

PART 5d – MEMBER/OFFICER PROTOCOL FOR PLANNING

Effective from ~~249~~ May 2023 ~~20 May 2015~~

Approved by Council on ~~X 2023~~ 30 March 2015

1. INTRODUCTION

- 1.1 This Local Code of Good Practice represents the standard against which the conduct of members and officers will be judged. Failure to follow this Local Code of Good Practice without good reason may be taken into account in investigations into possible maladministration by the council and might result in allegations that a member or officer has breached the council's local code of conduct that applies to them.
- 1.2 This Local Code of Good Practice is concerned primarily with the integrity of the planning system and the conduct of members of the Planning Committee and officers in its processes and procedures. However, it equally applies to all other members of the Council when dealing with planning issues.

2 THE GENERAL ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS

- 2.1 Instructions to officers may only be given through a council or committee resolution. Individual members cannot give instructions.
- 2.2 Each councillor is obliged to observe the council's local code of conduct adopted under the Localism Act 2011.
- 2.3 Each officer is obliged to observe the Officers' Code of Conduct
- 2.4 The council's Protocol on Member/Officer Relations requires members to respect the impartiality and integrity of council officers and officers to respect the role of members as elected representatives.
- 2.5 Officers who are chartered town planners will also be guided in their conduct by the Royal Town Planning Institute's (RTPI) Code of Professional Conduct.
- 2.6 The conduct of council business will be governed by the council procedure rules.
- 2.7 While councillors have a special duty to their ward constituents, their overriding duty is to the whole community. Councillors must represent their constituents as a body and vote in the interests of the whole borough.
- 2.8 Members must take account of views expressed but, as required by paragraph 6.(a) of the code of conduct, must not use their position as a member, improperly to confer on or secure for themselves or any other person, an advantage or disadvantage.
- 2.9 Councillors should be cautious about accepting gifts and hospitality. Under paragraph 13(c) of the members' code of conduct, a councillor may have an interest in any business of the authority where it relates to or is likely to affect the interests of any person from whom the councillor has received a gift or hospitality with an estimated value of at least £25, and will need to register that interest.
- 2.10 Officers must always act impartially. With regard to hospitality, if hospitality is offered by anyone with an interest in a planning proposal it should, if possible, be politely declined. If hospitality is accepted, it should be declared in the council's register of gifts and hospitality.

3 TRAINING

- 3.1 The council acknowledges the importance of training for members, particularly initial training for members when first serving on the Planning Committee. Training will be provided, and members will be updated on changes in legislation, procedure and national policy in relation to planning matters.
- 3.2 If a member of the Planning Committee consistently fails to undertake training, their group leader will be asked to remove them from the committee.
- 3.3 If a reserve Planning member consistently fails to attend meetings of the Planning Committee or to undertake training, the committee will consider removing them as a reserve Planning member.

4 DECLARATION OF INTERESTS

Members must follow scrupulously the requirements placed upon them as laid down by the Localism Act 2011 (including regulations made under it) and the council's code of conduct in relation to the registration and declaration of interests.

5 DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS AND OFFICERS AND COUNCIL DEVELOPMENTS

It is legitimate for former and serving members and officers (and their close friends and relatives) to submit planning applications or development plan proposals. The council may also submit planning applications or proposals for its own land. They, i.e. members, officers or the council itself, may also own or have an interest in land for which a planning application or development plan proposal is made by a third party. To ensure that all of these applications and proposals are handled in a way that gives no grounds for accusations of favouritism, the following will apply:

- 5.1 Proposals for the council's own development should be treated in the same way as those by private developers, in accordance with circular 19/92, particularly in relation to the officers' advice.
- 5.2 Serving members who submit their own proposal to the council, or who act as agents for people pursuing a planning matter within this authority's area, or own or have an interest in land for which a planning application or development plan proposal is made by a third party should play no part in the decision-making process for the proposal.
- 5.3 Similarly, serving officers who submit a planning application or proposal to the council, or own or have an interest in land for which a planning application or development plan proposal is made by a third party should play no part in the decision-making process of that application or proposal.
- 5.4 The council's monitoring officer should be informed of proposals submitted by members or officers and should certify that the application has been processed normally.
- 5.5 Applications or proposals by the council, by (or on behalf of) serving members and officers (including members of their family or any person with whom they have a close association) or by a third party involving land which they may own or have an interest in will be reported to the Planning Committee for determination.

6 LOBBYING OF AND BY MEMBERS

- 6.1 Members of the council, and importantly those members serving on the Planning Committee when being lobbied about a particular planning application/issue should take care about expressing an opinion which may be taken as indicating they have closed their mind to further arguments on the application/issue.
- 6.2 Additionally, members should restrict themselves to giving procedural advice including suggesting to those who are lobbying that they should speak or write to the ~~Director of Development Services~~ Head of Planning in order that their observations can be included in the relevant report to committee.
- 6.3 Given that the point at which a decision on a planning application is made cannot occur before the Planning Committee meeting, when all available information is to hand, and has been duly considered, any political group meeting prior to the committee meeting should not be used to decide how members should vote.
- 6.4 Members should avoid organising support for or against a planning application, and avoid lobbying other members.
- 6.5 Members should not put any pressure on officers for a particular recommendation and, as required by the code of conduct, should not do anything which compromises, or is likely to compromise, their impartiality.

7 PRE-APPLICATION DISCUSSIONS WITH POTENTIAL APPLICANTS

- 7.1 The council encourages, in accordance with the advice of auditors and the National Planning Forum, early discussions between a potential applicant and council representatives prior to the submission of an application.
- 7.2 Pre-application discussions can involve councillors as well as officers, applicants and their representatives.
- 7.3 Administrative arrangements for pre-application discussions should be made by officers. Except for any site visit, discussions should take place at a venue arranged by the council.
- 7.4 In order for such meetings not to become, or be seen to become, part of a lobbying process, the following guidelines should be followed.
 - 7.4.1 It should always be made clear at the outset that the discussion will not bind the council to making a particular decision and that any views expressed are personal and will in any case be provisional.
 - 7.4.2 No firm or final view can be offered in such early discussions since by the very nature of such meetings, not all relevant information will be to hand, nor will formal consultations with statutory bodies and interested parties be to hand.
 - 7.4.3 Advice given by officers should be based upon the development plan and other material planning considerations. There should be no significant difference of interpretation of planning policies amongst planning officers. In addition, all officers taking part in such discussions should make it clear whether or not they expect to be the decision-maker.

- 7.4.4 Councillors can ask questions to better inform themselves about the proposed development, and can give their opinions about potential public and political reaction to the proposals.
- 7.4.5 Planning officers should prepare a written note of pre-application discussions, whether carried out in person or by telephone.
- 7.4.6 When plans or documentary material have been left with the council for comments, a letter may be sent confirming the officers' provisional views on such material.
- 7.4.7 Care must be taken to ensure that advice is not partial, nor seen to be.

8 PLANNING COMMITTEE: OFFICERS

- 8.1 Officers who serve the Planning Committee can only act in accordance with collective decisions of the committee, not instructions of individual members of the committee.
- 8.2 In advising and assisting elected members in their determination of planning applications, officers should:
 - 8.2.1 Offer impartial professional advice including advice on possible implications;
 - 8.2.2 interpret planning policies consistently;
 - 8.2.3 Prepare written reports which include:
 - 8.2.3.1 a brief written description of the proposed development and the relevant site history or related history
 - 8.2.3.2 a clear and accurate analysis of the issues in the context of the relevant development plan policies and all other material considerations
 - 8.2.3.3 the substance of any observations representations, objections, or views of all those who have been consulted or who have made comments, whether or not such observations are considered to be material
 - 8.2.3.4 a clear written recommendation of action and, where that recommendation is contrary to the development plan, the material considerations which justify the departure
 - 8.2.3.5 all necessary information for the decision to be made;
 - 8.2.4 Assist members to articulate and record their decisions and reasons for their decisions, even if the officer disagrees with them (but this does not extend to suggesting reasons where a proper planning reason for a proposed decision has not emerged in discussion); and
 - 8.2.5 Advise on appropriate drafting for conditions that members wish to add or amend.
- 8.3 To ensure that all procedures are strictly followed procedural guidance will be given by the ~~Director of Resources~~Head of Governance or ~~her~~their representative in attendance at each meeting of the Planning committee.

9 PUBLIC SPEAKING AT THE PLANNING COMMITTEE

In accordance with Article 15 of the Constitution, applicants, objectors/supporters will be permitted to speak at any meeting of the Planning Committee on any application placed before the committee. These arrangements reflect national best practice and are intended to provide more open, transparent and informed decision making.

10 PLANNING COMMITTEE: MEMBERS

In making decisions on planning applications and planning matters, members should:

- 10.1 Act fairly and openly and without prejudice;
- 10.2 take care about expressing an opinion which may be taken as indicating they have closed their mind to further arguments;
- 10.3 Not accept or seek to impose group discipline, whether in the form of a party whip or otherwise;
- 10.4 Use the officer presentation, questions and debate to test any provisional view that they have formed;
- 10.5 Ensure that they understand the implications of any proposed decision, including possible appeals and costs awards;
- 10.6 Not vote if they have missed any part of the officer presentation, public speakers or discussion;
- 10.7 Not normally take a decision contrary to the officers recommendation without adjourning for a few minutes so that the reasons for the proposed decision can be discussed and then agreed by the committee and, where there is concern about the validity of reasons, considering deferring the decision to another meeting to have them tested and discussed;
- 10.8 Analyse all relevant development plan policies and other material considerations and, where the development plan is relevant, determine each application in accordance with the development plan unless material considerations indicate otherwise;
- 10.9 Ensure that clear, precise reasons for their decisions, based on material planning considerations, are clearly recorded, particularly where the committee's decision conflicts with officer recommendations; and
- 10.10 Where the decision is not in accordance with the development plan, ensure that the reasons that justify overriding the development plan are clearly demonstrated and explained.

11 SITE VISITS

- 11.1 The council's code of conduct applies as much to site visits as to any other area of conduct.
- 11.2 Organised committee site visits to application sites will be held where the committee has, by a majority, requested such a visit or where requested by officers, in consultation with the chairman or vice chairman of the committee.
- 11.3 Site visits should only be held:
 - 11.3.1 Where the expected benefit is substantial; and/or

- 11.3.2 The impact of the proposed development is difficult to visualise from the plans and supporting material, including photographs/video footage taken by officers.
- 11.4 Site visits will be primarily to view the site and appreciate how the proposed development relates to the site and its surroundings. An officer(s) would be in attendance with the members. No discussion of the merits of the proposal will take place as the site visit is purely to assess the effect of the proposed development on the surroundings. However, members may ask factual questions to confirm their understanding of physical features of the site or its surroundings.
- 11.5 Planning applications will not be determined at site visits but will be reported back to the Planning Committee (following the site visit) for determination in the normal way.
- 11.6 If an applicant/agent or objector is present at the time of the visit, members should explain the purpose is to see the site and surroundings, and not to hear representations, and should not offer any opinion whatsoever and in particular should not indicate that they have already made up their mind on the application/issue.
- 11.7 It is not expected that members will make personal site visits which would result in contact with an applicant, agent or objector. Exceptionally, members who wish to view sites prior to a meeting of a committee, other than authorised and arranged visits in accordance with 11.2 to 11.6 should bear in mind at all times that the sole purpose is to view the site and its surroundings.
- 11.8 A member should declare at the Planning Committee at which the application is considered that a personal site visit has been made by them which has resulted in contact with the applicant, agent or objector.

12 REVIEW OF DECISIONS

- 12.1 The Planning Committee will review its decisions from time to time.
- 12.2 In particular, the committee will examine the way development which has been permitted has turned out and will have an organised tour of selected recent developments, at least annually.
- 12.3 Following the consideration of such developments, officers and members will be encouraged to review the good and bad points of permitted schemes and decide whether such review gave rise to the need for any policies or practices to be reconsidered.

13 COMPLAINTS

All complaints received will be dealt with by way of the council's approved complaints procedure.