

DUDLEY MBC

CODE OF CONDUCT FOR MEMBERS AND OFFICERS - PLANNING MATTERS

ADOPTED CODE OF CONDUCT FOR MEMBERS AND OFFICERS - PLANNING MATTERS

1. INTRODUCTION

- 1.1 This Code has been prepared and adopted for the guidance of Officers and Councillors in their dealings with planning matters. The Code was adopted by the Council on [].
- 1.2 **The aim of this code** is to ensure that, in the planning process, there will be no grounds for suggesting that a planning decision has been biased, partial or not well founded on planning considerations and to inform potential developers and members of the general public of the standards adopted by the Council and the performance of its planning function.
- 1.3 **The aim of the planning process** is to plan control and manage development in the public interest.
- 1.4 **When this code applies** - to all members of the Development Control Committees and officers at all times when they are involved in the planning process. This would include, for example, making decisions at Development Control Committees, or if an officer, making delegated decisions on applications, or on less formal occasions such as meetings between members and Officers and/or Members of the public on planning matters. The Code applies equally to planning enforcement matters or site-specific policy issues and to planning applications.
- 1.5 Planning decisions made by Councillors can have a considerable effect on the value of land, the nature of its development and on the lives and amenities of people living in the vicinity. The process of arriving at decisions

on a planning matter must be open and transparent and the involvement of both Officers and Members must be clearly understood. The main principles which Members should have clear regard for are:-

- 1.5.1 The key purpose of planning is to deliver sustainable development which effectively balances economic, social and environmental interests and takes relevant location circumstances into account.
- 1.5.2 Your overriding duty as a Councillor is to all residents in Dudley and in relation to planning issues to help ensure that the Council's planning policies are achieved.
- 1.5.3 Your role as a member of the Planning Authority is to make planning decisions openly, impartially, with sound judgment and for justifiable reasons.
- 1.5.4 Whilst you may be strongly influenced by the views of others and of your party in particular it is your responsibility alone to decide what view to take on any question which councillors have to decide.
- 1.5.5 Section 38(1) and 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act requires you to take planning decisions in accordance with the provisions of the development plan (the Black Country Core Strategy, the Unitary Development Plan and any other development plan document) unless material considerations indicate otherwise. You should ensure that all decisions that you make have regard to proper planning considerations and are made impartially and in a way, which does not give rise to public suspicion or mistrust.
- 1.5.6 The Code applies to all decisions of the Council on planning related matters. This includes Members' involvement in any planning

application, whether or not it is reported to a Committee, all applications determined by any committee or by Full Council acting as a local Planning Authority.

1.5.7 When acting in your capacity as a Councillor you must have regard to the Council's adopted Code of Conduct.

1.6 If you have any doubts regarding whether this Code of Conduct for Members or Officers applies to your particular circumstances then you should take advice at the earliest possible opportunity from the Monitoring Officer or one of their staff. Any such advice should be sought well before any meeting of the local Planning Authority takes place.

2. THE MEMBERS' CODE OF CONDUCT

2.1 The Member's Code of Conduct sets out the standards of behaviour expected of Councillors and the requirements in relation to the declaration of interests in the Members' Register of Interests and at meetings. Not only should impropriety be avoided but also any appearance or ground for suspicion of improper conduct. When considering any planning matter you should have primary regard for the Code, and particularly the requirement to properly declare all interests.

2.2 **DO** comply with the requirements of the adopted Code of Conduct first.

2.3 **DO** then apply the rules in this Planning Code of Good Practice which seeks to explain and supplement the Members' Code of Conduct for the purposes of planning control.

2.4 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.

2.5 **If you do not** follow and apply the Code then you may put:-

2.5.1 the Council at risk of proceedings challenging the legality of the decision made or of a complaint to the Ombudsman in respect of alleged maladministration; and

2.5.2 yourself at risk of sanction if there has been a failure to comply with the adopted Members' Code of Conduct.

3. DEVELOPMENT PROPOSALS AND DECLARATION OF INTERESTS UNDER THE MEMBERS' CODE OF CONDUCT

3.1 When considering planning matters, Members may find that they need to:-

3.1.1 declare interests in accordance with the requirements of the adopted Code of Conduct; or

3.1.2 indicate whether or not they may have come to a fixed view on a planning application prior to the meeting (i.e. pre-determination).

3.2 The existence and nature of any interest should be disclosed in accordance with this Code at any Development Control Committee, any informal meetings or discussions with Officers and any other Members.

3.3 Members should preferably disclose their interests at the commencement of the meeting and not at the beginning of the discussion on that particular matter.

3.4 **Where you have a Disclosable Pecuniary Interest (DPI's)**

- 3.4.1 **DO NOT** participate or give the appearance of trying to participate in the making of any decision by the Local Planning Authority.
- 3.4.2 **DO NOT** try to represent ward views - get another Ward Member to do so instead.
- 3.4.3 **DO NOT** get involved with the processing of the application and direct any queries or technical matters to the relevant officer.
- 3.4.4 **DO NOT** seek or accept preferential treatment or place yourself in such a position so as members of the public would think you are receiving preferential treatment because of your position as a Councillor. An example would be where a member has an interest in a property and uses his/her position as Councillor to discuss a planning application with Officers or Members when ordinary members of the public would not have the same opportunity to do so. You may need to identify another local member who is prepared to represent local interests.
- 3.4.5 There is a requirement to withdraw from the meeting whilst the item is being discussed

3.5 **Development Proposals and Interests under the Members' Code**

- 3.5.1 **DO** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have an 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.

3.5.2 **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:-

3.5.2.1 Notification to the Monitoring Officer should be made no later than submission of the application;

3.5.2.2 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

3.5.2.3 **For your own application** it is advisable that you employ an agent to act on your behalf of the proposal in dealing with the officers and public speaking at Committee.

3.5.2.4 **Where you act as an agent you will be able to use the public speaking scheme to address the meeting but you must withdraw from the meeting once you have made representations to the Committee.**

3.6 Other Interests

3.6.1 **In addition to the Disclosable Pecuniary Interests, the Members Code of Conduct requires Councillors to disclose certain “other” interests in the following circumstances:**

3.6.1.1 If a decision in relation to a matter might reasonably be regarded as affecting the wellbeing or financial standing of

you or a member of your family or a person with whom you have a close association to a greater extent than it would affect the majority of the Council Tax Payers, ratepayers or inhabitants of the ward or electoral area for which you have been elected or otherwise of the Council's administrative area; or

3.6.1.2 It relates to or is likely to affect any of the Disclosable Pecuniary Interests, but in respect of a member of your family (other than a relevant person referred to on the form) or a person with whom you have a close association.

3.6.2 *You should withdraw from the meeting in circumstances where your impartiality might be called into question. If in doubt, always seek advice from the Monitoring Officer.*

3.7 **PRE-DETERMINATION IN THE PLANNING PROCESS**

3.7.1 The allowance made for Councillors to be predisposed to a particular view is a practical recognition of:-

3.7.1.1 the role played by party politics in Local Government;

3.7.1.2 the need for Councillors to inform constituents of at least an initial view on a matter as part of their public role;

3.7.1.3 the structure of local government which ultimately requires the same Councillors to make decisions.

3.7.2 It is, therefore, particularly important for elected Councillors to have a clear understanding about the implications of expressing strong opinions or views on planning matters.

- 3.7.3 Section 25 of the Localism Act, 2011 introduces provisions for dealing with allegations of bias or pre-determination or matters that otherwise raise an issue about the validity of a decision, whether the decision-maker(s) had or appeared to have a closed mind (to any extent) when making the decision.
- 3.7.4 The provisions in the Localism Act do not involve a change in the law. It puts the common law position of bias or pre-determination on a statutory basis.
- 3.7.5 The Act provides that a decision-maker is not to be taken to have had (or to have appeared to have had) a closed mind when making the decision just because:-
- 3.7.5.1 they had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter, and
- 3.7.5.2 the matter was relevant to the decision.
- 3.7.6 With this provision the Government expect Councillors to be able to publicise their views on issues, indicate their voting intentions and to engage fully with their local communities without this affecting their participation in the Council's formal decision making. In addition, Councillors should be able to engage with planning applicants to educate themselves about their proposals.
- 3.7.7 Thus, if a Councillor has campaigned on an issue or made public statements about their approach to an item of Council business, he or she will be able to participate in discussion of that issue in the

Council and to vote on it if it arises in an item of Council business requiring a decision.

3.7.8 However, Councillors will still need to be open minded at the point of decision in the sense of listening to all of the arguments and weighing them against their preferred outcome, before actually voting.

3.7.9 The difference is that the fact that Councillors may have campaigned against a proposal will not be taken as proof that they are not open-minded.

Examples:

In a situation where a member said something like “over my dead body” in respect of voting on a particular issue, the view must be that whilst the provision on pre-determination in the Localism Act might be useful in giving Councillors confidence about making their views on particular issues known, it has not changed the legal position that if a Member could be shown to have approached a decision with a closed mind, that could affect the validity of the decision.

3.7.10 Equally, if a Member had expressed views on a particular issue but could show that when taking the decision they had approached this with an open mind and taken account of all the relevant information, they could reasonably participate in a valid decision.

3.8 Important points to bear in mind:

3.8.1 If you give an indication of your viewpoint, when debating an application at DC Committee you must, at the outset, ensure that you indicate that you will take all relevant considerations into

account and that the decision will be based firmly on planning grounds and that they will ensure views are fully heard and taken into account by the Council.

3.8.2 It is a good idea to record your involvement.

3.9 **Lobbying by Councillors**

3.9.1 **DO NOT** 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 disclosable pecuniary interest and have to withdraw.

3.9.2 **In practice:**

3.9.2.1 A Councillor may campaign for or against a planning application, and still vote at Planning Committee, so long as they go into the meeting with an open mind to hear all the facts and evidence.

3.9.2.2 A Councillor quoted in a newspaper having said, “over my dead body will that planning application be approved. I will never support it under any circumstances”, could be said to have pre-determined the decision. These extreme statements should still be avoided.

3.9.3 It is important to note that if a member has expressed particularly extreme views, it will be more difficult in practice to be able to get away from the impression that they would approach the decision with a closed mind.

- 3.10 **Fettering your discretion** 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.
- 3.11 **DO** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body, provided:-
- 3.11.1 The proposal does not substantially effect the well-being or financial standing of the consultee body;
- 3.11.2 You make it clear to the consultee body that:-
- 3.11.2.1 your views are expressed on the limited information before you only;
- 3.11.2.2 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
- 3.11.2.3 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
- 3.12 You disclose the interest regarding your membership or role when the Development Control Committee comes to consider the proposal.

3.13 **DO NOT** 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.

3.14 **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

4.1 Local Authorities are encouraged to enter into pre-application discussions with potential applicants.

4.2 The Council encourages member involvement provided Members' roles in such discussions are clearly understood by Members, Officers, developers and the public. In particular, Members of Development Control Committee need to be aware of the distinction between the giving and receiving of information and engaging in negotiations. Without this Protocol Member involvement may inadvertently open a decision to challenge on the ground of apparent pre-determination. Members **should** also be aware that presentations by developers are, in effect, a form of lobbying and that the principles set out in paragraph 5 are relevant.

4.3 **DO** take advice from the Monitoring Officer if you are invited to attend meetings with applicants, developers or groups of objectors if you are a Member of the Development Control Committee and, therefore, likely to be part of the decision-making process. You will then be in a position to make a decision about your attendance having taken proper account of the issues relating to pre-determination.

- 4.4 **DO** refer those who approach you for planning, procedural or technical advice to officers.
- 4.5 **DO NOT** agree to any formal meeting with applicants, developers or groups of objectors. Where you feel that a formal meeting would be useful in clarifying the issues, such presentation or discussion with an applicant, developer or objector should be part of a structured arrangement organised by officers. You should never seek to arrange the meeting yourself but you should request the Director of the Urban Environment or his Offices 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 Committee.
- 4.6 **DO NOT** attend a planning presentation unless a Planning Officer is present and/or it has been organised by officers.
- 4.7 **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 Control Committee.
- 4.8 **DO** be aware that a presentation is a form of lobbying and if you express a view, you will need to carefully consider if you have pre-determined the matter prior to the vote.
- 4.9 **DO** otherwise:-
- 4.9.1 follow the rules on lobbying;

- 4.9.2 consider whether or not it would be prudent in the circumstances to make notes when contacted.
- 4.9.3 report to the Director of the Urban Environment 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.

5. LOBBYING OF MEMBERS

- 5.1 5.1.1 It is acknowledged that lobbying is an integral part of the planning process. However, care has to be taken to avoid members' integrity and impartiality being called in question and accordingly there is a need to declare publicly that an approach of this nature has taken place. Lobbying can take place by professional agents as well as unrepresented applicants/landowners and community action groups.
- 5.1.2 **DO** remember that your overriding duty is to the whole community and not just the people in your own particular ward.
- 5.1.3 **DO** explain to those lobbying or attempting to lobby you that whilst you can listen to what is being said it prejudices your impartiality and may affect your ability to participate in the Committee's decision making to express an intention to vote one way or another.
- 5.1.4 **DO NOT** accept any gifts or hospitality from any person or group involved in or affected by a planning proposal. Whilst a degree of hospitality may be unavoidable, Members must ensure that such hospitality is of a minimum and its acceptance is declared as soon as is possible (and remember to register the gift or hospitality when it is over £25).

5.2 Members **must** enter hospitality in accordance with the rules on gifts and hospitality

5.2.1 **DO** copy or pass on any lobbying correspondence you receive to the Director of the Urban Environment and Head of Planning at the earliest opportunity as this will enable proper officer advice to be given in the report and avoid the situation where Officers are asked to respond to new information at the meeting itself, leading to deferral or decisions made on partial advice.

5.2.2 **DO** immediately refer any offers to the Director of the Urban Environment or and Head of Planning made to you of planning gain or a constraint of development through a proposed s106 obligation or otherwise.

5.2.3 **DO** inform the Monitoring Officer where you feel that you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality) that may require an investigation.

5.2.4 **DO** note that unless you have a disclosable pecuniary interest you will not have pre-determined a matter or breached this Code if:-

5.2.4.1 you have listened or have received views from residents or other interested parties;

5.2.4.2 you have made comments to residents, interested parties, other Members or appropriate officers, provided the comments have not amounted to a pre-determination of the

issue and you have made it clear that you are keeping an open mind;

5.2.4.3 you have sought information through appropriate channels;
or

5.2.4.4 you are being a vehicle for the expression of opinion or speaking at the meeting as a Ward/Local Member, provided that you explain your actions at the beginning of the meeting or item and make it clear that, having expressed the opinion or ward/local view, that 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.

6. LOBBYING BY DEVELOPMENT CONTROL COMMITTEE MEMBERS

6.1 The Local Government Association report recognises that a Development Control Committee Member who represents a ward affected by a particular application is in a difficult position particularly if it is a controversial application around which a lot of lobbying takes place. There is a balance to be struck between the duties to be an active ward representative and the overriding duty as a Councillor to the whole community. In these circumstances:-

6.1.1 **DO** join general interest, resident or amenity groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals. Examples of such groups are local civic societies, the Ramblers' Association, the Victorian Society and CPRE. Members **must**, however, disclose any interest in accordance with the adopted Code of Conduct when that group has made representations on a particular matter and such members

should make it clear to that group and to the Development Control Committee that you have reserved judgment and the independent to make up your own mind on each and every proposal.

6.1.2 **DO NOT** excessively lobby fellow members regarding your concerns or views and nor attempt to persuade other members how they should vote in advance of a meeting at which a planning decision is to be taken.

6.1.3 **DO NOT** decide and do not discuss at any political group meeting how to vote on a planning matter 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 BY MEMBERS**

7.1 Sites inspection by Committee can be helpful in reaching a decision on issues where site circumstances are clearly fundamental to that decision as outlined below. Any Member of the Development Control Committee may request a site visit and state the reasons for the request.

7.2 **DO** try to attend site visits organised by the Council where the relevant Development Control Committee has resolved that a visit is required. If you do not attend a formally arranged site visit, you will be unable to participate in the debate or vote on the relevant item when it is formally considered for decisions by the Committee.

7.3 **DO NOT** request a site visit unless you feel it is strictly necessary and where:-

- 7.3.1 Particular site factors are significant in the terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of site inspection; or
- 7.3.2 There are significant policy or precedent implications and site factors need to be carefully addressed and which justify the delay in the decision being made.
- 7.4 **DO** ensure that you treat the site visit only as an opportunity of seeking information and to observe the site.
- 7.5 **DO** ask the officers questions and seek clarification from them on matters, which are relevant to the site inspection.
- 7.6 **DO NOT** hear representations from any other party at the site visit. If you are approached by the applicant, ward member or a third party, advise them that they should make representations in writing to the Council and direct them to or inform the officer that is present.
- 7.7 **DO NOT** express opinions or views to anyone at a site visit.
- 7.8 **DO** not enter a site that is subject to an application or proposal other than on an official site visit, even if it is in response to an invitation, as this may give the impression of bias.
- 7.9 **DO NOT** enter any land adjoining the site which is subject to a proposal without the specific consent of the owner of that land.
- 7.10 Occasionally officers will arrange informal site visits prior to a matter being considered at a Development Control Committee. Whilst Members should make every effort to attend such informal site visits, a Member's non-

attendance at such informal visits will not of itself prevent that member from taking part in the decision-making process.

8. PUBLIC SPEAKING AT MEETINGS

8.1 **DO NOT** 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.

8.2 **DO** ensure that you comply with the Council's procedures in respect of public speaking, ***as set out below.***

8.3 Public Speaking at Development Control Committee

8.3.1 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.

8.3.2 One person be allowed to speak on behalf of objectors, if any, and one person on behalf of the applicant. The speaker on behalf of objectors should be reached by collective agreement between parties, or if no agreement on representation can be reached on a "first come" basis. Priority will be given to persons who reside or have a business interest in the Borough. In the event of such a circumstance, the final decision will be made by the Director of the Urban Environment in consultation with the Chair of the Committee.

- 8.3.3 Where objectors, *or a ward Member who objects to the application*, have given notice that they wish to speak, the applicant and a Ward Member who supports the application will be offered the same opportunity.
- 8.3.4 If the applicant declines the opportunity to speak, an objector or *Ward Member* and a Ward Member who wishes to support the application will still be allowed to address Committee.
- 8.3.5 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.
- 8.3.6 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.
- 8.3.7 The playing of audio or visual material is not permitted, and any materials for circulation such as photographs or plans must be provided to Officers preferably 24 hours (and in any event a reasonable time period) prior to the start of the meeting.
- 8.3.8 If the speaker in their presentation makes comments considered to be inappropriate (such as remarks that could be construed to be inflammatory, derisory or inciting violence), their opportunity to speak will cease immediately irrespective of the time remaining.
- 8.3.9 That the Director of the Urban Environment presents his report to Committee prior to public speaking on each individual planning application.

8.3.10 That no questioning of Members or Officers by speakers, or of speakers by Members or Officers, be allowed.

8.3.11 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. Late requests cannot in the interests of fairness be allowed.

9. THE DECISION MAKING PROCESS

9.1 9.1.1 The Local Government Association report on Probity in Planning: the Role of Councillors and Officers - revised guidance note dated April 2013 on good planning practice for Councillors and Officers dealing with planning matters, advises that a decision on a planning application cannot be made at the Committee meeting until all of the available information is to hand and has been duly considered and any political group meeting prior to a Committee meeting should not be used to decide how Councillors should vote. Accordingly any pre-Committee meetings will solely be for the purpose of enabling an exchange of briefing material between Officers and Members on planning issues of concern in relation to particular applications, and will be open to Members of all political groups.

9.1.2 All applications considered by Development Control Committee or by way of a delegated decision shall be the subject of written reports and clear recommendations. If the recommendations are contrary to the provisions of the Development Plan the material considerations, which justify this, shall be clearly stated. If in the

view of the Officer the matter is finely balanced the report will say so. The recommendations put forward by Officers and the decision by Members are separate parts of the same process, which should be justified by the report and debate respectively.

9.2 MEMBERS RELATIONSHIP WITH OFFICERS

- 9.2.1 **DO NOT** put pressure on officers to put forward a particular recommendation. This does not prevent you from asking questions or submitting views to the Director of the Urban Environment and such views may be incorporated into any Committee report. If you wish to speak to an officer regarding any proposal then you should speak to the Case Officer as that Officer would know the current position regarding a matter. Alternatively, you can contact the Director of the Urban Environment.
- 9.2.2 **DO** recognise and respect that Officers in the processing and determining of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional Codes of Conduct. You should, therefore, appreciate that Officers' views, opinions and recommendations will be based on their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions and decisions of a Committee or its Members.
- 9.2.3 **DO** consider the Council's Protocol for Member/Officer relationships, which governs the working relationship you have with Officers. This is a relationship based on mutual trust and courtesy, and all meetings should be guided by this principle.

- 9.2.4 **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.

9.3 **Committee Reports**

- 9.3.1 When planning applications are reported to the Development Control Committee, reports should be formulated to ensure that all relevant matters are identified and addressed.
- 9.3.2 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 Black Country Core Strategy, the Unitary Development Plan, and any other development plan document site or related history, and any other material considerations. Where necessary, reports should contain a technical appraisal which clearly justifies the recommendation.
- 9.3.3 All reports should have a written recommendation (either to approve or refuse). 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 Development Plan, the material considerations which justify this must be clearly stated.
- 9.3.4 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.

- 9.3.5 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 Development Plan and the Council's statutory duty under Section 38(6) of the Planning and Compulsory Purchase Act, 2004.
- 9.3.6 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.

9.4 **DECISION MAKING BY MEMBERS**

- 9.4.1 **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.
- 9.4.2 **DO** come to a meeting with an open mind on a matter and do demonstrate that you are open-minded.
- 9.4.3 **DO** comply with the Sections 38(1) and 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990 and make decisions in accordance with the Development Plan and in particular the Black Country Core

Strategy, the Unitary Development Plan and any other development plan documents unless material considerations indicate otherwise.

- 9.4.4 **DO** come to you decision only after due and proper consideration of all of the information reasonably required upon which to base a decision. If you feel that there is insufficient time to consider new information or there is insufficient information before you then you should request that further information and, if necessary, defer or, if substantiated, refuse the application.
- 9.4.5 **DO** not vote or take part in a discussion at a meeting unless you have been present for the entire meeting or for the whole of the matter in question (and this includes the public speaking and the officers' introduction to the matter). If a member needs to leave a meeting for a short period, such as for a comfort break, that member should seek an adjournment.
- 9.4.6 **DO** have recorded the reasons for Committee's decision to defer any proposal.
- 9.4.7 **DO** make sure that if you are proposing, seconding or supporting a decision **contrary to** Officer recommendation or the Development Plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons, like all reasons in such matters, **must** be given prior to the vote and be recorded. Members should also be aware that you might have to justify their decision by giving evidence in the event of any appeal or challenge. Failure to do this not only increases the chances of a successful appeal but also exposes the Council to a significant danger of costs being awarded against the Council.

9.4.8 **DO** ensure that the reasons you give for a decision **must** be your reasons. You cannot ask an officer to give the reasons for you. An Officer may assist in the drafting of your reasons.

9.4.9 **DO** remember that Development Control Committees are important hearings. You should, therefore, act and dress accordingly, (i.e. you give a matter due consideration and should not talk between yourselves or use mobile telephones or other mobile devices when a matter is being considered).

10. TRAINING OF MEMBERS

10.1 All Members serving on the Development Control Committee and/or who have any decision making role on planning matters including substitute Members in accordance with the Council's Constitution shall be trained in planning procedures prior to serving on the Committee.

10.2 **DO** not take part in the decision making process at Committee meetings unless you have attended the mandatory planning training prescribed by the Council's Constitution.

10.3 **DO** attend any other specialised training sessions provided, since these will be designed to extend their knowledge of planning law, procedures, Regulations, Codes of Practice and the Development Plan. The training will be devised to assist you in carrying out your role properly and effectively.

10.4 **DO** participate in reviews of a sample of planning decisions referred to in Section [] below to ensure that Members' Judgments have been based on proper planning considerations.

11. THE ROLE OF OFFICERS IN PLANNING MATTERS

11.1 Officers **must** when making decisions on applications:-

11.1.1 Act fairly and openly at all times;

11.1.2 Consider each and every application with an open mind;

11.1.3 Consider all the material planning considerations attaching the appropriate weight to each one;

11.1.4 Avoid any inappropriate contact with the applicants, members and any other interested parties;

11.1.5 Ensure that the reasons for any decision are clearly recorded;

11.1.6 Ensure that the reasons for any decision are sufficient and reasonable and that the recording of such reasons comply with the relevant legislation and guidance in accordance with Article 31 of the Town and Country Planning Development Management Procedure (England) Order 2010 (SI 010/2184), regarding reasons for [approval] and refusal;

11.2 When reporting to a Committee on a planning matter officers **will**:

11.2.1 Provide professional and impartial advice at all times;

11.2.2 Ensure that all the information necessary for a decision by Members is made available to those members;

11.2.3 Ensure that a report includes the substance of all the objections and the views of the consultees;

11.2.4 Produce a clear, accurate and objective written analysis of the issues;

11.2.5 Make a clear recommendation.

11.3 Every planning application file and other files relating to planning matters should contain an accurate assessment of that matter's history. Particular care should be taken with files relating to delegated decisions, which should be as carefully maintained as those files relating to decisions taken by Members.

11.4 Any material planning information received after the writing of the report and up to midday of the day of the Committee meeting will be presented orally by officers or be included on an amendment sheet.

11.5 The Director of the Urban Environment may, after consulting the Chair of the relevant Development Control Committee, withdraw any item from the agenda of that Committee before that item is discussed by that Committee if the circumstances of an application have changed after the report has been prepared.

11.6 Officers have a duty to carry out the decisions of Members even when Members decide a matter against Officer recommendations.

12. DISCUSSIONS REGARDING PLANNING APPLICATIONS

12.1 Officers should have regard to the relevant parts of this Code regarding Members' involvement in pre-application or post submission discussions with applicants, supporters or objectors.

12.2 In particular, all Officers taking part in such discussions should inform all those present at such discussions that the decision on the particular

application will either be taken by elected Members in a Committee or in specified circumstances by the Director of the Urban Environment by a duly authorised officer of his or her department.

- 12.3 An Officer **must** always take a note of all such meetings. All meeting notes and follow-up correspondence **must** be placed on the relevant file.

13. OFFICERS' DISCLOSURES OF INTEREST

- 13.1 Officers **must not** play any part in the processing of any application where they have, or can be perceived to have, a conflict of an interest. Such interests would include financial or professional interests and the interests of family and friends.

14. HOSPITALITY - OFFICERS

- 14.1 Officer **must not** accept any gift or hospitality from any person or group affected by a planning proposal. Whilst a degree of hospitality may be unavoidable, officer **must** ensure that such hospitality is minimal and its acceptance is declared as soon as is possible.

15. DELEGATION OF DECISION-MAKING

- 15.1 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:-

15.1.1 As a Local Planning Authority.

15.1.2 The highway functions contained in Sections 249, 250, 257, 258 and 259 of the Town and Country Planning Act, 1990

15.1.3 In respect of all matters relating to the Building Regulations.

15.1.4 The implementation of the Council's existing Equal Opportunities' Policy in relation to the Committee's functions.

15.1.5 Authorise the institution of proceedings under Sections 1, 10 and 11 of the Planning and Compensation Act, 1991.

15.2 Other than

15.2.1 The acquisition, disposal or appropriation of land to or from such purposes.

15.2.2 Those aspect of development plans which fall within the terms of reference of other Committees.

15.3 With 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 Corporate Resources similarly has delegated powers to deal with a specified range of legal matters relating to planning procedures.

15.4 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.

15.5 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 or the urban Environment, in consultation with the Chair (or Vice Chair 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:-

- 15.5.1 any proposed development which would be an advertised departure from the Development Plan and, in particular, the Black Country Core Strategy, the Unitary Development Plan and any other development plan documents adopted Unitary Development Plan or approved Supplementary Planning Guidance, where the recommendation of the Director of the Urban Environment is to grant planning permission.
- 15.5.2 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.
- 15.5.3 any proposed development which has given rise to a substantial weight of public concern.
- 15.5.4 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.

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

15.6.1 all applications submitted for delegated decision by the Director of the Urban Environment and the Chair of the Development Control Committee, will be the subject of a full and detailed written report.

15.6.2 there is provision for the Director of the Urban Environment, in consultation with the Chair, to refer any planning application submitted for delegated decision, to the Development Control Committee for its determination.

15.6.3 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.

15.6.4 all decisions taken in respect of planning applications submitted for delegated decision by the Director of the Urban Environment in consultation with the Chair, must be recorded and made available for public inspection.

16. REVIEW OF COMMITTEE DECISIONS

16.1 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.

16.2 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.

16.3 The Development Control Committee will undertake, regularly, a sample review of decisions taken. This should include major and minor development, permitted departures, upheld appeals, listed building works and enforcement cases.

16.4 On an annual basis, the Director of the Urban Environment will report to the Development Control Committee on:-

16.4.1 the outcome of applications referred by adjoining planning authorities;

16.4.2 the outcome of authorised enforcement actions;

16.4.3 appeal decisions;

16.4.4 planning obligations (Section 106 Agreements).

17. ACTION TO BE TAKEN BY OFFICERS REGARDING DECISIONS TAKEN CONTRARY TO PROFESSIONAL ADVICE

17.1 In matters where Members have refused an application against an Officer recommendation for approval:

17.1.1 Officers will give their full support to Members and any external witnesses in the preparation of the evidence for any planning inquiry;

17.1.2 Officers will only give evidence themselves in the exceptional circumstances where their Code of Professional Conduct has not been breached or where a hearing is to be held, with no cross examination (and, in this later example, the officer concerned has not been involved with formulating the original recommendation);

17.1.3 Officers will give their full support to Member decisions that are appealed under the written representations procedure.

18. SANCTIONS

18.1 The purpose of this Code is to provide guidance to Members in relation to the performance of the Council's planning function. The application of and adherence to the Code is intended to build public confidence in the Council's planning system and to produce a strong platform for planning decision-making. The Code does not remove the responsibility of Members to exercise their statutory discretion to determine the merits of individual applications or proposals.

18.2 A failure to adhere to the Code gives rise to potential consequences to the Council and individual Members. Councillors may make a reputation in their community not only for their beliefs but also for their general conduct. Consistency and fairness are important qualities in the public eye and they are vital to the conduct of the Planning Committee. Beyond the normal democratic process a number of specific consequences can be identified, namely:-

18.2.1 The Local Government Ombudsman

Although the Local Government Ombudsman will not investigate the balance of argument in any planning decisions she/he may agree to investigate a planning complaint if it concerns the manner in which a decision was taken. If it is found injustice has been caused by maladministration in the light of statutory or established Council procedures she/he will recommend redress, which may taken the form of compensation.

18.2.2 Appeals to the Secretary of State

An applicant who has been refused planning permission 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. Examples of "unreasonable behaviour" are: failing to follow the Council's policies; no evidence of significant harm; and giving too much weight to local opposition to proposals.

18.2.3 Judicial review

If objectors are convinced that the Council in determining to grant an application did not observe their statutory duties to carry out all necessary procedures, did not base their decision on the development plan and or did not take into account all relevant representations they may apply for Judicial Review of the decision which might result in the decision being quashed. In such circumstances, it would be normal for the costs of the applicant to be awarded against Council.

18.2.4 Powers of the Secretary of State

The Secretary of State possesses a range of powers which could be exercised where a Local Planning Authority appears to make inconsistent decisions or decisions which are seriously in conflict with national and Development Plan Policies. This could involve the greater use of the power to call in applications whereby an application will be determined by the Secretary of State following a Public Inquiry. Where permissions 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.

18.2.5 **District Auditor**

Each of the above courses of action could result in significant extraordinary costs to the Council. The District Auditor will closely examine these costs. Where it appears to an Auditor that a loss has been incurred or a deficiency caused in the Council's accounts by the wilful misconduct of any person she/he is required to certify that the loss or deficiency is due to that person and it may, therefore, lead to a formal report to Council in accordance with the powers granted to District Auditors under the Local Government Act 2000.

18.3 These are in addition to possible sanctions against individual Members for breach of the Code of Conduct which could include:-

18.3.1 To report on findings to Full Council, i.e. "naming and shaming";

18.3.2 To recommend to a Group Leader that the Member concerned be removed from any Committee or Sub-Committee;

18.3.3 To recommend, in relation to any Members of the Executive that the Member concerned be removed from the Executive;

18.3.4 To recommend the Monitoring Officer to arrange appropriate training for the Member concerned;

18.3.5 To recommend removal of any Member concerned from any outside body appointments;

- 18.3.6 To require the withdrawal of Council facilities, e.g. use of computer or internet;
- 18.3.7 To exclude a Member from the Council's offices or other premises except for the purpose of attending formal meetings.

19. ADDENDUM

R (on the application of Kevin Paul Lewis) v Persimmon Homes Teesside Ltd [2008] EWCA Civ 746 (Court of Appeal) recognises *“that Councillors are not in a judicial or quasi-judicial position but are elected to provide and pursue policies. Members of a Planning Committee would be entitled and indeed expected to have and to have expressed views on planning issues”* Pill LJ at paragraph 69.

“ ... there is no escaping the fact that a decision-maker in the planning context is not acting in a judicial or quasi-judicial role but in a situation of democratic accountability. He or she will be subject to the full range of judicial review, but in terms of the concepts of independence and impartiality, which are at the root of the constitutional doctrine of bias, whether under the European Convention of Human Rights or at common law, there can be no pretence that such democratically accountable decision-makers are intended to be independent and impartial just as if they were judges or quasi-judges. They will have political allegiances, and their politics will involve policies and these will be known”. Rix LJ at paragraph 94.

APPENDIX 1

1. OVERTURN FROM OFFICER RECOMMENDATION OF REFUSAL TO APPROVAL

1.1 Members should clearly identify and understand the planning reasons leading to this conclusion and should specify the planning reasons for approval during the debate.

1.2 At the time the motion for approval is moved, Members should specify the planning reasons upon which the motion for approval is based to ensure that all Members are clear as to the basis for their vote.

1.3 The decision by Members is an 'in principle' only decision at this time. For example, Members support the application subject to conditions:-

1.3.1 that delegated authority is resolved to be given to officers to prepare conditions and (where necessary) Section 106 obligations and issue the decision notice **OR**

1.3.2 delegated authority is given to Officers to draft conditions to be considered by the next available Development Control Committee **OR**

1.3.3 the Committee approves the delegation to draft conditions in consultation with the Chair of the Committee.

2. OVERTURN FROM OFFICER RECOMMENDATION OF APPROVAL TO REFUSAL

- 2.1 The Member moving the motion for refusal must clearly state the reasons for refusal as part of the debate. These reasons must be planning reasons.
- 2.2 The Planning Officer to advise on whether or not these are relevant planning refusal reasons prior to the vote.
- 2.3 The Planning Officer can (if required) summarise the reasons for refusal before the vote is taken to ensure that all Members are clear as to the basis for their vote.
- 2.4 On being put to the vote, the Member moving the motion should re-state the reasons for refusal.
- 2.5 If the vote is successful the reasons given by the Committee shall form the basis of the refusal notice issued.

3. DEVELOPER SELECTION PROTOCOL

- 3.1 This Protocol applies where the Council is not funding the project but is seeking a partner for a major initiative in the Borough area in terms of scale and/or importance which is intended to deliver on one or more of the Council's policies or plans.
- 3.2 It should be noted that major projects such as these are unique and require an individual approach.
- 3.3 In all cases procurement should follow the procedure contained in Contract Standing Orders for a contract with an estimated contract value of over £100,000. The method of selection should be appropriate to the nature and size of the project but would normally be Public Advertisement following by the Select List Method.

- 3.4 At the commencement of the project the appropriate Director shall carry out a full assessment of the resources required and whether any external consultants are required. In particular, the Director shall satisfy himself that adequate project management arrangements are in place.
- 3.5 The Director shall involve the Head of Purchasing and Procurement in all project where the estimated value of the project (irrespective of the source of funding) exceeds £2 million.
- 3.6 Before bids are invited the Director should prepare a comprehensive development brief containing SMART targets and including details of the Council's aspirations for the project and a detailed statement of the range of outcomes that the Council require. The project brief should also expand upon the Council's aspirations for the outcomes of the project by detailing the type and scale of the project. The project brief shall be approved by the Council and have member involvement in its production.
- 3.7 Also, at the outset, the Director shall produce evaluation criteria to be clearly set out in two matrices relating to the suitability/benefits of the proposal with specific regard to the Council's objectives as set out in the project brief, and the capability of the partner. The criteria shall be properly weighted and lodged with the Chief Executive.
- 3.8 There must be a clear timetable to be set for submission of schemes, submission of questions and replies, the holding of interviews and the evaluation of bids. All questions shall be submitted in writing to a nominated officer and copies of all questions and replies sent to all prospective partners.
- 3.9 It shall be a requirement that each prospective partner shall submit detailed information in order to demonstrate financial viability and indicate any

requirements for external and Local Authority resources that may be targeted.

- 3.10 Each prospective partner must also provide a credible and sound business plan to deliver the project within a stipulated timescale.
- 3.11 The evaluation panel shall comprise officers only, of a suitable seniority and experience, who may be supported by any external consultants and/or stakeholders, as appropriate.
- 3.12 There shall be a detailed and comprehensive evaluation of each submission in accordance with the evaluation criteria when selecting a preferred bidder. The selection panel shall consider whether a reserve preferred bidder shall be nominated.