

REPORTS FROM THE EXECUTIVE AND COMMITTEES TO COUNCIL

1 REPORT OF THE STANDARDS COMMITTEE – 9 JUNE 2009

PROPOSED AMENDMENTS TO THE CODE OF CONDUCT FOR PLANNING MATTERS

- 1.1 This item of business was referred by the Standards Committee on 9 June 2009 to Full Council with a recommendation relating to the existing Code of Conduct for Planning Matters. An extract of the key elements of the report of the Head of Legal Services is attached at Appendix A. A copy of the proposed revised code is attached at Appendix B with changes to the existing document underlined.
- 1.2 In considering this subject the Standards Committee also took account of the content of a Local Government Association Paper 'Probity in Planning: the role of Councillors and Officers – revised guidance note on good planning practice for Councillors and officers dealing with planning matters'. Appendix B includes the suggestions emanating from discussion of this Paper.
- 1.3 It is proposed that Council **RESOLVES** that the 'Code of Good Practice for Planning Matters', as set out at Appendix B be adopted. (HLS)

Appendix A

**PROPOSED AMENDMENTS TO THE CODE OF CONDUCT
FOR PLANNING MATTERS**

1 SUMMARY

- 1.1 The purpose of this report is to propose various amendments to the existing Code of Conduct for Planning Matters.

2 INTRODUCTION

- 2.1 The Code of Conduct for Planning Matters pre-dates the Council's Constitution. It is not a statutory code of practice but was provided for guidance to Members dealing with planning applications. It deals with an area where the Code of Conduct is particularly pertinent. The Planning Code is based on a draft provided by the Association of Council Secretaries and Solicitors. It is not prescribed and many authorities have adapted it to suit their Authority.

- 2.2 The Code of Conduct for Planning Matters requires updating, partly following the introduction of the new planning regime, but mostly to reflect changes to the Members Code of Conduct.

3 NATURE OF THE PROPOSED AMENDMENTS

- 3.1 The code as revised will be called the "Code of Good Practice for Planning Matters".

4 RISK IMPLICATIONS

- 4.1 There is risk of legal challenge if Members fail to appreciate or follow the guidance outlined in the Code of Good Practice for Planning Matters.

Albert Bugeja

Head of Legal Services

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CODE OF GOOD PRACTICE FOR PLANNING MATTERS**GENERAL PRINCIPLES****Members and officers must:-**

- * at all times act within the law and in accordance with the Code of Conduct for Members and the Officers' Code of Conduct respectively.
- * support and make decisions in accordance with the Development Plan, Central Government advice and material planning considerations.
- * declare any personal or prejudicial interest as soon as possible.
- * not become involved with a planning matter where they have a prejudicial interest, except as specified by the Code of Conduct
- * not disclose to a third party, or use to personal advantage, any confidential information.
- * not accept gifts and hospitality received from applicants, agents or objectors outside of the strict rules laid down in the respective Member and Officer Codes of Conduct.
- * seek advice when in doubt, from the Monitoring Officer or other appropriate member of staff, preferably well before any meeting takes place

In Committee, Members must:-

- * base their decisions in accordance with the development plan, unless material planning considerations indicate otherwise.
- * through the Chairman, give details of their planning reasons for departing from the officer recommendation on an application which will be recorded in the Minutes.
- * give officers the opportunity to report verbally on any application.

Members should:-

- * not depart from their overriding duty to the interests of the District's community as a whole.
- * not become associated, in the public's mind, with those who have a vested interest in planning matters.
- * not agree to be lobbied, unless they give the same opportunity to all other parties.

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- * not depart from the Council's guidelines on procedures at site visits.
- * not put pressure on officers to achieve a particular recommendation.
- * be circumspect in expressing support, or opposing a planning proposal, until they have all the relevant planning information.
- * come to committee meetings with an open mind and demonstrate that they are open minded

Officers must:-

- * give objective, professional and non-political advice, on all planning matters.
- * put in writing to the Committee any changes to printed recommendations appearing in the agenda.

Relationship to the Code of ConductMembers must:-

- * apply the rules in the Code of Conduct for Members first, which must always be complied with
- * then apply the rules in this Code of Good Practice for Planning Matters, which seek to explain and supplement the Code of Conduct for Members for the purposes of planning control.

If they do not abide by this Code of Good Practice for Planning Matters, they may put:-

- * the Council at risk of proceedings in respect of the legality or maladministration of the related decision; and
- * themselves at risk of a complaint to the Standards Committee or Standards Board for England.

PROTOCOL**1 Introduction**

- 1.1 Members' conduct is governed by statute and the Code of Conduct for Members. Officers' conduct is covered by the Officers' Code of Conduct. This Code of Good Practice for Planning Matters gives guidance on the way that Members and officers should carry out their planning duties and make decisions on planning matters.
- 1.2 The Council wants to ensure that all planning decisions are made according to clear procedures that are known to all users of the planning system. In this Code, references to "the Planning Committee"

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means the Development Control Committee, but the principles also apply to public consultation meetings, working parties and panels that may deal with planning matters.

- 1.3 Planning decisions must be made on an objective basis, according to proper procedures. Members of the Local Planning Authority are elected to represent the whole community in planning matters. In deciding on planning applications, Members must take into account any relevant views expressed by neighbouring occupiers, local residents and other third parties, together with all other material planning considerations, including central Government policy and guidance and the Council's own Local Plan Policy Framework.
- 1.4 Planning decisions involve balancing a number of matters. This Code aims at fairness for all concerned in the planning process, so that decisions are made according to proper planning principles and not in response to the undue influence of individuals or groups, or the personal interests of Members or officers.

2 Acting within the Law

- 2.1 The District Council's planning responsibilities are defined by the Planning Acts and associated Regulations and Orders. The responsibilities of the Council's Planning Committee derive from that legislation and Councillors and officers must at all times act within the law. The Council's Legal and Planning officers give advice and make recommendations designed to keep the Council within the law. In the end, however, Members must take responsibility for their actions and decisions.
- 2.2 In making decisions in respect of planning applications, it should be recognised that the emphasis of planning legislation is such that all planning applications should be approved, unless there are sound and valid planning reasons to support a refusal.

3 Public Duty

- 3.1 The Council's planning policies are adopted in the interests of the whole community following public consultation. They therefore reflect the overall public interest, rather than that of individuals or organisations. Members have a duty to their constituents, including those who did not vote for them, but their over-riding duty is to the local community as a whole. Members and officers should therefore support the Council's planning policies and make decisions in accordance with them, unless there are sound and valid planning reasons for not doing so.

Appendix B**4 Prejudicial and Personal Interests**

- 4.1 If a Member has a prejudicial interest in any planning matter, he/she must declare that interest. Members who have a prejudicial interest may speak and make representations on that matter in the same way as a member of the public, but must then immediately withdraw from the chamber. Those Members must not vote on the matter or seek to improperly influence a decision about that matter. The rules and procedure are set out in full in the Code of Conduct for Members.
- 4.2 If a Member has a personal interest in any planning matter this must be declared even if already included in the Register of Member Interests. The rules and procedure are set out in full in the Code of Conduct for Members.
- 4.3 Members should avoid becoming associated in the public mind with representatives of the development industry, such as landowners, builders, agents or planning consultants. A consistent record of supporting a particular applicant or agent, contrary to the Council's adopted policies, could be seen as evidence of a private interest or connection.
- 4.4 When considering planning applications, Members must base their decisions on the Development Plan unless other material planning considerations indicate otherwise. Decisions reached for party political reasons are not consistent with a proper exercise of discretion and may be dismissed at appeal, or overturned by the courts or be the subject of a finding of maladministration by the Ombudsman with the potential to incur costs against the Council for this fact alone. It is not appropriate and will amount to maladministration to apply party whipping to decisions on planning applications.
- 4.6 Officers must declare any personal or financial interests in any planning matter before the Council, must not deal with such matters on behalf of the Council and must not give advice to Members or other officers on them. An officer with a personal or financial interest in a planning matter must withdraw from any relevant Committee meeting whilst that matter is discussed. Planning officers must maintain their professional integrity and should avoid becoming associated in the public mind with representatives of the development industry or environmental pressure groups.

5 Officer Member Relationships and Roles

- 5.1 Officers and Members both serve the public, but they have different although complementary roles in dealing with planning matters. In general, the officers' role is to advise Members of the relevant planning policies and other material considerations and the Member's role is to make planning decisions on the basis of that advice.

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- 5.2 Officers must give objective, impartial planning advice, based on their professional judgment and not be compromised or influenced by political considerations, other than through the formal development of the Council's planning policies.
- 5.3 It is important that there is a good working relationship between officers and Members, based on mutual understanding of, and respect for, their respective roles. This avoids delay and assists consistency in the planning system. Regular training can help to achieve these objectives.
- 5.4 Members must not put improper pressure on officers for a particular recommendation and should not do anything that compromises, or is likely to compromise, officers' impartiality.

6 Assisting Applicants and Objectors and Lobbying Members

- 6.1 Members should explain to those lobbying or attempting to lobby them that, while they can listen to them, they cannot give them their view because it could mean they would be unable to take part in Committee discussion or vote, or the decision of the committee may be seen to be compromised

Members should consider whether it is appropriate to copy and pass on any lobbying material, such as correspondence or leaflets they receive, to the Head of Planning and Transportation.

They should not attempt to persuade fellow Members how they should decide to vote in advance of the meeting at which any planning decision is to be taken.

No political group meeting should be used to decide how Councillors should vote.

Members should avoid accepting gifts or hospitality wherever possible. If a degree of hospitality is unavoidable, Members should register the details of any gift or hospitality. This interest must be declared where relevant for the next 3 years.

Members should tell the Monitoring Officer where they feel they have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality).

Members are free to join general interest groups which reflect their areas of interest and which concentrate on issues beyond specific planning proposals, however Members should disclose a personal interest where an organisation to which he/she belongs has made representations on a particular proposal.

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If Members have vocalised or helped formulate the group's views, they are likely to be considered biased and should withdraw from the matter for this reason. If Members become a member of an organisation whose primary purpose is to lobby to promote or oppose planning proposals, it is likely that they will have a prejudicial interest and will only be able to take limited role in expressing an opinion on the proposals

- 6.2 Members should refer those who approach them for planning, procedural or technical advice to officers.
- 6.3 Behind the scenes lobbying can provoke suspicion that a planning decision may be unduly influenced by a particular interest. Members must bear in mind that their over-riding duty is to the local community as a whole. Consequently, if they are willing to be lobbied by one party, they must give the same opportunity to all other parties. Alternatively, they can decline to be lobbied and refer that party or parties to the officers.
- 6.4 Where a Member agrees to a formal meeting with applicants, developers or groups of objectors because they feel that a formal meeting would be useful in clarifying the issues, where appropriate, they should request the Head of Planning and Transportation to organise it. When any meeting takes place Members should ensure that those present are advised from the start that the discussions will not bind the 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 Committee.
- 6.5 Members must not agree to speak or vote for or against a particular planning application without having heard all relevant details in respect of the case. Applicants and objectors are entitled to expect that planning decisions will be made on the basis of information and arguments available to the Committee. Late representations often have to be reported verbally to the Committee. If Members have given a prior commitment to vote in a particular way, they may be acting against natural justice and their duty to the whole community.
- 6.6 Members should act objectively when a planning matter is discussed at Committee. It follows that a Member should not become personally involved in particular planning issues, organise support or opposition, lobby other Councillors, or act as an advocate. Members must not put pressure on officers for a particular recommendation. If a Member has, nevertheless, agreed to represent the views of any person or organisation at a meeting of the Development Control Committee, he/she must declare it to the Committee and must consider whether this constitutes a prejudicial interest.

Appendix B**7 Committee Procedures and Conduct of Meetings**

- 7.1 Pre-Committee briefing meetings between officers and Members of the Planning Committee are not part of the formal Committee proceedings and, if held, must always be after the agenda has been set and officer's recommendations made. The purpose of such meetings is to inform the Chairman/Vice-Chairman and spokespersons on planning issues, the reasons for officer recommendations and to give the Chairman an opportunity to give notice of potential problems or the need for more information.
- 7.2 Planning decisions should be made on the basis of an officer's written report, which should contain all the relevant information to enable the Committee to reach a reasonable decision. In the case of planning applications, the report will be based on any appropriate national planning policy advice and guidance, Structure Plan Policy and Local Plan Policy and other material planning considerations. The report will normally include the officers' recommendation as to how the application should be decided, together with valid planning reasons for that decision. Members must have good reasons based on material planning considerations if they decide to reject officers' advice. Members must consider the professional advice given to them on planning matters and if they reject that advice, must clarify the basis for their decision and both this and the decision itself should be recorded in the Minutes.
- 7.3 If the Committee decides that there are over-riding reasons for not accepting officers' advice and the decision represents a departure from the Local Plan, it is particularly important that the reasons are clearly recorded and are based on valid planning grounds.
- 7.4 A Committee decision on a planning application, contrary to the Council's planning policies, may result in an appeal. Officers must be prepared to explain and defend the Council's decisions. However, if asked, an officer appearing at an informal hearing or public inquiry will be obliged to give their bona fide professional opinions and, in certain circumstances, it may be that an officer whose professional advice was not consistent with the Committee's decisions, may not be the best witness for the Council as the difference of opinion is likely to be revealed under cross-examination.
- 7.5 To facilitate debate at the Committee meeting it would be advisable for Members to ask for information and clarification on specific points prior to the Committee meeting, particularly where points of detail are concerned.
- 7.6 At Committee, officers should be given the opportunity to give verbal updates on the representations received, present additional information on introducing the item and present the recommendation accordingly.

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- 7.7 The Chairman shall move all officer recommendations unless any Member indicates intention to move to the contrary.

8 Committee Site Visits

- 8.1 Site visits should only be used where the expected benefit is substantial; Officers will have visited the site and identified material considerations on behalf of the Council. A site visit is only likely to be necessary if the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers; or there is good reason why the comments of the applicant and objectors cannot be expressed adequately in writing, or the proposal is particularly contentious.
- 8.2 The purpose of site visits is to give Members, accompanied by officers, first hand knowledge of a site and its surroundings in relation to any development proposal or other planning matter. A site visit is not part of the formal Committee proceedings and is not a forum for debate or making planning decisions. Site visits are not open to the public and should not be used to canvass local opinions, or as an opportunity for lobbying or advocacy. Members should not express personal opinions during site visits.
- 8.3 In normal circumstances at the Development Control Committee where, after the introduction of an item, a site visit is proposed, there shall be no debate.
- 8.4 The Council's approved Site Visit Procedure is reproduced below and forms part of this Code of Good Practice for Planning Matters.

9 Confidentiality

- 9.1 There are valid reasons why some planning information should remain confidential. Members and officers must not disclose confidential planning information which is prejudicial to the Council's interests, or its role as the Local Planning Authority and they must not use such information for personal advantage.

10 Gifts and Hospitality

- 10.1 The Code of Conduct for Members deals with gifts and hospitality offered to Members and the Officers' Code of Conduct includes rules and advice for officers. Planning decisions can result in huge increases in the value of land and property, so the probity and integrity of the officers and Members involved are vital to the maintenance of public confidence in the planning system.
- 10.2 Officers and Members involved in the planning system must abide by the respective codes in connection with gifts, rewards, favours or hospitality from applicants, agents or objectors, as this may be

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interpreted as an improper inducement, intended to secure a particular planning decision. Gifts or invitations exceeding £25 must always be reported to the Monitoring Officer of the Council.

10.3 Any attempt at bribery must be reported to the Monitoring Officer of the Council.

PROCEDURE AT MEMBERS' SITE VISITS
Purpose of the Visit

The purpose is to enable Members of the Development Control Committee to reach a more informed decision by seeing the site itself and to have the proposal explained by the officer who attends. Whilst it is primarily a fact finding procedure, there may be discussion of the merits of the application but there will not be any voting or decisions taken. The expression of views by Members may assist the case officer. However, there is no obligation on any Member to express a view at the site visit and its purpose is not for those Members attending to make a decision on the application.

The holding of a site visit does not provide an opportunity for applicants or objectors to make representations. To allow representations would undermine the purpose of the site visit and might be construed as an indication of bias or unfairness, but applicants/agents will be given an opportunity to explain the proposals to assist Member understanding. If necessary, interested parties present will be advised by the Chairman that representations cannot be heard.

Attendance at Site Visit

The following persons are entitled to attend a Committee site visit:-

- (a) All Members of the Development Control Committee;
- (b) Planning Officer(s) as appropriate;
- (c) Other District Council and supporting County Council Officers as appropriate – e.g. Highway Engineer, Archaeology Adviser;
- (d) Two representatives of the relevant Town or Parish Council
- (e) The applicant and/or his agent or representative

Organisation and Notification of Site Visits

Members of the Council are notified in writing of the date and time of the visit as soon as possible following the decision at Committee to hold such a visit. A map showing the location of the site to be visited and, where necessary, a precise meeting place is provided.

Applicants/agents are informed of the site visit and its purpose and asked to give free, unaccompanied access to the relevant part of the property. Applicants/agents should not participate in the debate.

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The Parish/Town Council is informed of the relevant procedures and the limitations to their participation. The role of the Parish/Town Council representations is to point out particular aspects of the site and surroundings, to respond to Members' questions in connection with this and to be a witness to proceedings, including the information provided to the site visit, but not to take part in discussion of the merits of the application.

Procedure at the Site Visit

In order that visits are conducted in a consistent manner, the following procedure is followed:-

- (a) Assemble at the agreed time and place for each site;
- (b) Start time only at or after the time stated on the timetable;
- (c) In the absence of the Chairman or Vice-Chairman of the Development Control Committee, Members elect a Chairman for the purpose of conducting the site visit in accordance with the adopted procedures;
- (d) The Planning Officer gives brief details of the proposal, highlighting the main aspects which need to be considered on site. A copy of the plans will be available;
- (e) At the conclusion of the visit, Members and officers present converse in private to see if there is any further information Members wish officers or applicants/agents to make available to the Committee, prior to the meeting. However, there should be no discussion as to the relative merits of the application.

Report to Committee

An officer report will include the fact that a site visit has taken place. Individual Members who attended the site visit can, of course, contribute their personal views during the subsequent discussion of the application by the Committee before a decision is made.