

DUDLEY M.B.C.

MEMBERS' PLANNING CODE OF GOOD PRACTICE

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Members' Planning Code of Good Practice

Background

This Code of Good Practice has been prepared in response to the Local Government Association's Guidance Note on the preparation of Local Codes of Good Practice on Planning Matters, in the light of the introduction of the new ethical framework and in consultation with the District Audit Service, Local Government Ombudsman and the Standards Board for England.

The Code was adopted by the Council on the 2008

Introduction

The aim of this Code of Good Practice: to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well-founded in any way.

The key purpose of Planning: to plan, control and manage development in the public interest.

Your role as a Member of the Planning Authority: to make planning decisions openly, impartially, with sound judgment and for justifiable reasons.

When the Code of Good Practice applies: this Code applies to Members at all times when involving themselves in the planning process. (This includes, where applicable, when part of 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, and it applies to the Tree Preservation Orders' Committees when dealing with planning applications relating to trees.

If you have any doubts about the application of this Code to your own circumstances, you should seek advice early, from the Monitoring Officer or one of their staff, and preferably well before any meeting takes place.

1. Relationship to the Members' Code of Conduct

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

purposes of planning control. If you do not abide by this Code of Good Practice, you may put:

- the Council at risk of proceedings on the legality or maladministration of the related decision; and
- yourself at risk of either being named in a report made to the Standards Committee or Council or, if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Standards Board for England.

2. 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. **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** try to represent ward views, get another Ward Member to do so instead.
 - **Don't** get involved in the processing of the application.
 - **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 greater limitations on you in representing that proposal than would apply to a normal member of the public. However, you will be able to make use of the public speaking scheme to address the meeting on the proposal but, unlike an ordinary member of the public, you will then have to withdraw from the room whilst the meeting considers the proposal

- **Do** notify the Monitoring Officer in writing of your own application **or where you are acting as an agent for the applicant** and note that:
 - > notification to the Monitoring Officer should be made no later than submission of the application;
 - > the proposal will always be reported to the Development Control Committee as a main item and not dealt with by officers under delegated powers; and
 - > **for your own application** it is advisable that you employ an agent to act on your behalf on the proposal in dealing with officers and public speaking at Committee
 - > **where you act as an agent you will be able to use the public speaking scheme to address the meeting but you must then leave the room. If you do intend to speak, you must remember to declare a personal and prejudicial interest.**

3. Fettering Discretion in the Planning Process

- **Don't** fetter your discretion and therefore your ability to participate in planning decision-making at this Council 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 meeting of the Development Control 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. (If you have a 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.)
- **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body, (e.g. an Area Committee) provided:
 - the proposal does not substantially effect the well-being or financial standing of the consultee body;

- 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, or ward, as and when it comes before the Committee and you hear all of the relevant information; and
 - > you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Development Control Committee; and
- you disclose the personal interest regarding your membership or role when the Development Control 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.

4. Contact with Applicants, Developers and Objectors

- **Do** refer those who approach you for planning, procedural or technical advice to planning officers.
- **Don't** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Director of the Urban Environment or his officers to organise it. The officer(s) will then 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 Development Control 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 Director of the Urban Environment or his officers 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 planning presentation unless a planning officer is present and/or it has been organised by officers
- **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, and that this will be carried out by the Development Control Committee.
- **Do** be aware that a presentation is a form of lobbying, and you must not express any strong view or state how you or other Members might vote. You must at all times avoid the risk of having pre-judged or to be perceived as having prejudged the matter.

5. 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 to express 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.
- **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible, and remember to register the gift or hospitality where its value is over £25.
- **Do** copy or pass on any lobbying correspondence you receive to the Director of the Urban Environment at the earliest opportunity.

- **Do** promptly refer to the Director of the Urban Environment any offers made to you of planning gain or constraint of development, through a proposed Section 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; or
 - seeking information through appropriate channels.

6. 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 and have to withdraw.
- **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, 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 Development Control 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, or 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.

7. Site Visits

- **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 that specific site factors need to be carefully addressed and which justify the delay in the decision being made.
- **Do** ensure that any information that you gained from the site visit is reported back to the Development Control Committee so that all Members have the same information.
- **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 planning officer present.
- **Don't** express opinions or views to anyone.
- **Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
 - 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 Director of the Urban Environment 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.
- **Don't** enter any land adjoining the site which is subject to a proposal without the specific prior consent of the owner of that land.

8. Public Speaking at Meetings

- **Don't** under any circumstances 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, ***as set out in the Appendix to this Code.***

9. Officers

- **Don't** put pressure on planning officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Director of the Urban Environment which may be incorporated into any committee report).
- **Do** recognise that planning and other professional officers are part of a management structure and only discuss a proposal outside of any arranged meeting with a Director or those officers who are authorised by their Director 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 strict 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 Development Control Committee or its Members or those of other parts of the Council.

10. Decision Making

- **Do** ensure that, if you request a proposal to go before the Development Control Committee rather than be determined through officer delegation, that your reasons are recorded and repeated in the report to the Committee.
- **Do** come to meetings with an open mind and demonstrate that you are open-minded and that you have not pre-judged the decision in any way.
- **Do** comply with Section 38(6) of the Planning and Compulsory Purchase Act 2004, and make decisions in accordance with the Development Plan (regional or local) 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. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.
- **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- **Do** have recorded the reasons for the Committee's decision to defer any proposal (and that this is in accordance with the Council's protocol on deferrals).
- **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the Development Plan, that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by personally giving evidence in the event of any challenge. Failure to do this not only increases the chance of a successful appeal; but also exposes the Council to a significant danger of costs being awarded against the Council.

11. Committee Reports

- When planning applications are reported to the Development Control Committee, reports should be formulated to ensure that all relevant matters are identified and addressed.
- Reports should be accurate and cover all relevant points, as recommended by the Ombudsman. Relevant points will include a clear exposition of the Development Plan, in particular the Unitary Development Plan, site or related history, and any other material considerations. Where necessary, reports should contain a technical appraisal which clearly justifies the recommendation.
- All reports should have a written recommendation of action. Oral reporting (except to update a report) should be extremely rare and carefully minuted when it does occur. If the report's recommendation is contrary to the provisions of the Unitary Development Plan, the material considerations which justify this must be clearly stated.
- Reports should include details of any planning obligation required of the applicant, and of any other requirements/legal actions necessary to allow a decision to be implemented.

- It is particularly important that this process is adhered to. Not only is this a matter of good practice, but failure to do so may constitute maladministration and/or give rise to judicial review on the grounds that the decision was not taken in accordance with the provisions of the Unitary Development Plan and the Council's statutory duty under Section 38(6) of the Planning and Compulsory Purchase Act 2004.
- Corrections, amendments and the provision of additional information known as Pre-Committee Notes (which becomes available subsequent to the Committee agenda being finalised) should be circulated at the Development Control Committee meeting as an addendum to the formal agenda, or when necessary, reported orally to the meeting. It is important that Members take full account of these pre-committee notes when considering the application and, subsequently, making the decision.

12. Delegation of Decision Making

- The Development Control Committee is appointed by the Council and the Committee is authorised by its terms of reference to determine all matters which fall within the following categories:-
 1. As a local planning authority.
 2. The highway functions contained in Sections 249, 250, 257, 258 and 259 of the Town and Country Planning Act 1990.
 3. In respect of all matters relating to the Building Regulations.
 4. The implementation of the Council's existing Equal Opportunities' Policy in relation to the Committee's functions.
 5. Authorise the institution of proceedings under Sections 1, 10 and 11 of the Planning and Compensation Act 1991.

Other than:-

1. The acquisition, disposal or appropriation of land to or from such purposes.
 2. Those aspects of development plans which fall within the terms of reference of other Committees.
- Within the terms of reference and subject to the provisions of the Council's Standing Orders and Financial Regulations, the Director of the Urban Environment is delegated to exercise specific powers and duties, as set out and approved by the Council, provided that such exercise does not conflict with a decision taken by the Council or the Committee. The Director of the Urban Environment may refer any matter to the Committee

for consideration whether or not it falls within any power which he is authorised to exercise. The Council's Director of Law and Property similarly has delegated powers to deal with a specified range of legal matters relating to planning procedures.

- All decisions taken by the Director of the Urban Environment in respect of planning applications and associated matters are recorded and open to audit and inspection.
- The Council has also approved that additional planning applications, not included in the delegated powers given to the Director of the Urban Environment referred to above, be delegated for determination to the Director of the Urban Environment, in consultation with the Chairman (or Vice Chairman as substitute) of the Development Control Committee. This extended delegation provision includes all planning applications other than the following, which remain to be determined by the Development Control Committee:-
 - (a) any proposed development which would be an advertised departure from the adopted Unitary Development Plan or approved Supplementary Planning Guidance, where the recommendation of the Director of the Urban Environment is to grant planning permission
 - (b) any proposed development which would have a significant impact outside of its immediate vicinity, e.g. it would generate significant volumes of traffic, noise or atmospheric pollution: or it would have a significant impact on the pattern of trading: or it would be prominent in the landscape, etc.
 - (c) any proposed development which has given rise to a substantial weight of public concern
 - (d) notwithstanding paragraphs (a), (b) and (c) above, all applications requiring a legal agreement under Section 106 of the Town and Country Planning Act 1990, and all development that affects the stopping-up, diversion or the creation of highways, where planning permission is required.

These extended delegations are subject to the following procedural arrangements to ensure that the public interest is safeguarded:-

- (a) all applications submitted for delegated decision by the Director of the Urban Environment and the Chairman of the Development Control Committee, will be the subject of a full and detailed written report.
- (b) there is provision for the Director of the Urban Environment, in consultation with the Chairman, to refer any planning application submitted for delegated decision, to the Development Control Committee for its determination.

- (c) any member of the Council may request that any planning application be referred to the Development Control Committee for determination, with reasons given for such request.
- (d) all decisions taken in respect of planning applications submitted for delegated decision by the Director of the Urban Environment in consultation with the Chairman, must be recorded and made available for public inspection.

13. Training

- **Don't** participate in decision-making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.
- **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 carry out your role properly and effectively.
- **Do** participate in the annual review of a sample of planning decisions (referred to in Section 14 below) to ensure that Members' judgments have been based on proper planning considerations.

14. Review of Committee Decisions

- The public is becoming increasingly aware and concerned about the impact that planning decisions have on the environment and their amenities. However, planning is not an exact science and it relies upon informed judgment by officers and members within a firm policy context.
- The quality and consistency of decision-making is, therefore, a very important element of the planning process. It should be regularly monitored and reviewed and amended when and where necessary.
- The Development Control Committee will undertake, at least annually, a sample review of decisions taken. This should include major and minor development, permitted departures, upheld appeals, listed building works and enforcement cases.
- On a regular basis, the Director of the Urban Environment will report to the Development Control Committee on:
 - the outcome of applications referred by adjoining planning authorities
 - the outcome of authorised enforcement actions

- appeal decisions
- planning obligations (Section 106 Agreements).

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Public Speaking at Development Control Committee

1. In accordance with best practice, the Council has resolved to provide the public with a right to speak at meetings of the Development Control Committee. The intention is to give members of the public **and ward members** the opportunity to express their views directly to the Committee regarding the planning merits or otherwise of individual planning applications. This right to speak also applies to applicants or their agents
2. The **Council** has adopted the following protocol in respect of public speaking:-

- (1) That planning applications upon which public speaking will be invited be identified by the Director of the Urban Environment in consultation with the Chairman of the Development Control Committee using the following criteria:-
 - (a) the proposed development would be an advertised departure from the adopted Unitary Development Plan or approved supplementary planning guidance where the recommendation of the Director of the Urban Environment is to grant planning permission.
 - (b) the proposed development would have a significant impact outside of its immediate vicinity, e.g. it would generate significant volumes of traffic, noise or atmospheric pollution: it would have a significant impact on the pattern of trading: it would be prominent in the landscape: etc.
 - (c) the proposed development has given rise to a substantial weight of public concern.
- (2) That one person be allowed to speak on behalf of objectors, if any, (selected by the objectors or, if no agreement on representation can be reached, on a "first come" basis) and one person on behalf of the applicant. Where objectors, **or a ward member who objects to the application**, have given notice that they wish to speak, the applicant will be offered the same opportunity.

If the applicant declines the opportunity to speak, an objector **or ward member** will still be allowed to address Committee. If no objector **(including a ward member)** wishes to speak, then the applicant will still be given the opportunity of addressing the Committee, but only where the application is recommended for refusal.

- (3) That each speaker be allowed a single opportunity to a maximum of three minutes to present their case and will not be allowed a second chance to address Committee.
- (4) That the Director of the Urban Environment presents his report to Committee prior to public speaking on each individual planning application.
- (5) That no questioning of Members or Officers by speakers, or of speakers by Members or Officers, be allowed.
- (6) ***Any applicant (or their agent), any objector or ward member who wishes to speak at a meeting of the Development Control Committee, must notify the Development Control Section by 10.00 a.m. on the Friday prior to the meeting, to enable sufficient time for the Council to contact the other relevant parties.***