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## REPORTS FROM THE EXECUTIVE AND COMMITTEES/SUB-COMMITTEES TO COUNCIL

### 1 REPORT OF THE DEVELOPMENT MANAGEMENT SUB-COMMITTEE – 8 DECEMBER 2009

#### CODE OF GOOD PRACTICE FOR PLANNING MATTERS

- 1.1 This item of business was referred by the Development Management Sub-Committee on 8 December 2009 to Council with recommendations relating to the adoption of a revised Code of Conduct for Planning Matters and a change to the system of referral of any controversial delegated planning applications to the Development Control Committee. An extract of the key elements of the report of the Head of Planning and Transportation to the Sub-Committee is attached at Appendix A. A copy of the revised code proposed by the sub-Committee is attached at Appendix B.
- 1.2 In considering this subject, the Sub-Committee discussed the current system of referral for delegated planning applications raising controversial issues. Current procedures required that the Chairman of the Development Control Committee be advised of any such applications, who may require that the application be reported to that Committee for determination.
- 1.3 The Sub-Committee concluded that it would be more democratic to require referral of any such controversial delegated planning applications to three Members of the Council, namely the Chairman of the Development Control Committee, the Portfolio Holder for Planning and Transportation and the Chairman of the Council, with a requirement that two out of the three Members agree to the application being referred to the Committee.
- 1.4 It is proposed that Council **RESOLVES**
  - (1) That the 'Code of Good Practice for Planning Matters', as set out at Appendix B, be adopted.
  - (2) That, in future, referral of any controversial delegated planning applications to the Development Control Committee be determined by the majority decision of the Chairman of the Development Control Committee, the Portfolio Holder for Planning and Transportation and the Chairman of the Council. (HPT)

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## **CODE OF GOOD PRACTICE FOR PLANNING MATTERS**

### **1 SUMMARY**

- 1.1 This report seeks approval for a revised Code of Good Practice for Planning Matters (Minute 192/09 refers).

### **2 INTRODUCTION**

- 2.1 At a meeting on 28 July 2009, Council considered a report from the Standards Committee containing recommendations relating to the Code of Conduct for Planning Matters.
- 2.2 Council resolved that a Sub-Committee be set up to review and modify the Code, with a report back to Council.

### **3 DISCUSSION**

- 3.1 Officers have now reviewed the Council's existing Code and considered issues raised by Members and reported through the Portfolio Holder for Planning and Transportation.
- 3.2 As a result of the review, it is proposed that the existing Code be replaced by a new Code based on a model prepared by the Association of Council Secretaries and Solicitors.
- 3.3 The important change to the Code is that it is proposed to base the advice to Members around a series of Do's and Don'ts in order to make very clear what is and what is not best practice.
- 3.4 The draft Code includes appropriate references to the arrangements followed in relation to site visits, the weekly list and so on.
- 3.5 In addition, the Code now includes clear advice on the arrangements for pre-application meetings with developers and for visits to public exhibitions/displays often organised by prospective applicants to inform residents.

### **4 RISK IMPLICATIONS**

- 4.1 It is essential that Members follow clear guidance when involved with planning matters to avoid reputation, strategic or operational risk.

### **5 LEGAL IMPLICATIONS**

- 5.1 The draft Code provides advice on how Members should conduct themselves at the different stages of the planning process.

## CODE OF GOOD PRACTICE FOR PLANNING MATTERS

### A. Introduction

#### 1. The aim of this code of good practice

To ensure that in the planning process all decisions are unbiased, impartial, and well founded.

#### 2. Your role as a Member of the Planning Authority

To control development and to make planning decisions openly, impartially, with sound judgment and for justifiable reasons.

#### 3. When the Code of Good Practice applies

This code applies to Members at all times when involving themselves in the planning process (this includes when taking part in the 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.

### B. Relationship to the Code of Conduct – Points for Members

- **Do** apply the rules in the Code of Conduct for Members first.
- **Do** 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.
- Failure to abide by this Code of Good Practice for Planning Matters may put:-
  - the Council at risk of proceedings in respect of the legality or maladministration of the related decision; and
  - yourself at risk of a complaint to the Standards Committee or Standards Board for England.

### C. Development Proposals and Interests under the Members' Code

**Do** 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 of the meeting and not just at the commencement of discussion on that particular matter.

**Do** then act accordingly.

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Where your interest is personal and prejudicial:-

- **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.
- **Don't** get involved in the processing of the application, save as mentioned below.
- **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 members when other members 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, in person or in writing, the Code places limitations on you in representing that proposal. You may address the Committee but only to make a presentation in the same manner that would apply to a normal member of the public, after which you must leave the room whilst the meeting considers it (you may not remain to observe the meeting's considerations on it from the public gallery).
- **Do** notify the Monitoring Officer of the details.

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

- **Don't** fetter your discretion and therefore your ability to participate in planning decision making 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 and of your hearing the officer's presentation and evidence and arguments on both sides.

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 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 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 (this is more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal 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).

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- **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 and county councillor), provided that the proposal does not substantially affect the well being or financial standing of the consultee body, and you make it clear to the consultee body that:-
    - your views are expressed on the limited information before you only;
    - you must reserve judgment 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 Committee and you hear all of the relevant information;
    - you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee; and
    - you disclose the personal interest regarding your membership or role when the Committee comes to consider the proposal.
  - **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.
  - **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.
  - **Do** take the opportunity to exercise your separate speaking rights as a Ward/Local 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 proper officer or 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.

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

- **Do** refer those who approach you for planning, procedural or technical advice to officers.
- **Do** contact the Head of Planning and Transportation where you think a formal meeting with applicants, developers or groups of objectors might be helpful. You should never seek to arrange that meeting yourself. If a meeting is organised, officers will ensure that those present at the meeting 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.

- **Do** otherwise:-
  - follow the rules on lobbying;
  - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
  - report to the Head of Planning and Transportation 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/developers:

- **Don't** attend a private planning presentation not open to the general public unless an officer is present and/or it has been organised by officers.
- **Do** attend a public meeting or exhibition to gather information about planning proposals.
- **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 Development Management Control Committee.
- **Do** be aware that a presentation is a form of lobbying – you can express views, but must not give an indication of how you or other Members might vote.

#### **F. Lobbying of Councillors**

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

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- **Do** promptly refer to the Head of Planning and Transportation any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation 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 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;
    - attending a meeting with the developer or applicant organised by the Head of Planning and Transportation that is conducted in accordance with the rules set out in the Code of Conduct and this good practice guide;
    - 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/local 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.

### G. Lobbying by Councillors

- **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.
- **Do** feel free to join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, Ramblers Association or a local civic society, but disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgment and the independence to make up your own mind on each separate proposal.
- **Don't** excessively 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.

- **Don't** decide or discuss how to vote on any 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.

#### H. Site Visits

- **Do** request an early site visit if you think one is required.
- **Do** try to attend site visits organised by the Council where possible.
- **Don't** request a site visit unless you feel it is strictly necessary because:
  - particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
  - there are significant policy or precedent implications and specific site factors need to be carefully addressed.
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **Don't** hear representations from any other party, with the exception of the Ward Member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.
- **Don't** express opinions or views to anyone.
- **Don't** enter a site not open to the public 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:-
  - you feel it is essential for you to visit the site other than through attending the official site visit,
  - you have first spoken to the Head of Planning and Transportation about your intention to do so and why (which will be recorded on the file) and
  - you can ensure you will comply with these good practice rules on site visits.

#### I. Public Speaking at Meetings

- **Don't** allow members of the public to communicate with you during the



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.

#### **J. Officers**

- **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 Planning and Transportation, which may be incorporated into any committee report).
- **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with a Head of Service or those officers who are authorised by their Head of Service to deal with the proposal at a Member level.
- **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.
- **Do** give officers the opportunity to report verbally on all applications reported to the Development Control Committee for determination.

#### **K. Decision Making**

- **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation following a Weekly List report, you discuss your reasons with the Head of Planning and Transportation.
- **Do** comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 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, including any information presented through an addendum to a committee report or reported verbally by officers.

- **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present during the entire debate on any particular item, including the officers' introduction to the matter.
- **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.
- **Do** be aware that in the event of an appeal the Council will have to justify the resulting decision and that there could, as a result, be a costs award against the Council if the reasons for refusal cannot be substantiated.

#### L. Training

- **Don't** participate in a vote 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.