the site visit can be reported back to the Committee, and that all Members have the same information.
- 8.4 While visiting sites Members must not accept any form of gift, hospitality or refreshment.
- 8.5 Members of a Planning Committee should not normally accept invitations to visit a site unless this is in the company of a planning officer. This does not prevent Members from going alone to view a site from public land.
- 8.6 Councillors have no rights to enter on private land. A Councillor might be invited to enter the site by the owner. It is not good practice for a member of a Planning Committee to do so as this can lead to a perception that the Councillor is no longer impartial. If a Member feels that they need an explanation of the proposal then they should request a formal site visit by contacting the Case Officer at least 10 days before the Committee meeting.

Advice to Members:

Don't request a site visit unless you feel it is strictly necessary

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 factual matters which are relevant to the site inspection.

Don't express opinions or views on the proposal to anyone.

Don't enter a site which is subject to a planning application unless you can comply with the good practice rules in this Code

9. Presentations to Members

- 9.1 It may be that on larger, more complex, or design sensitive applications, it would be appropriate for a prior presentation to be made to the relevant Committee.
- 9.2 If so, such presentations will not be held less than two weeks in advance of the meeting. This is to allow Members due time for reflection on the proposal, and to allow any questions and issues to be followed up by officers and covered in the agenda report to Members at the subsequent Committee.
- 9.3 The role of Members at such presentations is to listen to the presentation, and to raise questions on the details presented. It is important that Members do not promote or oppose the application at this stage, since not all the relevant information may be before them.

10 Decision Making

- 10.1 The Council's Constitution specifies that certain applications must be brought before the Committee and others may be determined by officers. Members, including those who are not on the Committee, can request that a particular application should be brought to Committee rather than being determined by officers under delegated powers.
- 10.2 Members should ensure that they only request that an application be brought to Committee in accordance with Constitutional requirements, and for proper planning reasons which are reported to the Committee.
- 10.3 In making decisions on planning applications, the law requires the application to be determined in accordance with the development plan and the requirement to comply with national planning guidance unless material considerations indicate otherwise. Adequate reasons

must be given for any decision. It is particularly important to ensure that these are fully articulated and recorded where a decision is made contrary to an officer recommendation or contrary to established policy. Where a decision is made contrary to policy it is Members' responsibility to explain their reasons in full. Pressure should never be put on officers to "go away and sort out the planning reasons".

- 10.4 Members must come to a decision after proper consideration of all the information reasonably required. Members should not participate in a vote if they have not been present for the full presentation and debate. Members should not attempt to answer e-mail, monitor or contribute to social media discussions or engage in any other activity which may distract them from giving the proceedings their full attention.
- 10.5 Members should ensure that they have had sufficient time to digest any new material which has been presented. Members may need to ask for an adjournment to do so. Occasionally it may be necessary to defer an item to allow for proper consideration or for additional information to be obtained.
- 10.6 Messages should not be passed to individual committee members either from other Members or members of the public. This could create an impression that a Member is being improperly influenced.

Advice to Members:

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

Do come to your decision only after due consideration of all of the information reasonably required.

Do make sure that if you are proposing, seconding or supporting a decision that you clearly identify the planning reasons leading to this conclusion and can identify the supporting evidence

11 Officers

- 11.1 Members, whether or not they sit on a Planning Committee, must not put improper pressure on any officer to put forward a particular recommendation and should not do anything which compromises or is likely to compromise his or her professional integrity and impartiality. Doing so may be a breach of the Code of Conduct.
- 11.2 Planning Officers must act within officer and professional codes of conduct. The Royal Town Planning Institute requires its members to fearlessly and impartially exercise their independent professional judgment to the best of their skill and understanding. Accordingly there may be occasions where officers make recommendations which may be contrary to the views and wishes of Members.

Advice to Members:

Do not apply improper pressure on Officers to make a particular recommendation

Do respect the professional obligations of planning Officers.

12 Members as developers or applicants

- 12.1 If a Member has an interest in land that may be the subject of redesignation or other decision in the Development Plan process, or if a Member, or someone with whom they have a close association is making a planning application to the Council, then they should discuss this at the earliest opportunity with the Assistant Director (Planning and Public Protection). The planning application should contain a declaration (in the form of a covering letter) of the Member's position in relation to the planning application, so that all those consulted are aware of the relationship. The Assistant Director (Planning and Public Protection) will oversee the consideration of the application with the case officer, including any discussions that may involve other Members.
- 12.2 Any applications by a Member will be reported to the Planning Committee or the Planning Area Sub-Committee as appropriate and will not be dealt with by an officer under delegated powers. The Member's interest should be made clear at the Committee.

12.3 If a Member's planning application comes before the Planning Committee they will have a disclosable pecuniary interest in relation to the application. This must be declared and means that you may not participate in the discussion or vote on the application. Government guidance suggests that the prohibition on discussing the item would prevent Members making representations to the Committee as an ordinary member of the public. While some lawyers have questioned this guidance there is a degree of uncertainty and the safest option would be for the Member to either seek a dispensation allowing them to make representations or ask someone else to make those representations on their behalf.

13 Enforcement cases

13.1 Planning enforcement is particularly sensitive since it can ultimately result in Court proceedings. All Members are encouraged to report breaches of planning control to officers or to support their constituents in doing so. They may seek updates on progress which is being made to resolve matters but should avoid playing too proactive a role such as by involving themselves in meetings between enforcement officers and developers.

14 Member Training

14.1 In order to ensure that Members are fully aware of the requirements placed on them when sitting on Planning Committees it is the policy of the Council to require Members to attend prescribed training before sitting as a Member or Substitute Member.