

***Planning Committee
Members' Code of
Good Practice***

Planning Committee Members' Code of Good Practice

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Planning Committee Members' Code of Good Practice

Background

Planning has a positive and proactive role to play at the heart of local government. It is a powerful tool that helps councils achieve the ambitions of local communities. Good planning stimulates growth and promotes innovation. It helps to translate goals for healthier communities, higher employment, better housing, reduced congestion, educational attainment, safe and sustainable communities into action through well-designed medical centres, offices, universities, homes, roads and other facilities vital to achieving them.

The planning system works best when the roles and responsibilities of the many players essential to its effective operation are clearly understood. It is vital that elected Councillors understand their role and the context and constraints in which they operate.

Planning decisions involve balancing the needs and interests of individual constituents and the community with the need to maintain an ethic of impartial decision-making on what can be highly controversial proposals.

The planning process is complex and sometimes highly emotive. It is essential that members of the Planning Committee conduct themselves correctly to avoid complaints which could have personal consequences, and may in some cases involve the Council in substantial costs.

All Councillors must follow the rules laid out in the Members' Code of Conduct to ensure they are, and are seen to be, fair and impartial in their work as a Councillor.

For many members of the public, the Planning Committee is the most visible operation of the Council, and one that can affect their lives most directly. Some stand to gain substantial financial benefit from the outcome of a Planning Committee decision.

This Code of Good Practice has therefore been prepared to provide members with additional guidance on their role on the Planning Committee. It updates the previous Code in the light of new government guidance, particularly on the encouragement to greater involvement of members in the pre-application consultation phase. Annex B lists references of further information available. The LGA document 'Probity in Planning: the role of Councillors and officers – revised guidance note 2009', which has been issued to all Planning Committee members, is particularly useful.

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 to facilitate place-shaping and community planning as laid out in the Local Development Framework.
- **Your role as a member of the Local Planning Authority:** to make planning decisions openly, impartially, with sound judgment 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 decision making meetings of the Local 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.

Members are reminded that this document is only for general guidance, as it cannot cover all eventualities. It is the individual Member's responsibility to act correctly under all circumstances. If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer (Tonya Meers) or one of the Council's Solicitors, and preferably well before any meeting takes place.

1. Relationship to the Members' Code of Conduct

Always apply the rules in the Members' Code of Conduct first, which must be complied with. The Members' Code of Conduct can be found in your copy of the Council's Constitution.

Do then apply the rules in this Planning Code of Good Practice, which seeks 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 either being named in a report made to the Standards Committee of the 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 of Conduct

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 prior to the commencement of discussion on the particular matter in which you have an interest.

Do then act accordingly.

Where your interest is personal and prejudicial:-

Do not participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Local Planning Authority.

Do ask another ward member to represent the views of the ward. If this is not possible then it is recommended that you put those views in writing to the Committee.

Do not get involved in the processing of the application.

Do not seek or accept any preferential treatment, or place yourself in a position that could give the public the impression you are receiving preferential treatment. In other words, if you have a personal and prejudicial interest in a planning application, you should not seek to use your position as a Councillor to discuss the matter with officers and other members when a normal member 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 (either in person or in writing), this Code of Good Practice 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 an application to be put before the Planning Committee, you would have to withdraw from the Committee Room whilst the meeting considers it, whereas an ordinary member of the public would be allowed up to the three minutes to address the Committee and to observe the meeting's consideration of the application.

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, you must exercise your discretion in deciding whether or not to participate in each case. Where:-

- you have been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of another local or public authority of which you are a member; or
- you have been appointed or nominated to an outside body or organisation by the Council as its representative; 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 from the meeting of the Planning Committee.

Do consider yourself able to take part in the debate on an application when acting as part of a consultee body (where, for example, you are also a member of the parish council or you are both a Borough and a 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 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, ward or parish, as and when it comes before

the Planning 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 Planning Committee; and
- you disclose the personal interest regarding your membership or role when the Planning Committee comes to consider the proposal.

Do notify the Monitoring Officer (Tonya Meers) in writing of your own applications, and those of relatives and close associates, and note that:-

- notification to the Monitoring Officer should be made no later than submission of the application;
- the proposal will always be reported to the Planning Committee 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 the Planning Committee.

3. Fettering Discretion in the Planning Process

Before considering this section, it will be helpful to the reader to refer to the broad definition of the term “fettering a discretion” which is set out at Annex A

Do not fetter your discretion and therefore your ability to participate in the decision making process 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 its formal consideration at the Planning Committee without having heard the full discussion at the meeting.

Fettering your discretion in this way and then taking part in the decision will put the Council at risk of:-

- (a) a finding of maladministration; and
- (b) 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 be considered 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. Through such significant personal involvement 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 not 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 for the sake of appearances.

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 of the meeting.

Do take the opportunity to exercise your separate speaking rights as a ward member where you have represented your views or those of local electors and fettered your discretion, but do not have a personal and prejudicial interest.

Where you do:-

- advise the 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.

4. Contact with Applicants, Developers and Objectors

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

Do not 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 Chief Planning Officer to organise it. The officer will then ensure that those present at the meeting are advised from the start that the discussions will not bind the Local Planning 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 Planning Committee.

Always:-

- follow the rules on lobbying (see below);
- consider whether or not it would be prudent in the circumstances to make notes when contacted; and
- report to the Chief Planning Officer 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 or developers:-

Do not 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 Planning Committee.

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

Discussions between a potential applicant and a Council prior to the submission of an application can be of considerable benefit to both parties and are encouraged. With the recognition of the need to allow and encourage Councillors to be champions of their local communities in the local government white paper, there has followed a realisation that councillor engagement in pre-application discussions on major development is necessary to allow Councillors to fulfil this role.

Do explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it would prejudice your impartiality, and therefore your ability to participate in the Planning Committee's decision making, to express an intention to vote one way or another or take 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. You therefore need to make decisions impartially, that should not improperly favour, or appear to improperly favour, any person, company, group or locality.

Do not 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 where its value is over £25 in accordance with the Council's rules on gifts and hospitality.

Do copy or pass on any lobbying correspondence you receive to the Chief Planning Officer at the earliest opportunity.

Do promptly refer to the Chief Planning Officer any offers made to you of planning gain or constraint of development, through a proposed S106 Planning Agreement, 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 to, 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 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

Do not 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 from any Planning Committee meeting where the application is discussed.

Do 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. However, you will need to disclose a personal interest where that organisation has made representations on a particular planning application and make it clear to that organisation (if approached by them) and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal.

Do not 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.

Do not decide or discuss how to vote on any planning 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. Any vote taken on political lines will leave the Council open to challenge as set out in section 3 of this code.

7. Site Visits

Whilst it is not the practice for the Planning Committee to make site visits as a Committee, **do** make a personal visit to an application site if you do not feel you will be able to come to a fair decision without seeing the site. Always try to view the land or building concerned from a public vantage point, for example an adjoining road or a public footpath.

Do ensure that any particular observations you make during the site visit, which are not referred to either in the Chief Planning Officer's report or the visual presentation, are reported back to the Planning Committee, so that all Members have the same information.

Do ensure that you treat the site visit only as an opportunity to observe the site to clarify particular issues. Wherever possible, make the visit unaccompanied.

Do not hear representations from any other party during the visit. Where you are approached by the applicant, agent or a third party, advise them that they should make representations in writing to the Local Planning Authority and direct them to the Chief Planning Officer.

Do not express opinions or views to anyone.

If you need to enter the site the subject of a planning proposal, **do not** do so without the consent of the owner or occupier and **do not** do so in circumstances where you believe you will not be able to abide by the Good

Practice Rules. **Do not** accept an invitation to be shown around by either the applicant, agent or a third party unless you are accompanied by one of the Council's Planning Officers.

8. Public Speaking at Meetings

Do not allow members of the public to communicate with you during the Planning 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.

9. Officers

Do not put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Chief Planning Officer which may be incorporated into any Planning Committee report.)

If you wish to discuss a particular planning proposal outside of any arranged meeting, **do** try to contact the relevant Case Officer or, in his/her absence, another Planning Officer or the Chief Planning Officer.

Do recognise and respect that officers involved in the processing and determination of planning matters must act in accordance not only with the Council's Code of Conduct for Officers, but also 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.

10. Decision Making

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

Do comply with the requirements 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. If necessary, defer a decision on an application for planning permission or refuse it.

Do not vote or take part in the meeting's discussion on an application unless you have been present to hear the entire debate, including the officers' introduction to, or visual presentation in respect of, the matter.

Do have recorded the reasons for the Planning 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.

11. Training

Do not 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.

ANNEX A

A Broad Definition of the term “Fettering a Discretion”

Fettering a Discretion is one of those unfriendly and legalistic phrases which derive from the statutory basis which underlies all local government decision-making. Unfortunately it is quite difficult to replace - or to translate into normal English. So here’s a broad definition instead:-

It means that where a decision-making body (like a Council - or a Committee or an Executive Councillor) is obliged to exercise some discretionary power under statute – then it must **exercise** that discretion fairly, at the right time and only after taking all proper factors into account. (Deciding upon the fate of a planning application is a good example of such a discretion).

If - instead of keeping that essential open mind - it can be seen that it (or its members) have already **committed** themselves – in one direction or another - **before the moment when that discretion must be exercised** (ie - **after** all material factors have been considered) then they are said to have “fettered their discretion”.

The consequence of such pre-judging can be dire. In a bad case the validity of the decision could be challenged in a number of ways – including through the courts – with painful and expensive consequences for all concerned – including the Council itself – and for individual councillors who have left themselves open to this criticism.

ANNEX B

Committee on Standards in Public Life (1997) **Third Report: Standards of Conduct in Local Government in England, Scotland and Wales, Volume 1 Report** Cm 3702-1:
<http://www.public-standards.org.uk/Library/OurWork/3rdInquiryReport.pdf>

The Local Authorities (Model Code of Conduct) (England) Order 2007:
http://www.opsi.gov.uk/si/si2007/uksi_20071159_en_1

National Development Control Forum (1988) **Guidelines for the Handling of Planning Applications**
Royal Town Planning Institute **Code of Professional Conduct:**
<http://www.rtpi.org.uk/download/154/Code-of-Professional-Conduct-2007.pdf>

Royal Town Planning Institute (1997) - **The Role of Elected Members in Plan-making and Development Control** - A Study Commission from the School of Planning, Oxford Brookes University

Code of Conduct – Guide for members Standards Board for England, May 2007
http://www.standardsboard.gov.uk/TheCodeofConduct/Guidance/CodeofConduct/filedownload_16126.en.pdf

Predisposition, Predetermination or Bias and the Code
Standards Board for England Occasional paper August 2007
http://www.standardsboard.gov.uk/Publications/OccasionalPaper/filedownload_16105.en.pdf

Members involvement in planning decisions,
Department of Communities & Local Government 2007

Connecting Councillors with strategic Planning Applications London Councils November 2007
<http://www.londoncouncils.gov.uk/Transport/Publications/connectingcouncillorswithstrategicplanningapplicationsagoodpracticeguideforlondon.htm>

Positive Engagement – a guide for planning councillors 2008 leaflet PAS
<http://www.pas.gov.uk/pas>

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Model Members' Planning Code of Good Practice Association of Council Secretaries and Solicitors, 2007 update:
http://www.acses.org.uk/public_file/filename/8/ACSeS_Members_Planning_Code_update_draft_07_07.pdf

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Councillor Involvement in pre application discussions Development Management Practice Project
Guidance note 3, 2007 Planning Officers Society:
http://www.planningofficers.org.uk/documents/Guidance_Note_3_Member_pre_application_discussions.pdf

The Planning System – matching expectations to capacity Audit Commission, February 2006:
http://www.audit-commission.gov.uk/Products/NATIONAL-REPORT/EFF8A0E9-4071-4fc9-8099-77FDFBD3D7CB/Planning_FINAL.pdf

Published by CLG on behalf of the Killian Pretty review
Planning applications; a faster and more responsive system Final Report November 2008:
http://www.planningportal.gov.uk/uploads/kpr/kpr_final-report.pdf