

## **PART 5**

### **(D) CODE OF CONDUCT FOR MEMBERS AND OFFICERS DEALING WITH PLANNING MATTERS**



**CODE OF CONDUCT FOR MEMBERS AND  
OFFICERS DEALING WITH  
PLANNING MATTERS**

**A GUIDE TO PROPER PRACTICES AND PROCEDURES**

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## 1. INTRODUCTION

- 1.1 In recent years the planning system has come under close scrutiny, following a few well-publicised inquiries into the conduct or practices of a number of local planning authorities, and, by the Nolan Committee Report on 'Standards in Public Life'.
- 1.2 Whilst the Nolan Committee looked at local government in general one chapter of the report dealt specifically with the planning system and, in particular, the planning application process.
- 1.3 In the introduction to the chapter on the planning system the Nolan Committee Report states:-
- "We have received more letters from members of the public about planning during our work on local government than on any other subject. Planning is clearly a subject that excites strong passions and for good reason. The planning system frequently creates winners and losers; it involves the rights of others over one's property; the financial consequences of a decision may be enormous".*
- 1.4 One of the recommendations of the Nolan Committee Report, stemming from the evidence submitted was that authorities should have in place, procedures and practices designed to avoid allegations of malpractice. It recommended that such procedures and practices are clearly set out in each local authority's own **local code of conduct**.
- 1.5 Whilst the Nolan Committee Report makes a number of recommendations regarding best practice in planning procedures it is not prescriptive in what should be included in a code of conduct; it recognises that local circumstances will vary.
- 1.6 Since the publication of the Nolan Committee Report, the Local Government Association published guidelines to assist Local Authorities in framing local codes of conduct. In 2007, a revised General Model Code of Conduct was published and this advice reflects that contained in the Model Code.
- 1.7 This Code of Conduct has been prepared, having regard to the recommendations and guidance in the Nolan Report and the Local Government Association document, together with this Council's own, existing procedures and practices and best practice examples from other local authorities.
- 1.8 The Code applies to all Councillors and Officers who are involved in operating the planning system. It is not restricted to professional town planners and only 'Planning' Committee Members; where relevant it applies to all Members and Officers taking any part in the planning process.
- 1.9 The term "Officers" in this Code includes any persons who act on behalf of the Council.

## **2. PURPOSE OF THE CODE**

2.1 The purpose of this Code of Conduct is to regulate the performance of the Council's functions in its role as Local Planning Authority, principally in relation to planning applications, but also in other areas pertaining to development management (i.e. enforcement, tree preservation orders, listed buildings and conservation areas) and the development plan process.

2.2 The main objectives of the Code are:

- to guide Members and Officers of the Council in dealing with planning related matters.
- to inform potential developers, and members of the public generally, of the standards adopted by the Council in the discharge of its planning functions.
- to assist Members in dealing with approaches from developers, objectors and other third party interests to ensure the integrity of the decision making process is preserved.

2.3 The Code is intended to supplement the Council's general Code of Conduct which is in line with the national Model Code. The Local Government Act 2000 introduced a comprehensive ethical framework for local government and led to the replacement of a national code of conduct with a system of individual local authority codes based on a national Model Code of Conduct for Councillors and voting co-opted Members. The Code seeks to ensure that decision making is governed by an open transparent process.

2.4 The Human Rights Act 1998 has had implications for the planning system and, in particular, compliance with Article 6 of the European Convention on Human Rights. Article 6 is concerned with guaranteeing a right to procedural fairness, transparency and accountability in the determination of civil rights and obligations. The good practice set out in this Code meets the requirements of Article 6.

## **3. STATUS OF CODE**

3.1 Members and Officers should have full regard to the Code in discharging their responsibilities and duties in relation to planning matters on behalf of the Council.

3.2 As with the Model Code of Conduct for Members, this local Code of Conduct represents a standard against which the conduct of Members and Officers will be judged, by the public, and by their fellow Councillors and colleagues. The Local Government Ombudsman may also regard a breach of the Code as incompatible with good administration, and may make a finding of maladministration by the Council in such circumstances.

3.3 The Standards Committee will monitor the operation of this Code of Conduct.

3.4 Section 19 of this Code ('Sanctions') considers the possible consequences to the Council, and any Officer or Member of the Council, if the Code is not adhered to.

#### **4. GENERAL ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS**

- 4.1 Members and officers have different, but complementary roles. Both serve the public but Members are responsible to the electorate, while officers are responsible to the Council as a whole. Officers advise the Members and the Council and carry out the Council's work.
- 4.2 In terms of the Council's Planning Committee functions it is the role of Members to make decisions and for Officers to ensure that Members of the relevant Committees and/or Working Groups are advised as to the relevant material planning considerations and the appropriate courses of action.
- 4.3 Both Members and Officers are guided by Codes of Conduct adopted by the Council.
- 4.4 The Council's general Code of Conduct, which is in line with the national Model Code, governs the actions of Members.
- 4.5 The requirements of this Planning Code of Conduct will apply to all Members involved in the planning process. This may be as a Member of a Committee deciding planning applications or approving planning policies, as a Member receiving information on emerging development projects prior to submission of a planning application, or who discuss planning applications or emerging development projects with developers or members of the public.
- 4.6 Much is often at stake in the planning process, whether it be in relation to planning applications or other development control matters, or in planning policy development. Opposing views are often strongly held by those involved. Whilst Members should take account of those views, they need to have regard to their wider responsibilities.
- 4.7 In accordance with the Council's general Code of Conduct, Members should not favour any individuals or groups and must represent their constituents as a body and vote in the interests of the Borough as a whole. Whilst Members should take account of all views expressed, they should not put themselves in a position where they appear to favour individuals or groups regardless of the planning merits of a particular case.
- 4.8 Officers involved in the processing and determination of planning applications, and in discharging the Council's functions in relation to other statutory planning matters, should act in accordance with the Council's Code of Conduct for Council Employees, and act impartially in dealing with all planning matters.
- 4.9 The Council will review on a regular basis the restrictions set on outside activities of senior officers through the Local Government and Housing Act 1989 having specific regard to the Council's role and responsibility as Local Planning Authority.

## **5. MEMBERSHIP OF PLANNING COMMITTEES**

- 5.1 It is important that members of the public have confidence in the Members who are making decisions on planning applications and in connection with other planning matters. Regarding the conduct of Members, not only should impropriety be avoided but also any appearance or grounds for suspicion, of improper conduct. Also, members of the public need to be confident that Members have reasonable capability, in terms of background knowledge, for making these decisions, and are making them in line with agreed and adopted policies, national guidance and legislation. It is, therefore, considered necessary to set down some rules about membership of planning committees.
- 5.2 Members who have business or other interests which may bring them into contact with the Council's planning system on a regular basis should not generally be considered for membership of a Planning Committee. The same should be applicable to membership of any Overview or Scrutiny Committee which may occasionally become involved in planning matters.
- 5.3 No Member should be appointed to any of the above Sub-Committees or the Regulatory Committee without having agreed to undertake training on planning issues as specified by the Council. Membership should not continue if training is not subsequently undertaken.
- 5.4 Members who are consistently unable to support the Council's planning policies should not be considered for membership of any Planning decision making Committee.

## **6. MEMBERS' TRAINING**

- 6.1 All Members of Committees determining planning applications shall undertake training on the following matters before serving on these Committees or within two months of their appointment to the Committee.
- The Determination of Planning Applications
  - Enforcement of planning control and related matters
  - Local Code of Conduct for Members and Officers dealing with planning matters.
- 6.2 Other voluntary training sessions may from time to time be arranged by Officers to ensure Members are fully briefed and trained on any changes to legislation or procedures.

## **7. DECLARATIONS OF INTEREST BY COUNCILLORS**

- 7.1 The law and the Council's general Code of Conduct set out the requirements and guidance for Councillors, respectively, on declaring personal and personal and prejudicial interests and the consequences of having such interests.
- 7.2 These requirements must be followed scrupulously. It is important to ensure that not only should impropriety be avoided but also the avoidance of any appearance, or grounds for suspicion, of improper conduct. The responsibility for this rests individually with each Councillor.
- 7.3 By the very nature of the planning system actions taken by Councillors and Officers easily lead to suspicions of improper conduct. This section of the Code therefore deals with Members involvement in the planning system with the aim of not only avoiding improper conduct but also reducing the likelihood of suspicions of such conduct.
- 7.4 Members must declare personal and prejudicial interests in any planning matter, in accordance with the Council's Code of Conduct. Any interest should be declared in the Council's register of interests as soon as that Member becomes aware they have an interest. A copy of this should also be provided to the Planning Service and, if this relates to a submitted planning application, a copy placed on that file and the matter referred to in any Officer report to Committee.
- 7.5 The law requires that any Member who has declared a personal and prejudicial interest must take no part in any discussion on the matter and in the making of any decision at a Committee meeting and must withdraw from the meeting. A personal and prejudicial interest is a personal interest, defined below, which would reasonably be considered by a person, who knew the relevant facts, to be so significant that the Member's judgement of the public interest would be prejudiced. The interest should be minuted.
- 7.6 Members must also declare any personal interest in a planning matter, even if it is not a prejudicial interest. These are interests which might reasonably be expected to affect, to a greater degree than other Council taxpayers or inhabitants of the area, the well-being or financial position of the Member, his/her family, relatives and friends or employer. The interest can arise whether the bias is either for or against a proposal. In such a case, the interest should be minuted.
- 7.7 In accordance with the Development Control Scheme any application in which a Member of Council has declared an interest must be determined by Committee and not under the Scheme of Delegation to Officers.
- 7.8 Members who have an interest in a planning matter (whether or not it has been declared) should not lobby other Members or Officers either directly or indirectly.
- 7.9 Any Member who has a personal or personal and prejudicial interest in an application which is the subject of a site visit should not attend the visit.
- 7.10 In cases of doubt regarding declarations of interest Members should refer to the Monitoring Officer for advice.

## **8. DECLARATIONS OF INTEREST BY OFFICERS**

8.1 Any Officer listed below, who has any interest in a planning application or any other planning matter (either personally or through interests of their spouse/partner, close family or friends) which could be construed by a member of the public as leading to bias in any decision taken, should declare an interest and take no part in the processing of the application or the progressing of any other matter.

Interests should be declared by:

- Any Officer employed in the Planning Service
- Any Officer employed in another Service Group of the Council or partner organisation who has regular involvement in the planning application process, providing advice or support.
- Any Executive Director or Service Director of the Council or equivalent Manager of any partner organisation

8.2 An interest should be declared by completing two copies of the Declaration of Interest in a Planning Application form (obtainable from the Planning Service); one copy of the form should be returned to the Planning Service and placed on the planning application file or the file relating to the matter and the other copy kept on the Officer's personal file.

8.3 In accordance with the Development Control Scheme, any application in which an Officer has declared an interest must be determined by Committee and not under the Scheme of Delegation to Officers.

8.4 Any declaration of interest should be noted in any report to Committee and minuted.

8.5 The requirements of this Section of the Code will regularly be brought to the attention of all staff affected together with new employees as part of their induction.

8.6 For any planning application for which the Service Director has declared an interest, an individual report shall be prepared in the name of the Development Control Manager, as a separate agenda item stating the Service Directors' interest.

## **9. DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS AND OFFICERS**

9.1 It is perfectly legitimate for development proposals to be submitted by Councillors and Officers in respect of their own property or land. However, it is vital to ensure that such applications are handled in a way that gives no grounds for accusations of favouritism or impropriety. Submission of applications on behalf of other individuals, companies, groups or bodies should not be undertaken other than in exceptional circumstances.

9.2 Any Member or Officer involved in planning matters (see paragraph 8.1 above) who submits their own proposals for development to the Authority must:-

- i) complete a Declaration of Interest Form (obtainable from the Planning Service or Member's Secretariat)
- ii) not take part in the processing or determination of the application, and;

iii) not lobby Members or Officers either directly or indirectly.

9.3 In accordance with the Development Control Scheme, any application in which an interest has been declared under this Section must be determined by the appropriate Committee and not under the scheme to delegation to Officers.

9.4 Any declaration of interest should be noted in the report to Committee and minuted.

## **10. GIFTS AND HOSPITALITY**

10.1 The receipt of gifts or hospitality by either Members or Officers can affect the perceived integrity of the planning system. Any offer of a gift, favour or hospitality should be treated with extreme caution.

10.2 The Council has accepted the recommendation of the Standards Committee about the acceptance of gifts and hospitality. A copy of this is attached as Appendix 1.

10.3 All receipts or offers of gifts or hospitality must be notified to the Monitoring Officer on the appropriate declaration form.

10.4 Members should carefully consider whether the nature of any offer of gift or hospitality they have received is such that they ought to stand down from participating in any discussion and decision made on a particular planning application or other planning matter.

10.5 Members should declare the fact of the receipt of any offer of gift or hospitality at any Committee meeting at which the planning application or other planning matter is to be discussed, and should consider, in the event of the offer of any gift or hospitality having been accepted, whether they should declare any interest.

10.6 In cases of doubt Members or Officers should refer to the Monitoring Officer, for advice.

## **11. RELATIONSHIPS BETWEEN MEMBERS AND OFFICERS**

11.1 Good administration is dependent on a successful relationship between Councillors and Officers which can only be based on mutual trust and understanding of each others roles and responsibilities. This relationship, and the trust which underpins it, should not be abused or compromised.

11.2 Officers have a duty to give impartial advice to Councillors and the Council on planning applications and other planning matters, and to make recommendations to Committees in the light of the Council's adopted planning policies and national planning policies using their professional judgement. Members should not attempt to use their position to pressurise officers into making a particular recommendation.

11.3 Any criticism of Officers by Members, in relation to the handling of any planning applications or other planning matters, should be made, in writing, to the Service Director and not to the Officer concerned or through the local media.

11.4 If any Officer feels or suspects that pressure is being exerted upon him/her by any Member of Council in relation to any particularly planning matter he/she should notify the matter to the Service Director.

## **12. LOBBYING, PREDETERMINATION AND BIAS**

12.1 It is important that Members deciding planning applications should not put themselves in a position where they could be seen to have made their minds up on a particular planning issue before the Committee (predetermination)

12.2 Lobbying is a normal and perfectly proper part of the political process. Lobbying of Members for their support in relation to development applications is likely to come from:

- applicants or their agents, or other interested third parties (eg landowners) looking for support for a proposed development.
- local residents or other third parties objecting to a proposed development
- as part of presentations on emerging projects from partners organisations during working groups, Overview or Scrutiny Committees

12.3 Similarly, there are likely to be individuals, companies, or groups looking for support for or against particular decisions in relation to the adoption of planning policies, and any other planning related issues.

### **To avoid the appearance of bias and predetermination the following is recommended:**

12.3.1 Members should avoid expressing an opinion which may be taken as indicating that they have already made up their minds on an issue before they have the benefit of all the evidence and arguments. This may include comments made during debates in Cabinet, Overview or Scrutiny Committees where future projects are being discussed.

12.3.2 Members should never indicate the likely decision on an application by Committee or otherwise committing the Authority

12.3.3 Members should restrict themselves to giving procedural advice, including the Council's public consultation arrangements and how representations can be made.

12.3.4 Members should refer any approaches to Planning Officers and/or where considered appropriate, and possible, direct the lobbyist to another Member of Council not on the decision making Committee.

12.3.5 Where a Member receives written representations, documents or other information directly in relation to a planning application under consideration, or a prospective application, a copy of the correspondence, documents or information should be passed to the Planning Service in order that they can be included in the Committee Report. When this is not possible due to timescales the Member should present the representations, documents and information at the Committee Meeting.

- 12.3.6 Members should make it clear that they will only be in a position to make a final decision after having heard all the relevant evidence and arguments at the Committee meeting. The Committee report may well contain issues previously unknown to the Councillors. Also, further aspects affecting the decision can arise during the discussion or through public speaking rights at the meeting, which were not previously evident.
- 12.3.7 Members on the Planning Committee or other decision making Committee should not organise support for, or opposition to, a planning application, adoption of a policy or any other planning related issue, or seek to lobby other Members or act as advocate.
- NOTE: In order to assist Members to comply with the Code, a standard reply for Members to use in response to both verbal and written representations on planning applications is attached as **Appendix 2**. This suggested wording sets out Members' neutral position on such planning matters until they have all the facts before them.
- 12.4 Members should report instances of significant or persistent or inappropriate lobbying, particularly from an applicant or their agent, to the Monitoring Officer
- 12.5 No Member of Council should state, or give the impression, that he/she is able to secure a particular outcome on a planning application.
- 12.6 A Member sitting on a Planning Committee who represents a ward affected by a planning proposal may be in a difficult position, particularly if it is a controversial application. If a Ward Member responds to lobbying by going public in support of a particular outcome it will be difficult for that Member to argue convincingly when Committee makes a decision that he/she has carefully weighed up all the evidence and arguments presented.
- 12.7 Whilst not amounting to a personal or personal and prejudicial interest that Member would have prejudiced their position in the decision making process on that application.
- 12.8 Any Member of a Planning Committee who responds to lobbying by going public in support of a particular outcome on a planning application prior to a Committee meeting should make an open declaration at the meeting at which the application is considered and not vote on the issue. The Member may seek to address the meeting on the same basis as a non-committee member.
- 12.9 This could be seen as a restriction on the Councillor's wish, and duty, to represent the views of the electorate. The situation therefore underlines the advice earlier in this section, that Members should await the presentation of all the evidence at a Committee meeting before making a final decision.

### **13. DISCUSSIONS/MEETINGS BETWEEN APPLICANTS, THE COUNCIL AND LOCAL COMMUNITIES**

- 13.1 Discussions and meetings between potential applicants or their agents and the Council prior to the submission of an application, are encouraged and can be of considerable benefit to both parties. In some cases, these discussions may need to be held in confidence with officers, for example, where a developer has an option on acquiring land, or is in competition to acquire it and disclosure of proposals could prejudice a negotiating position. The role of the officer in these discussions is, without prejudice to any decision of the Council, to explain and interpret the relevant policies which will apply to a proposal.
- 13.2 Officers may give an indication of the recommendation which is likely to be made to any Planning Committee, particularly in the light of the provisions of the Development Plan. It should be made clear that this will not bind the Council to making a particular decision.
- 13.3 In many cases, and particularly major or complex proposals, developers will seek to share their proposals with the public and the Council before making a planning application. This allows developers to inform the public at the earliest opportunity and undertake meaningful community engagement and to inform and shape development to meet community aspirations and address policy requirements.
- 13.4 Early discussions with Officers and in appropriate circumstances with relevant Members about significant future development proposals are therefore encouraged, provided that they do not become, or are seen to be (by objectors) part of the lobbying process. Guidance on these issues has been published by central government and the Local Government Association.
- 13.5 In order to avoid such problems, these meetings and discussions with potential applicants, or their agents, should take place within the guidelines set out below.
- 13.5.1 It should always be made clear at the outset that the discussions will not bind the Council to making a particular decision and that any opinions expressed are provisions and are not those of the Council. Officers and Members should clearly explain at the outset their role.
- 13.5.2 By the very nature of such discussions not all relevant information will be to hand, and in the case of pre-application discussions, no formal consultations with interested parties will have taken place.
- 13.5.3 Any advice made by Officers should be impartial and based upon the Development Plan and material planning considerations.
- There should not be a significant difference of interpretation of planning policies and standards between Planning Officers and between Planning Officers and Members when both are involved.**
- 13.5.4 A written note should be made of any discussion/meeting and placed on the appropriate file. Where a developer prepares a note of the meeting, this should be checked for accuracy and retained on file, and the developer informed in writing of

any material inaccuracies.

- 13.5.5 A follow up note or letter should be sent following any potentially contentious meeting or a meeting involving a number of issues or where documentary material has been left with the Council.
- 13.5.6 Care should be taken to ensure that advice is impartial, and seen to be, otherwise a subsequent report could appear to be promoting a particular view. No indication should be given at the pre application stage as to what recommendation will be made when the application is submitted.
- 13.5.7 Under no circumstances should Members arrange to meet applicants/agents or third parties for the purposes of a site inspection.**

### **COUNCILLORS INVOLVEMENT IN PRELIMINARY DISCUSSIONS/MEETINGS**

- 13.6 Where councillors are involved in meetings with developers the following additional requirements will apply:
  - 13.6.1 Community engagement about a specific development proposal is often best undertaken by the prospective developer at the pre application stage. This will generally be considered when a developer is certain of making an application and wishes to inform the community and canvass opinion about the proposals, so these may be taken into account in the submitted scheme. It is not normally the role of the Council or any councillor to organise this engagement. However, if a councillor did decide to organise such a pre application meeting, the developer should be invited as well as the public and the purpose should be clear, that it is to obtain information and views from both sides. In certain cases, it would also be advisable to invite relevant consultees.
  - 13.6.2 Members who wish to engage in such preliminary discussions should notify the Planning Service in writing so that their involvement can be recorded on the relevant planning file.
  - 13.6.3 The Executive Director, Service Director, or appropriate senior manager within the Planning Service, should be present at the meeting to advise and support councillors whenever possible.
  - 13.6.4 It is however important as community representatives, that Members should be able to participate and meaningfully contribute at this stage of the process, when developments are being formulated. Care will however need to be taken so that a participating councillor is not seen to have prejudged the proposal, if he/she is intending to sit on a Planning Committee when the resulting application is submitted for determination. Any consultation process should be transparent and maintain the probity of the process. The role of a councillor who wishes to take part in any future Committee debate on the application, is different from that of a community leader, in that it must be more passive and independent, due to the constraints of the planning process, and the need to maintain probity. This role is one of facilitation, of bringing the two sides together to exchange information and views. The councillor could even articulate the views of the community, without being prejudiced, providing it

was made clear he/she did not necessarily hold those views and would only make a judgement as and when the application presented to Committee for consideration, along with all the accompanying Officer advice and information. If however the councillor takes a more active role in promoting or opposing a development, an interest must be declared.

- 13.6.5 When councillors take an active role in preliminary discussions/community engagement exercises, it is recommended they provide a written note of this to the Planning Service, in order this is retained on the planning file. This should also be reported to Committee.
- 13.6.6 Where a councillor sitting on a Planning Committee, which would determine any proposal once it is submitted, decides to participate in a community engagement exercise, and has expressed a particular viewpoint, which could be seen as prejudicial or having formed a view on the application, the councillor must declare the interest and leave the room whilst the application is determined, unless they decide to make representations to the Committee under the normal public speaking arrangements. This involvement should also be minuted.
- 13.6.7 Two or more Officers should attend potentially contentious meetings.
- 13.6.8 A note should be made by Officers of contentious telephone discussions and should be placed on the appropriate file.
- 13.7 The same rules apply to meetings and discussions once a planning application has been made.**

#### **14. COMMITTEE SITE VISITS**

- 14.1 The purpose of a site visit should be:-
- to provide Members the opportunity to familiarise themselves with relevant features of a site and its surroundings and
  - to learn something from the visit which is otherwise not ascertainable from the Officer's report to Committee and the submitted documentation and plans.
- 14.2 **There should be no public announcement of a visit and no Member of Council should seek or organise any site demonstration of public opinion or lobbying by the applicant/agent or other third party.**
- 14.3 No decision on an application will be made at the site visit. Those Members attending will report back to the formal meeting of the relevant decision making Committee when the particular application is considered, as no discussion or decision can be taken at this time.
- 14.4 Justification for a site visit will normally be in cases where:-
- i) the impact of a proposed development is difficult to visualise from plans and submitted material or from the Officer's report.
  - ii) There is a good reason why the comments of the applicant or objectors cannot be

expressed adequately in writing.

- iii) a proposal is particularly contentious or significant.
- iv) a recommended action could lead to loss of jobs and/or financial hardship e.g. refusal of a retrospective application, leading to enforcement proceedings.

14.5 The decision to hold a site visit will normally be made in one of the following ways:

- i) by resolution of a Committee to defer consideration of an application for viewing, at the request of a Member(s) of that Committee. Such requests should be made and seconded and Committee should vote on the issue.
- ii) Where the Planning Service considers that an application site should be viewed by Members prior to the application being determined.

14.6 Members requesting a site visit at Committee should state their reasons and whether or not they have been approached by the applicant/agent, objector or other third party. The decision of the Committee and their reasoning should be minuted.

14.7 Requests for site visits by Members should not be made for the purpose of delaying an application, hearing local views or holding a public meeting on site or to allow lobbying by an applicant/agent or other interested third party.

14.8 When an application is placed on the viewing agenda by the Planning Service the reasons for this will be noted in the Committee report and the holding of the site visit shall be minuted.

14.9 The following rules will be observed in relation to Committee site visits:-

- i) The Chair (or nominated 'stand in') will control the proceedings throughout.
- ii) If non-Committee Members (Ward Councillors, applicant/agent, objectors or other third parties) are present the Chair or Planning Officer will explain the purpose of the visit and the constraints set out below. (ie that the visit will be run on the strict lines as a Planning Inspector's site inspection for appeals).
- iii) The Planning Officer will describe the proposal with references to features on the ground and the submitted plans and will summarise the relevant issues and material considerations.
- iv) Other Officers may be in attendance to provide specialist information.
- v) The Officers will provide clarification on matters relevant to the proposal in response to questions from Committee Members. He/she will not respond to points made by other parties except when the Chair agrees that clarification is required.
- iv) During site visits no separate discussions should take place between Officers/Members and either the applicant/agent, objectors or other third parties.
- v) No hospitality will be accepted from the applicant/agent or any other party on the site visit.
- v) Applicants or their representatives shall not be permitted to make representations to members of Committee during the site visit. They may, however, with the Chair's agreement, give purely factual information which is requested by Members and which cannot be ascertained by viewing alone.
- vi) Lobbying by applicants/agents or objectors or other third parties during a site visit will not be allowed.
- vii) Members should avoid making any statements which would prejudice their later

consideration of the application.

- viii) The Chair will conclude the site visit. No decision will be made on the visit and no indication of the views of Members or the likely outcome of the Committee deliberations should be given.
- ix) If the Members require any further information or clarification of any aspect of the proposed development, the Officer attending the visit should be asked to ensure that such information is available at the subsequent Committee meeting.

## **15. DECISIONS BY COMMITTEE**

- 15.1 Having regard to the fact that decisions on planning applications are made in the public arena, Members of the decision making Committee should conduct their business in a fair and sensitive manner. The debate on a planning application should be confined to the planning merits, or otherwise, of a development proposal.
- 15.2 The following statements of law should be observed when planning applications are determined.
  - i) a party political stance on a planning application is unlawful;
  - ii) a party whip upon a planning application is unlawful.
  - iii) it is for Members as individuals to balance the proper planning considerations in order to reach their judgement on a planning proposal.
  - iv) it is wrong for a Member to vote for a motion on a planning application simply because it is moved by a Member of his or her party.
  - v) it is wrong for a Member to vote on a planning application with other Members of his or her party because they are members of that party; and
  - vi) it is wrong for a Member to vote on a planning application without coming to a properly balanced judgement on the basis of proper planning considerations.
  - vii) group meetings held prior to Committee meetings, at which members decide on which way they will vote on particular planning applications, should not be held.
- 15.3 The Council has a duty to process applications without undue delay. Applications should not be deferred as a delaying tactic or to put off making a decision because of the number of objectors at a meeting or because of uncertainty in the face of opposing parties being present at the meeting.
- 15.4 Decisions taken by Committee should be open and transparent in the sense that any fact or document which Committee takes into account in coming to a decision should be a matter of public record.

## **16. DECISIONS CONTRARY TO OFFICER RECOMMENDATIONS AND SUBSEQUENT APPEALS**

- 16.1 In determining planning applications, a Committee is entitled to decide the weight to be attached to the various planning considerations relevant to the application. This could lead to a decision being taken contrary to the recommendation of the officers.

- 16.2 In these circumstances, it is essential that the reasons for the decision are clear in the minds of the Committee members. It is often possible for the Committee to be clear about the reasons for refusal and to set these out in detail when the application is first considered. Sometimes it may be necessary to defer an application for a further report to enable detailed reasons to be framed and considered. In terms of decisions to grant permission contrary to office advice, Committee may be happy for these to be left with the Officers, or in some cases for subsequent agreement with the Chair.
- 16.3 Where a decision making Committee wish to refuse an application contrary to an Officer recommendation the reasons for refusal should be clearly stated and a detailed minute of the decision should be made. In some cases, the Committee minutes will constitute the Council's statement on appeal.
- 16.4 Where a Committee wish to grant planning permission contrary to an Officer recommendation a detailed minute of the Committee's reasons will be made. Committee should indicate whether there are any specific conditions which they wish to see imposed.
- The drafting of appropriate conditions, including any specifically identified by Committee will normally be delegated to senior officers in consultation with the Borough Solicitor as necessary, unless the Committee indicate otherwise.
- 16.5 Where Members wish to add extra planning conditions or delete recommended conditions, a detailed minute of the reasons for the Committee's action should be made.
- 16.6 In the cases of decisions made contrary to Officers recommendation, the Officer attending the meeting should be given the opportunity to explain the implications of the decision. This is particularly important where decisions are taken contrary to adopted policies or national guidance.

## **17. PRESS COMMENTS**

- 17.1 All Members and Officers should ensure that any contact which they have with the press should accord with the principles of this Code and should not affect the integrity of the planning system.
- 17.2 In particular,
- Members of the relevant decision making Committee should ensure that they do not create the impression that they have prejudged the application.
  - All other Members should ensure that they do not create the impression that the Council has already prejudged the planning application.
  - Officers should restrict their comments to factual matters and should ensure that they do not prejudice the Council's position with regard to any application.

## **18. COUNCIL DEVELOPMENTS AND DEVELOPMENT ON COUNCIL LAND**

- 18.1 As a local authority exercising a wide range of functions the Council will often require planning permission to carry out developments. As a landowner, the Council may also wish to dispose of land or buildings and, in order to do so, to obtain a planning permission for their future use or development. It is important to demonstrate that no preferential treatment is given to them, and give rise to any suspicions of impropriety.
- 18.2 Proposals submitted by the Council for development which the Council intends to carry out, or for the development of Council land will be handled in the same way as applications for private developments, in accordance with the Delegation Scheme.
- 18.3 It is important that the Council is seen to be treating such applications on an equal footing with all other applications as well as actually doing so.

## **19. SANCTIONS**

- 19.1 The application of, and adherence to this Code is intended to build public confidence in the Council's planning system and to produce a strong platform for decision-making on planning applications and other planning matters. The Code does not remove the responsibility of Members to exercise their discretion to determine the merits of individual applications and/or proposals.
- 19.2 A failure to adhere to the Code may give rise to a range of potential consequences to a Council, and individual Members, especially if this results in a pattern of inconsistency. The normal sanction of the democratic process is through the ballot box. Consistency and fairness are important qualities in the public eye and they are vital to the conduct of the Committees dealing with planning matters. Beyond the normal democratic process, a number of specific consequences can be identified.

### **THE LOCAL GOVERNMENT OMBUDSMAN**

- 19.3 Although the Local Government Ombudsman will not investigate the balance or argument in any planning decision, the Ombudsman may agree to investigate a planning complaint if it concerns the manner in which a decision was taken. If it is found that injustice has been caused by maladministration in the light of statutory or established Council procedures, the Ombudsman will recommend redress which may take the form of compensation.
- 19.4 Where the Local Government Ombudsman makes a finding of maladministration then the report may name the individual Member and give particulars of the breach.

### **APPEALS TO THE SECRETARY OF STATE**

- 19.5 An applicant who has been refused planning permission or where permission has been granted subject to conditions with which he/she is not satisfied has a right of appeal to the Secretary of State. If an appeal is successful and it is shown that the Council's conduct in dealing with the matter was unreasonable, the appellant's costs may be awarded against the Council.

## **JUDICIAL REVIEW**

- 19.6 If objectors are convinced that the Council, in determining to grant an application, did not observe their statutory obligations to carry out all necessary procedures, base their decision on the Development Plan and take into account all representations, they may apply for judicial review of the decision, which might result in it being quashed. In such circumstances it would be normal for the costs of the Court hearing to be awarded against the Council.

## **POWERS OF THE SECRETARY OF STATE**

- 19.7 The Secretary of State possesses a range of powers which could be exercised where a local planning authority appears to be making inconsistent decisions, or decisions which are seriously in conflict with national and development plan policies. This could involve a greater use of the power to "call in" applications, whereby an application would be determined by the Secretary of State following a public inquiry. Where permission has already been granted by the Council, powers exist to revoke or modify permissions, or to require discontinuance of a land use, which if exercised would give rise to a liability to compensate on the part of the Council.

## **20. APPLICATION OF THE CODE TO THE DEVELOPMENT PLAN PROCESS AND OTHER PLANNING FUNCTIONS**

- 20.1 In the Development Plan process, decisions are made by the Council regarding allocations and policies which relate to specific sites, or general policies which are not site specific but can have a bearing on how and what land can be developed. All these affect private interests.
- 20.2 During the Development Plan process Members and Officers will be dealing with people putting forward proposals for inclusion in the Plan, whilst others will be objecting to the proposals in the Plan.
- 20.3 In addition to planning applications, other development control functions include enforcement action, tree preservation orders and dealing with listed buildings and conservation areas. All these areas of work involve important decisions being made which affect people's interests. Decisions are made by Officers in consultation with Members under the terms of the Development Control Scheme.
- 20.4 It is essential, therefore, both Members and Officers have regard to the guidance in this Code of Conduct in relation to these other areas of work besides planning applications.
- 20.5 The procedures and practices set out in this Code, when not wholly relating to the planning application function, should be applied in these other areas of work when Members and Officers are discharging their duties.

The Mayor and Deputy Mayor when acting in a representative capacity be exempted from the provisions of this Policy if a recommendation of the Standards Committee has been accepted by Council.

**Registration of gifts and hospitality**

- (1) A Member must within 28 days of receiving any gift or hospitality over the value of £25, provide written notification to the Authority's Monitoring Officer of the existence and nature of that gift or hospitality.
- (2) All Members must refuse all gifts of hospitality in excess of £100 (if received on one occasion) or in excess of a total of £100 (if received on more than one occasion in the same Municipal Year from the same individual or organisation), except with the approval of the Chief Executive (all such exceptions to be reported to the Standards Committee).
- (3) The Mayor and Deputy Mayor when acting in a representative capacity be exempted from (1) and (2) above but that any gift with a value in excess of £100 should be registered and a record kept of where it is stored or displayed

**GUIDANCE FOR MEMBERS IN DEALING WITH REPRESENTATIONS ON PLANNING APPLICATIONS**

**SUGGESTED WORDING OF LETTER THAT MEMBERS MAY WISH TO USE WHEN RECEIVING REPRESENTATIONS/REQUESTS FOR SUPPORT ON PLANNING APPLICATIONS**

Dear

**TOWN AND COUNTRY PLANNING ACT 1990**

**PLANNING APPLICATION D.....  
(Proposal)  
(Location)**

I refer to your request for assistance regarding the above planning application currently being considered by the Council.

As your elected representative I will ensure your views on this application are both brought to the attention of the planning officer dealing with it and are considered by the ..... Planning Committee.

However, my role as a member of the decision making Committee requires that I maintain a 'neutral position' on all planning applications until such time as I receive a report setting out the full facts and policy considerations to enable a decision to be made. For these reasons I am unable to express a view on this matter at this particular point in time.

\* See note re additional paragraph if required.

I do hope you understand my position and I will ensure that you are advised on the outcome of the application.

Yours sincerely

Councillor .....

\* Additional paragraph if required.

Should you wish me to pass your concerns to Councillor ..... (telephone .....) who is also a Ward Member but not on the decision making Committee then I will happily do so. Please advise me as soon as possible.