

## SECTION 16 – PROTOCOL FOR MEMBERS IN DEALING WITH PLANNING MATTERS

### 1. Introduction

- 1.1 One of the key purposes of the planning system is to control development in the public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. It is important, therefore, that the Council should make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons. The process should leave no grounds for suggesting that a decision has been partial, predetermined, biased or not well founded in any way.
- 1.2 **The key purpose of Planning** is to control development in the public interest.
- 1.3 **Your role as a Member of the Planning Authority** is to make planning decisions openly, impartially, with sound judgement and for justifiable planning reasons. When planning applications are reported to Committee, the report will contain an Officer recommendation as to whether planning permission should be granted or refused. Members are entitled to bring their own judgment to bear on planning applications and to make a decision contrary to Officer recommendation but it is important that such decisions are taken on sound planning grounds which will withstand scrutiny at a possible appeal (if planning permission is refused) or if the decision is referred to the Local Government Ombudsman.
- 1.4 Planning decisions taken by local authorities in Committee are liable to be quashed if it can be justifiably alleged that a Member participating in the decision-making process has predetermined the issue (i.e. approached the matter with a closed mind) before the Committee or if a fair minded observer, knowing the relevant background, would consider that there was a real danger of bias.
- 1.5 **When the Code applies:** This Code of Good Practice applies to **All Members**, at all times, when involving themselves in the planning process (including, where applicable, decision-making meetings of the Council whenever it exercises the functions of the Local Planning Authority in determining applications and other issues). It applies as equally to planning enforcement matters and to planning functions which are the responsibility of the Executive, as it does to planning applications.
- 1.6 **If you have any doubts about the application of this Code to your own circumstances, you should seek advice early from the Borough Solicitor or the Director of Corporate Services.**

### 2. Relationship to the Members' Code of Conduct: General

- 2.1 **Do** apply the rules in the Members' Code of Conduct first and then the rules in this Planning Code of Good Practice, which explain and supplement the Members' Code of Conduct for the purposes of planning.
- 2.2 A breach of this Protocol may also, in some circumstances, constitute a breach of the Members' Code of Conduct. Having regard to the obligation upon Members to make a written allegation to the Standards Board for England if they reasonably believe that another Member has failed to comply with the Code of Conduct, such breaches

must be determined in accordance with the legislative framework set out by the Local Government Act 2000 and regulations made thereunder.

- 2.3 However, in various respects, this Protocol goes beyond the requirements set out in the Code. Therefore, in some instances, a breach of the Protocol will not constitute a breach of the Code of Conduct. In those cases, a complaint may be made to the Council's Monitoring Officer who will determine whether or not there are reasonable grounds for believing that there has been such a breach and, if so, to refer the matter to the Council's own Standards Committee. The Standards Committee will investigate and adjudicate upon such alleged breach in accordance with the Council's local procedures.

### **3. Development Proposals and Members' Interests**

- 3.1 **Do**, if you have a Personal Interest (as defined by paragraph 8 of the Members' Code of Conduct), 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 and not just at the commencement of discussion on that particular matter.

- 3.2 **Do** consider whether a Personal Interest is one which a member of the public would regard as so significant that a member of the public would reasonably consider that it is likely to prejudice your judgement of the public interest. If so, it is a Prejudicial Interest.

- 3.3 *There can be no hard and fast rules to determine when a Member's interest in a matter is so significant that it is a Prejudicial Interest. A judgment has to be made in the individual circumstances of the case. Applications for planning permission, or an enforcement matter concerning immediately neighbouring properties, are almost certainly likely to constitute a Prejudicial Interest. How far this may extend, would depend upon the development proposed, and the location of the properties. Relevant factors could include:-*

- *visual impact on the Member's property*
- *financial impact on the Member's property*
- *generation of a significant amount of more or less traffic locally*
- *whether a precedent for the area might be established which could affect the Member's property*

- 3.4 *Paragraph 10(2) of the Code of Conduct sets out circumstances in which a Member with a Personal Interest in a matter may regard him or her self as not having a Prejudicial Interest. In particular, a Member **may** regard him or her self as not having a Prejudicial Interest if the matter relates to:-*

- *another relevant Authority (e.g. a Parish Council) of which h or /she is a Member*
- *another Public Authority in which h or /she holds a position of general control or management*

- *a Body to which he or she has been appointed or nominated by the Council as its representative.*
- 3.5 *However, it will not always be appropriate for a Member with such an interest to participate. If a member of the public with knowledge of the relevant facts would reasonably regard the interest as so significant that it is likely to prejudice the Member's judgment of the public interest, then the Member should not participate.*
- 3.6 **Do** if you are a Member of a lobbying group, consider whether you should declare an interest in a matter if it is one which the Group has expressed an opinion upon
- 3.7 *Although not in all cases Members are precluded from participating in decisions where a lobbying group of which they are a Member has publicly expressed a view, there will be circumstances when such participation would be inappropriate. If the circumstances are such that a fair minded member of the public would conclude that the Member was partial towards promoting the aims of the lobbying group and disinclined to vote inconsistently from the Members of the Group, then the Member should not participate. Relevant factors to be taken into consideration are:-*
- *the role of the Member in formulating the views of the lobbying group*
  - *the perceived importance of the lobbying group in the matter to be decided*
  - *the issues on which the Group lobbies and the relationship of those issues to the matter for decision*
- 3.8 *Where a lobbying group has been vociferous on the merits of a planning application or matter, the risk increases of a decision being tainted by bias. Membership of a lobbying group formed specifically to achieve a given result is a clear example e.g. a residents' association formed to oppose a particular development.*
- 3.9 Where your interest is prejudicial:-
- 3.9.1 **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Council
- 3.9.2 **Don't** try to represent ward views, get another Ward Member to do it instead.
- 3.9.3 **Don't** get involved in the processing of the Application.
- 3.9.4 **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.
- 3.9.5 **Don't** make representations in connection with any matter in which you have a Prejudicial Interest except in writing to the Officer having conduct of the matter and/or to the relevant Ward Member appointed to the Planning and Highways Committee (or to the relevant Executive Member if the matter in issue is an Executive responsibility). If there is no Ward Member, you may make your written representations to such other Member of the Planning and Highways Committee as you may nominate but the Monitoring Officer should be advised, in writing, of any such nomination. All such correspondence should expressly state that you have a Prejudicial Interest and indicate the nature of the interest.

- 3.9.6 **Don't** act as an Agent for anyone else in pursuing an application for planning consent, enforcement issue or other planning matter.
- 3.9.7 **Do** inform the Monitoring Officer, in writing, of any application for a planning permission or consent which you intend to seek.
- 3.10 *For the avoidance of doubt, if a Member has a Prejudicial Interest in a matter they may, if they wish to do so, decline to attend the meeting and ask an eligible Member to attend as a substitute. The matter in which the Member has a Prejudicial Interest should not be discussed with the substitute Member.*

#### **4. Avoidance of Pre-determination in the Planning Process.**

- 4.1 **Don't** approach a planning decision with a closed mind. Members may offer a particular view in public before a matter is determined but they should not express a decided view which it is apparent they will follow regardless of due consideration of the circumstances when it falls for decision. If a Member actively campaigns for a particular decision, it will be difficult for him or her to show that they have kept a sufficiently open mind. Accordingly, Members who campaign for a particular decision should not be present when the decision comes to be taken. If a Member wishes to remain part of the decision-making process, he or she should ensure that they do remain open to persuasion and that their view is subject to the full consideration of the relevant matter in Committee.
- 4.2 **Don't** participate in a planning decision if you have effectively committed yourself to determining the decision one way or the other in another capacity. For example, if an Executive Member has taken a decision to pursue a particular project, it would be inappropriate for that Member to participate in consideration of the Planning Application. Similarly, Members who have sat on a Panel to determine whether a parcel of amenity land may be disposed of for residential use, should withdraw from the Planning Committee when an application for the change of use of the land to residential purposes is considered. Those Ward Members who have been consulted upon, and expressed their views as to whether or not the amenity land should be sold, may participate in consideration of the Planning Application unless they have a closed mind on the issue when the matter comes to Committee.
- 4.3 **Do**, if you are a Member of a Town or Parish Council which has considered a planning application, consider whether your participation at the Parish Council has effectively indicated that you cannot consider the matter with an open mind when it comes before the Council's Planning and Highways Committee. Merely by speaking, or voting, at the Parish will not usually disqualify a Member from subsequent participation at the Planning and Highways Committee, provided that he or she remains genuinely willing to listen to the debate in Committee and weigh the considerations material to the later decision. However, if the Parish Council decision was reached after lengthy debate and the Member was a leading proponent of the view which the Parish adopted, the Member should not participate at the Planning and Highways Committee.
- 4.4 If a Member is, under the preceding provisions of this Section, considered to have predetermined a planning application before it reaches Committee, then he or she should withdraw from the Council Chamber before the start of the item on the agenda.

## **5. Lobbying of, and by, Councillors**

- 5.1 **Do**, if you wish to vote and/or speak on a matter, explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your position and that of the Council to express a final point of view or a fixed intention to vote one way or another. It will normally be appropriate to advise those who are lobbying that they should speak, or write, to the relevant Officer, in order that their opinions can be included in the Officer's report to the Committee or the Executive Member(s).
- 5.2 Unless you have a Personal and Prejudicial interest, this does not prevent you from:-
- being able to listen and receive 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, prejudging the issue and you make clear you are not expressing a final view;
  - seeking information through appropriate channels.
- 5.3 **Don't** accept gifts or hospitality wherever possible. If a degree of hospitality is unavoidable, ensure it is of a minimum; its acceptance is declared as soon as possible and do remember to register the gift or hospitality where its value is over £25. The Register of Gifts and Hospitality is open to inspection by the public.
- 5.4 **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 favour, or appear to favour, any person, Company, Group or locality, irrespective of other considerations.
- 5.5 **Don't** impose the Party Whip in connection with a planning matter.
- 5.6 **Don't** accept an instruction from anyone to determine an application in a particular manner. While you may accord appropriate weight to the views of other Members, you must determine planning matters, on their own merits, and should not take into account any factor which you are not prepared to state in Committee.
- 5.7 **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.

## **6. Pre-Application Discussions**

- 6.1 **Do** refer Applicants and Developers who approach you for planning or procedural advice, to Officers wherever practicable.
- 6.2 **Don't** engage in pre-application discussions with applicants or third parties, except as provided for below. Members may engage in pre-application discussions in respect of minor development but an Officer should be present when such discussions take place. In exceptional circumstances (for example, major developments having Borough wide implications), recorded, in writing, and placed on the relevant case file, the Director of Environment, Culture and Communities or Chief Officer: Planning and Transportation may request the Chairman or Vice-Chairman of

the Planning and Highways Committee, or the relevant Executive Member, to engage in such discussions in connection with development which is not minor development.

- 6.3 **Do** ensure that you report to the Head of Development Management, or the Chief Officer: Planning and Transportation, any significant contact with the Applicant, and other parties, and explain the nature and purpose of the contacts and your involvement in them. Ensure that this is recorded on the planning file.
- 6.4 **Do** make clear at the outset, that any discussions will not bind the Council to make a particular decision and that any views expressed are provisional.
- 6.5 **“Pre-application”** means discussions taking place before a decision is made, not simply those prior to an application being submitted. **“Pre-Application Discussions”** means such discussions where a Member actively participates in exploring the merits of a proposed development and does not encompass the mere receipt of representations in favour or against a proposal. **“Minor Development”** means development falling within either of the following two categories:-
- the construction of, alteration to or material change of use of a single dwelling
  - the provision of, alteration to or material change of use of commercial or industrial premises having a “footprint” of 100 square metres or less.
- 6.6 The term **“third parties”** does not include fellow Members or Officers. It is, of course, perfectly legitimate for a Member to engage in discussions on a planning application with another Member or Officer, whatever the nature or scale of the development (although if a Member wishes to participate in determination of the application, he or she should be careful to avoid pre-determination of the Application)
- 6.7 *The Officer present when any pre-application discussions take place should make a note of the following:-*
- *the major issues raised in the pre-application discussions and any views expressed on such issues by any party to the discussions*
  - *any action points arising*
  - *points of agreement*
  - *points of disagreement*
- 6.8 **In addition, in respect of presentations:**
- 6.8.1 **Don’t** attend presentations unless the arrangements therefore have been agreed by a Planning Officer and a Planning Officer is present or has agreed that the presence of a Planning Officer is not required.
- 6.8.2 **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- 6.8.3 **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.

- 6.8.4 **Do** be aware that a presentation is a form of lobbying and you must not express a final view or state how you or other Members might vote.
- 6.8.5 *For the purposes of this paragraph “Planning Officer” means the Case Officer within the Environment, Culture and Communities Department dealing with the matter, or an Officer within that Department senior to the Case Officer.*

## **7. Officers**

- 7.1 **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 Head of Development Management or the Chief Officer: Planning & Transportation, which may be incorporated into any Committee report).
- 7.2 **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 and opinions 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.

## **8. Decision-Making**

- 8.1 **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through Officer delegation, that your reasons are recorded and repeated in the report to the Committee.
- 8.2 **Do** comply with Section 54A of the Town and Country Planning Act 1990 and make decisions in accordance with the Development Plan, unless material considerations indicate otherwise.
- 8.3 **Do** come to your decision only after due consideration of all of the information reasonably required to base a decision upon.
- 8.4 **Do**, if you wish to move a Motion contrary to the Officer’s recommendation (whether for approval or refusal), contact the Case Officer to discuss the Application as soon as reasonably practicable to discuss your reasons for departing from the Officer recommendation. If you remain of the view that you wish to move a Motion contrary to the Officer recommendation, then formulate reasons for refusal or approval (as the case may be) and ensure that a copy is circulated to all Members of the Committee when the item is considered.
- 8.5 **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.
- 8.6 **Do** have recorded the reasons for the Committee’s decision to defer any proposal.
- 8.7 **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 or 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.

## **9. Site Visits**

- 9.1 *This section relates to SITE VISITS arranged by Officers prior to a meeting of the Planning & Highway Committee or made pursuant to a resolution of the Committee; it does not relate to visits made by individual Members (usually Ward Members) to the location of a planning application to assist him/her in formulating his/her views on an application. Individual Members making such visits should not enter on to private land unless they are authorised to do so by the Owner and should bear in mind that no Pre-Application Discussions should be held save in accordance with Paragraph 6.*
- 9.2 **Do** ensure that you treat the site inspection only as an opportunity to seek information and to observe the site.
- 9.3 **Do**, through the Officers present at the site meeting, ask questions or seek clarification of matters which are relevant to the site inspection.
- 9.4 **Don't**, if at all possible, hear representations from the Applicant or third parties.
- 9.5 **Don't** express opinions or views to the Applicant and/or Site Owner.

## **10. Appeals**

- 10.1 An applicant applying for planning permission whose application is refused by the Council, has a statutory right of appeal. Rights of appeal are also afforded in respect of certain types of other refusals (e.g reserved matters consent, listed buildings consent). Such appeals may be determined by way of written representation, informal hearing or public inquiry. Once an appeal is made, the Council ceases to have jurisdiction in the matter and Members are able to make representations on the matter to the Inspector appointed to determine or hear the appeal. However, a Member with a Prejudicial Interest in the matter should disclose that fact and the nature of the interest when making representations.
- 10.2 Although a Member when making representations in connection with an appeal may disclose to the Inspector that they are a Member of the Council care should be taken to avoid the impression that the Member is making representations on behalf of the Council or is authorised by the Council to make such representations.
- 10.3 On rare occasions, notably in some cases where Members have refused permission against Officer advice, it may be appropriate for a Member to give evidence on behalf of the Council.