

PART 4C: CODE OF GOOD PLANNING PRACTICE FOR MEMBERS AND
EMPLOYEES DEALING WITH PLANNING MATTERS

1. Introduction

- 1.1 The aim of this Code is to promote 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, and to set out the standards of conduct required of all Members and Employees in dealing with planning matters including but not limited to applications, policy development and enforcement.
- 1.2 Members and Employees of the Local Planning Authority should undertake their duties with an open mind and make planning decisions openly, impartially, with a sound judgement and for justifiable reasons. Members are also democratically accountable decision takers who have been elected to provide and pursue policies. Members are entitled to be predisposed to make planning decisions in accordance with your political views and policies **provided** that they have considered all material considerations and have given fair consideration to relevant points raised.
- 1.3 This Code applies to Members and Employees at all times when involving themselves in the planning process (this includes, where applicable, when part of 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.
- 1.4 **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 their staff, and preferably well before any meeting.**
- 1.5 The Code will be appended to the Council's Constitution and is available to all Members, Employees and members of the public.

2. Relationship to the Member and Employee Codes of Conduct

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- 2.1 The rules in the Member and Employee Codes of Conduct must always be complied with and should be applied first.
- 2.2 The rules in this Planning Code of Good Practice should be applied thereafter. These rules seek to explain and supplement the Member and Employee Codes of Conduct for the purposes of planning.
- 2.3 Failure to abide by this Code of Good Practice may put:
 - 2.3.1 The Council at risk of legal challenge; and
 - 2.3.2 Members at risk of either being named in a Code of Conduct Complaint and report made to the Standards Committee or Council, or if the failure is also likely be a breach of the interest provisions of Localism Act 2011, a complaint being made to the police to consider criminal proceedings.

3. Training

- 3.1 The Council provides training for new Members of the Committee. The Council also provides regular training for all Members of the Planning Committee on matters relevant to developments in planning law and procedure.
- 3.2 Members must not participate in decision making at Planning Committee Meetings dealing with planning matters if they have not attended the mandatory planning training prescribed by the Council.
- 3.3 Members and Employees must endeavour to attend any other specialised training sessions provided, since these will be designed to extend knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist them in carrying out their roles properly and effectively.

4. The Relationship of Councillors and Employees

- 4.1 In the planning process, Members and Employees perform different functions. Members represent the whole community and not just people in a particular area, ward or parish.
- 4.2 A successful relationship between Members and Employees can only be based on mutual trust and respect and understanding of each other's position. Respect is a value embedded within both the Member and Employee Codes of Conduct.

5. Declaration of Interests

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- 5.1 Provisions in the Member and Employee Codes of Conduct as regards declarations of interests, will apply equally to proceedings before the Planning Committee.
- 5.2 It is the responsibility of individual Members and employees to make the necessary declarations. Where advice is needed, this may be obtained from the Monitoring Officer or one of his or her staff. Advice should be obtained early and preferably **well before** any meeting takes place.
- 5.3 Members should take into account when approaching a decision as to whether to make a declaration, that the Principle of integrity is defined in terms that “*Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. **They must declare and resolve any interests and relationships***”. It is therefore advisable that Members and Employees:
- 5.3.1 Should not seek or accept any preferential treatment, or place themselves in a position that could lead the public to think they are receiving preferential treatment, because of the Member or Employee’s position. This would include where the Member or Employee has a disclosable or other personal conflict of interest in a proposal and using their position to discuss that proposal with Members or Employees when other members of the public would not have the same opportunity to do so.
- 5.3.2 Should note that they are not prevented from seeking to explain and justify a proposal in which they may have a conflict of interest to an appropriate officer, in person or in writing, but that the Member and Employee Codes of Conduct may place additional limitations on them in representing that proposal.

6. Declaration of Contacts

'Contacts'

The City Council’s Planning Committee operates a system for declaring 'contacts' received by Committee Members and certain employees in respect of planning applications appearing before the Committee for a decision.

6.1 What is a 'Contact'?

6.1.1 "A contact is any form of communication received from any person or group of persons in respect of a planning application".

6.1.2 The following information should be declared about the 'contact':

(a) the application it relates to,

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- (b) the contents of the communication (e.g. lobbying for or against the application or a request for information).

6.2 Members Declaration of 'Contacts'

- 6.2.1 Members of the Committee must declare all contacts they have received on all planning applications appearing on that meeting's agenda at the start of the meeting under the item headed 'Contacts' or when that application is called for consideration at the meeting. Contacts received from other Council Members must also be disclosed.
- 6.2.2 Where numerous persons belonging to the same group or residents' association etc contact a Member of the Committee, then this may be declared as a single contact from that group or residents association or as the case may be.
- 6.2.3 'Contacts' received may also take the form of lobbying of Committee Members. In those cases, the advice given below in respect of lobbying may be followed.
- 6.2.4 In all cases of contacts, Members of the Committee should not indicate whether they are favourably or unfavourably disposed towards an application and that they, as a Member of the Committee, will await the Committee meeting before expressing a view on the application. They should consider advising the contact to communicate with planning employees.
- 6.2.5 Members should always advise contacts that they will need to disclose their communication under the 'contacts' rule at the Committee meeting. Where contacts refuse to reveal their identity, Members must judge whether they should terminate the communication as soon as can be.
- 6.2.6 'Contacts' are **not** interests and declaring a contact is **not** a substitute for declaring an interest where one exists. The rules for declaring interests operate independently from the 'contacts' scheme.
- 6.2.7 For the avoidance of doubt, where any Member of the Planning Committee is approached by an applicant or objector seeking to have a particular application dealt with by the Committee, rather than under delegated powers, then this must be disclosed as a "contact".

6.3 Employees' Declarations of 'Contacts'

- 6.3.1 Planning employees will make their disclosures of contacts in the written Committee report or orally where they have occurred after the written report has been published.
- 6.3.2 Certain matters (which would otherwise be contacts) will be excluded from what amounts to declarable contacts by employees (this is

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because they are a necessary part and parcel of the exercise of assessing the application). These will be communications from:

- (a) the applicant and/or their representative
- (b) third parties as required by law or national guidance, such as statutory undertakers or statutory consultees
- (c) Council employees consulted for their technical assessment of matters arising from their application such as environmental, health and highways matters
- (d) other planning employees acting in that capacity.

7. Fettering Discretion in the Planning Process (natural justice, predisposition and predetermination)

- 7.1 Members must not fetter their discretion and therefore their ability to participate in planning decision making by approaching the decision with a closed mind. Fettering discretion in this way and taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of bias, pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- 7.2 Members should be aware that they are entitled, and are often expected, to have expressed views on planning issues and these comments have an added measure of protection under the Localism Act 2011.
- 7.3 Members should keep at the front of their mind that, when they come to make the decision, they:
 - 7.3.1 must keep an open mind and hear all of the evidence presented, both the officers' presentation of the facts and their advice and the arguments from all sides,
 - 7.3.2 are not required to cast aside views on planning policy held when seeking election or when otherwise acting as a Member, in giving fair consideration to points raised,
 - 7.3.3 should be aware of the importance of material considerations and must disregard considerations that are non-material. Members should be aware that when making decisions on planning applications they

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- must do so in accordance with the Council's Development Plan document unless material conditions indicate otherwise.
- 7.3.4 are to come to a decision after giving what they feel is the right weight to those material considerations.
- 7.4 Members should consider themselves able to take part in the debate on a proposal when acting as part of a consultee body (where the Member is also a member of the parish council, for example, or both a district/borough and county councillor), provided:
- 7.4.1 the proposal does not substantially affect the well being or financial standing of the consultee body
- 7.4.2 the Member makes it clear to the consultee body that
- (a) their views are expressed on the limited information before them only,
 - (b) they reserve judgement and the independence to make up their own mind on each separate proposal, based on their 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 they hear all of the relevant information and
 - (c) they will not in any way commit themselves as to how they or others may vote when the proposal comes before the Committee.
- 7.5 Where a Member has a disclosable interest, that prevents them from participating, they should explain that they do not intend to speak and vote as a member of the Committee because they will be perceived as having judged (or they 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.)
- 7.6 Members may take the opportunity to exercise their separate speaking rights as a Ward/Local Member (where this is granted by the authority's standing orders or by the consent from the Chair) where they have represented their views or those of local electors and

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fettered their discretion, but do not have a disclosable or other personal conflict of interest. Where Members do:

- 7.6.1 advise the Chair that they wish to speak in this capacity before commencement of the item
- 7.6.2 remove themselves from the seating area for members of the Committee for the duration of that item and
- 7.6.3 ensure that their actions are recorded.

8. Development Proposals Submitted by Councillors and Employees

- 8.1 The Council has a 'safeguard' requiring any application where a Council Member or officer in Planning have a material interest in the application to be decided by the Planning Committee itself.
- 8.2 Where the Member who has such an interest is also a Member of the Committee, then they should declare an interest and leave the meeting whilst that application is considered.
- 8.3 No planning officer will be the case officer, will advise Committee or be the decision-maker under delegated authority where they:
 - 8.3.1 are related to the applicant or their agent,
 - 8.3.2 know the applicant or their agent in a personal capacity,
 - 8.3.3 know any of those persons making representations on the application,
 - 8.3.4 have any other material interest in relation to that matter.

9. Development by the Council

Proposals for development by the Council should be treated in the same way as those of private developers and in accordance with current Government guidance.

10. Lobbying of and by Councillors

- 10.1 Lobbying is a normal and perfectly proper part of the political process. Those who are affected by a planning decision will seek to influence it. However, care is needed to ensure that the impartiality and integrity of a Councillor is not called into question.
- 10.2 When being lobbied, Members of the Committee should not express an opinion on the application. If Committee Members do express an opinion, they must take care to indicate that they have not made up their mind on the application until they have heard all the arguments at Committee.

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- 10.3 If lobbied, Members of the Committee should encourage the lobbyist to contact the relevant planning officer to express their views to them.
- 10.4 Members must take into account the views of their constituents but Members of the Committee must act also openly and fairly and listen to all evidence presented at the Committee. Committee Members must not make a commitment beforehand either for or against a proposal. To do so may prejudice that Member's impartiality.
- 10.5 The planning process is one of formal rules and procedure involving a right of appeal and possible legal action. Where any expectation as to fairness has not been met, then an aggrieved party may seek remedy through the Courts or by complaint to the Ombudsman on grounds of maladministration.
- 10.6 If the application is such that a Member of the Committee feels they must adopt a public stance in respect of an application, then that Member may have difficulty in arguing at Committee that they have been impartial and even-handed in considering that application. In those circumstances, it may be better for that Member to make an open declaration and not to vote on the application.
- 10.7 In all cases it is a matter for the individual Member as to whether they can maintain a position of impartiality up to and including the Committee meeting which decides the application.
- 10.8 In respect of lobbying, the City Council's Planning Committee operates a system of declaring 'contacts' in respect of planning applications to be dealt with by the Committee. Again it is the responsibility of each Member of the Committee to declare the 'contacts' they receive. Lobbying of Members of the Committee will amount to a 'contact' under the scheme and will need to be declared by Members of the Committee at the appropriate Committee meeting.
- 10.9 Members of the Committee should not organise support for or opposition to a planning application and should not lobby other Committee Members. Such actions can easily be misunderstood by parties to the application and by the general public. Members should not put pressure on employees for a particular recommendation in respect of an application.
- 11. Pre-Application Discussions**
- 11.1 Such discussion between developers and Employees and Members can be of great benefit. But such discussions, especially if they occur just before or after the making of an application, must occur within clear guidelines.
- 11.2 It should be made clear that such discussion will not bind the Council to making a particular decision.

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- 11.3 Advice should be consistent and based upon the development plan and material considerations. There should be no significant difference of interpretation of planning policies between employees. Planning judgements involve balancing a number of policies and material considerations and officers and members may place different weight to each of the issues considered.
- 11.4 Care must be taken to ensure that advice is not partial (nor seen to be).
- 11.5 Development Forums may be established to enable the engagement of Councillors and members of the public. These are detailed in the Planning Committee Procedure Rules which are publicly available.
- 11.6 In addition, in respect of presentations by applicants/developers Members of the Planning Committee should:
- 11.6.1 Not attend a planning presentation without requesting an officer to be present.
- 11.6.2 Ask relevant questions for the purposes of clarifying your understanding of the proposals.
- 11.6.3 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.
- 11.6.4 Be aware that a presentation is a form of lobbying and, whilst you may express any view on the merits or otherwise of the proposal presented, you should never state how you or other Members would intend to vote at a committee.
12. **Employee Reports to Committee**
- 12.1 The basis of the Committee's consideration of a planning application should be the employee's written report. This helps to clarify the nature of applications and the context in which a decision needs to be made. Written reports help to ensure consistency of decision-making and clear reasoning behind recommendations. This is not only a matter of good practice but because failure to do so may constitute maladministration or give rise to judicial review on the grounds that the decision was not taken in accordance with the provisions of the development plan and the Council's statutory duty under section 54A of the Town and Country Planning Act 1990 (as amended).

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- 12.2 All reports should comply with the following points of good practice:
 - 12.2.1 Reports should be accurate and cover, amongst other things, the substance of any objections and the views of those consulted.
 - 12.2.2 Reports should include a clear exposition of the relevant development plan policies, site or related history and any other material considerations.
 - 12.2.3 Reports should have a written recommendation of action. Oral reporting (except to update a report) should be avoided and carefully minuted when it does occur.
 - 12.2.4 Reports should contain technical appraisals which clearly justify the recommendation.
 - 12.2.5 If the report's recommendation is contrary to the provisions of the development plan, the reasons justifying the departure must be clearly stated.

- 13. **Public Speaking at Planning Committee**
 - 13.1 Members of the public are not permitted to communicate during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking or through the Chair, as this may give the appearance of bias.
 - 13.2 The public speaking scheme does not apply to applications decided under officer's delegated authority. In those cases members of the public are still entitled to submit their comments and views on the application for employees to consider.
 - 13.3 The rules of the Public Speaking Scheme are set out in the Planning Committee Procedure Rules which are available from the Council. The aim of the scheme is to elicit a broad range of opinions on the application in order to increase public participation and to help the Committee in its decision making.
 - 13.4 A Guide to Public Speaking at Planning Committee has been produced and is also available from the Council.

- 14. **Decisions Contrary to Officer Recommendations and/or the Development Plan**
 - 14.1 The law says that decisions must be made in accordance with the development plan where relevant unless material considerations indicate otherwise (section 38 of the Planning and Compulsory Purchase Act 2004).

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- 14.2 Applications not in accordance with the development plan must be identified as soon as possible and, if required, advertised as such.
- 14.3 If it is intended to approve such applications then the material considerations leading to this conclusion must be clearly identified and how these considerations justify overriding the development plan be clearly demonstrated. The application may then have to be referred to the First Minister, depending upon the type and scale of the development. If the officer's report recommends that permission be granted for a proposal involving such a departure, the justification for this should be included in full in that report.
- 14.4 If the Planning Committee makes a decision contrary to the officer's recommendations (whether for grant or refusal of permission), a detailed minute of the Committee's reasons should be made and a copy placed on the application file.
- 14.5 The officer should also be given the opportunity to explain the implications of the contrary decision and, if appropriate, legal advice should be sought. Such reasons should be clear and convincing. The personal circumstances of the applicant will rarely provide such grounds.
- 14.6 Where a decision is made contrary to the recommendation (whether to approve or refuse), the Committee will be required to provide conditions on the grant of a permission or reasons for refusal, as the case may be. In such cases and where necessary the Committee may consider delegating to employees the task of drafting conditions or reasons.
15. **Regular Review of Decisions**
- When undertaking sites visits (see the Planning Committee Procedure Rules, available separately) in connection with planning applications, Members will take the opportunity, where appropriate, to visit sites within the locality in order to review completed developments. This will enable Members to assess the quality of developments in accordance with the Committee's decision and in line with the Council's policies and guidelines. Such visits are intended to improve the quality and consistency of decision-making and thereby strengthen public confidence in the planning system.
16. **Complaints Procedure**
- 16.1 Any complaints received will be dealt with under the Council's complaints procedures.
- 16.2 Record keeping should be complete and accurate to allow complaints to be fully investigated. This is especially so where decisions are taken under delegated powers and there is no report to Committee. In

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all cases the planning file should be an accurate record of event during that application's life.