

## **PART 9**

### **9.2 Members' Planning Code of Good Practice**

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

### **1. Background**

This Code of Good Practice is based on a model prepared by the Association of Council Secretaries and Solicitors (ACSeS) in response to the Local Government Association's Guidance Note on the preparation of Local Codes of Good Practice on Planning Matters in the light of the introduction of the new ethical framework.

In preparing the model ACSeS consulted with the District Audit Service, Local Government Ombudsman and the Standards Board for England.

The Code also reflects the comments made at meetings of the Council's Standards Committee and the Regulatory Committee.

### **2. Introduction**

- 2.1 The aim of this Code is 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.
- 2.2 The key purpose of planning is to control development in the public interest.
- 2.3 Your role as a member of the Planning Authority is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.
- 2.4 This Code applies to councillors at all times when involving themselves in the planning decision making process.

This includes, where applicable, decision making meetings of the Council whenever it exercises the functions of the Planning Authority or involvement 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.

#### **2.5 Status of the Code**

By definition a code of good practice cannot be mandatory but it will be used as the benchmark against which behaviour will be judged.

#### **2.6 Role of the Monitoring Officer**

If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer

(Assistant Director, Scrutiny and Monitoring) or one of his staff, and preferably well before any meeting takes place.

### **3. Relationship to the Members' Code of Conduct**

- 3.1 Do apply the rules in the Members' Code of Conduct first.
- 3.2 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 and development plan making.
- 3.3 If you do not abide by this Planning Code of Good Practice, you may put:
  - (a) the Council at risk of proceedings on the legality or maladministration of the related decision; and
  - (b) yourself at risk of either being named in a report made to the Standards Committee or 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.

### **4. Development Proposals and Interests under the Members' Code of Conduct**

- 4.1 Do disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other councillors. You must disclose your interest at the beginning of the meeting or as soon as the interest becomes apparent.
- 4.2 Do then act accordingly.
- 4.3 Where your interest is personal and prejudicial:
  - (a) Don't participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Planning Authority.
  - (b) Don't try to represent the views of people in your Division, get another Councillor to do so instead.
  - (c) Don't get involved in the processing of an application.
  - (d) 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. This would include, where you have a personal and prejudicial interest in a proposal, using your position to discuss that proposal with officers or councillors when other members of the public would not have the same opportunity to do so.

- (e) 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, in person or in writing, the Code 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 a proposal to be put before a meeting, you will have to withdraw from the room or chamber whilst the meeting considers it, whereas an ordinary member of the public would be able to address the meeting on the proposal and observe the meeting's consideration of it from the public gallery.)

- (f) Do notify the Monitoring Officer in writing of your own applications or proposals and those where you act as agent for a third party:
  - (i) notification to the Monitoring Officer should be made no later than submission of the application;
  - (ii) the proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers; and
  - (iii) 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 Committee.

## **5. Fettering Discretion in the Planning Process.**

- 5.1 Don't fetter your discretion, and therefore your ability to participate in planning decision making at committee, 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 formal consideration of the matter at the committee meeting.

Fettering your discretion in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings.

- 5.2 Do be aware that you are likely 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, the chief advocate for the proposal, either on behalf of the Council or in respect of a particular area.
- 5.3 Do 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 relating to other public bodies, it is recommended that you do not take advantage of this presumption.

- 5.4 Do consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the parish council, for example, or both a district/borough and county councillor), provided:
- (a) the proposal does not substantially affect the well being or financial standing of the consultee body;
  - (b) you make it clear to the consultee body that:
    - (i) your views are expressed on the limited information before you only;
    - (ii) 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, Division or parish, as and when it comes before the Committee and you hear all of the relevant information; and
    - (iii) you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee.
  - (c) you disclose the personal interest regarding your membership or role when the Committee comes to consider the proposal.
- 5.5 Don't 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.
- 5.6 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.
- 5.7 Do take the opportunity to exercise your separate speaking rights as a Division Councillor where you have fettered your discretion (by representing your own views or the views of the local community), but where you do not have a personal and prejudicial interest. Where you do take this opportunity:
- (a) advise the Monitoring Officer or Chairman that you wish to speak in this capacity before commencement of the item;
  - (b) remove yourself from the member seating area for the duration of that item; and
  - (c) ensure that your actions are recorded.

## **6. Contact with Applicants, Developers and Objectors**

- 6.1 Do refer those who approach you for planning, procedural or technical advice on matters to be determined by the Planning Authority to officers wherever possible, except where this is part of a meeting organised by an officer and at which an officer is present.
- 6.2 Don't agree to any meeting with applicants, developers or groups of objectors on matters to be determined by the Planning Authority.
- 6.3 Do otherwise:
  - (a) follow the rules on lobbying (para 7);
  - (b) consider making notes when contacted; and
  - (c) report to the Director of Environment and Transport any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them. Ensure that this is recorded on the planning file.
- 6.4 In addition, in respect of presentations by applicants/developers:
  - (a) Don't attend a planning presentation unless an officer is present and/or it has been organised by officers.
  - (b) Do ask relevant questions for the purposes of clarifying your understanding of the proposals.
  - (c) 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.
  - (d) 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 councillors might vote.

## **7. Lobbying of Councillors**

- 7.1 Don't declare the way you intend to vote or express any opinion on the merits prior to your formal consideration of the matter at committee, when you will hear the officer's presentation and evidence, and arguments on both sides.
- 7.2 Do explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality to express a firm point of view or an intention to vote one way or another.

- 7.3 Don't accept gifts or hospitality, from any person involved in or affected by a planning proposal. If a degree of hospitality is 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.
- 7.4 Do copy or pass on any lobbying correspondence you receive to the Director of Environment and Transport at the earliest opportunity.
- 7.5 Do promptly refer to the Director of Environment and Transport any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- 7.6 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.
- 7.7 Unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this Planning Code of Good Practice through:
  - (a) listening or receiving viewpoints from residents or other interested parties;
  - (b) making comments to residents, interested parties, other councillors 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;
  - (c) seeking information through appropriate channels; or
  - (d) being a vehicle for the expression of opinion or speaking at the meeting as a Division Councillor, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or view of people in your Division, you will make up your own mind having heard all the facts and listened to the debate.

## **8. Lobbying by Councillors**

- 8.1 Don't 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.
- 8.2 Don't lobby fellow councillors excessively 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
- 8.3 Don't decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other councillor to do so. Political



group meetings should never dictate how councillors should vote on a planning issue.

## **9. Site Visits**

- 9.1 Do try to attend site visits organised by the Council where possible.
- 9.2 Do ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- 9.3 Do ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- 9.4 Don't hear representations from the applicant or a third party other than indications of fact or relevant information which are made public to everyone on the site visit.
- 9.5 Don't express opinions or views to anyone.
- 9.6 Don't enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
  - (a) you feel it is essential for you to visit the site other than through attending the official site visit,
  - (b) you have spoken first to the Director of Environment and Transport about your intention to do so and why (which will be recorded on the file) and
  - (c) you can ensure that you will comply with these good practice rules on site visits.

## **10. Public Speaking at Meetings**

- 10.1 Don't allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the arrangements for public speaking, as this may give the appearance of bias.
- 10.2 Do ensure that you comply with the Council's procedures in respect of public speaking.

## **11. Officers**

- 11.1 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 Director of Environment and Transport. However, such questions or submissions must be made in sufficient time to enable the item to be incorporated into any committee report if appropriate).

- 11.2 Do recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with the Director or the appropriate member of staff dealing with the proposal.
- 11.3 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, 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.

## 12. **Decision Making**

- 12.1 Do come to meetings with an open mind and demonstrate that you are open-minded.
- 12.2 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.
- 12.3 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, ask for additional time to consider it. If there is simply insufficient information before you, request that further information.
- 12.4 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 officer's introduction to the matter.
- 12.5 Do have recorded the reasons for the Committee's decision to defer any proposal.
- 12.6 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 the Council, as Planning Authority, may have to justify the resulting decision by giving evidence in the event of any challenge and in some circumstances this may include a member of the committee giving evidence.

### **13. Training**

- 13.1 Don't participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.
- 13.2 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. This will assist you in carrying out your role properly and effectively.

**DECLARING INTERESTS FLOWCHART – QUESTIONS TO ASK YOURSELF**

