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# Local Code for Members and Officers dealing with Planning Matters

## 1. GENERAL ROLE AND CONDUCT OF MEMBERS AND OFFICERS

This Local Code is an advisory document that expands on the Code of Conduct and other provisions concerning probity in public office as they relate to planning. As such, it will be taken into account when a complaint is investigated, whether the investigation is internal, or by an external body such as the Local Government Ombudsman.

Only Members of the Council and officers who are prepared to observe this Code ought to be involved in determining planning matters. This Code will be of importance to all Members of the Council, whether as members of the Area Planning Committees or the Cabinet (in view of the latter's primary responsibility for formulating planning policy for approval by Council, and for deciding other planning matters such as supplementary planning guidance and conservation area designations). The responsibility to abide by this Code also applies to all Members on those occasions when a planning matter is referred to full Council.

### Why we have a Local Code for Planning

- 1.1 The law requires Members to comply with the Members' Code of Conduct which concerns probity and other aspects of conduct across the whole range of a Member's duties. This Local Code seeks to relate the Members' Code of Conduct's requirements specifically to planning. However, it goes beyond the specific concerns of the Members' Code of Conduct to give more detailed advice on the operation of the system. The aim of this additional advice is to ensure the integrity of the planning system is preserved, and that it is, and is seen to be, open and fair to all parties. Whilst remaining advisory only, and having no statutory basis, the expectation nonetheless is that both Members and officers will at all times abide by the guidance contained in the Code.
- 1.2 Determining a planning application is a formal administrative process involving rules of procedure, rights of appeal, and an expectation that people will act reasonably and fairly. Those involved should always be alert to the possibility that an aggrieved party may:
  - (a) seek judicial review of the way the decision was arrived at; and/or
  - (b) complain to the Local Government Ombudsman on grounds of maladministration; and/or
  - (c) complain to the General Purposes Employment Appeals & Ethics Sub-Committee that a Member has breached the Code of Conduct.

- 1.3 Decisions on planning involve considering private development proposals against the wider public interest. Much is often at stake, particularly the financial value of landholdings and the quality of their settings, and opposing views are often strongly held by those involved. It is important, therefore, that planning decisions affecting these interests are made openly, impartially, with sound judgement and for justifiable reasons. While Members should take account of the various views expressed, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so. The process should leave no grounds for suggesting that a decision has been partial, biased or not well-founded in any way. The Members' Code of Conduct requirement that a Member should act solely in terms of the public interest is also relevant in this context.

#### Officers

- 1.4 Officers must always act impartially.
- 1.5 Officers are required to disclose to the Council their direct or indirect pecuniary interests under Section 117 of the Local Government Act 1972. Officers involved in processing and determining planning matters must also observe the guidance set out in the Officers' Code of Conduct concerning gifts and hospitality and with the relevant sections of the Royal Town Planning Institute's Code of Professional Conduct.

#### Application to Policy Formulation and Other Planning Matters

- 1.6 While this Code will most commonly need to be followed in connection with dealing with planning applications, it also applies to consideration of development plans, development briefs, enforcement cases and all other planning matters.
- 1.7 The operation of executive arrangements means that many major planning issues, and formulation of planning policy, are considered by the Cabinet. The relevant principles of this Local Code apply in the same way to Cabinet members engaged in formulating planning policy and other planning issues as they do to members of the Planning Committees when determining planning applications. In particular, the following parts of this Code apply to policy formulation and planning issues other than determination of applications:
- (a) the duty to declare interests (section 2);
  - (b) dealing with lobbying, the duty to reach decisions impartially without "pre-judging" issues, and attendance at other public meetings (section 4); and
  - (c) pre-application and pre-decision discussions with applicants or potential applicants (section 5).
- 1.8 However:
- (a) subject to the overriding requirement to comply with the Members' Code of Conduct; and
  - (b) providing the discussions do not refer to individual sites;

this Code does not preclude Members from taking part in discussions on the general principles of land allocation policies in the Development Plan outside the Council's formal meetings.

- 1.9 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires all planning applications to be determined by reference to the Development Plan, if material to the application, and any other material consideration. Only material planning considerations are to be taken into account. If the Development Plan is material to the application, the law provides that the application should be determined in accordance with it unless material considerations indicate otherwise.

### Training

- 1.10 Seminars are held from time to time to give guidance to Members on declaring interests and other issues in the Members' Code of Conduct. Members will also receive specialised training on planning law and procedures, and the practical operation of this Local Code and the Development Plan. All members of the Council's Planning Committees have an important role in providing a consistent approach to the determination of proposals, and in the application of policy, and may be involved in dealing with contentious proposals. It is, therefore, important that all Members attend a minimum level of training on planning matters.

Members who have not attended training sessions should not be involved in the decision-making process. Any Member who does not comply with this requirement may be reported to the Council in order to remove them from the Planning Committee(s). Members' attendance at training sessions will be monitored and reported to the General Purposes Employment Appeals & Ethics Sub-Committee, which may wish to offer advice to or in relation to a Member who has not undergone adequate training.

## **2. DECLARATION AND REGISTRATION OF INTERESTS**

- 2.1 All Members, whether or not dealing with planning matters, must observe the Members' Code of Conduct and this Local Code by:
- (a) maintaining the general standards of conduct required in Part 1 of the Members' Code;
  - (b) disclosing interests at meetings (or when making a Portfolio Holder decision) as required in the Members' Code; and
  - (c) registering financial and other interests, gifts and hospitality.

### Register of Members' Interests

- 2.2 Members will have provided the Monitoring Officer with details of their disclosable pecuniary interests, and these will be included in a register maintained under the Localism Act 2011. Where any changes occur to a disclosable pecuniary interest the Member is required to notify the Monitoring Officer, in writing, within 28 days of becoming aware of the change. The Monitoring Officer will affect any necessary amendment to the Register.

## Disclosable Pecuniary Interests and Personal Interests at Meetings

2.3 So that the system operates in an open and transparent way, a Member who has any interest in a planning matter must immediately inform the Head of Planning and Building Services of that interest, in writing in accordance with the Member and Officer Interests Protocol. The Head of Planning and Building Services will report planning matters in respect of which such notification has been received to the appropriate Committee for determination. Such a matter must not be determined under delegated powers by officers. The report to Committee will identify the reason for the report as a Member interest. A similar procedure applies in relation to any officer interest, as defined in paragraphs 5.3, 5.4 and 15 of the Officers' Code of Conduct. Neither Members nor officers should assume that the Head of Planning and Building Services will otherwise be aware of any interests they may have in any planning matter.

2.4 The definition of a Disclosable Pecuniary Interest and a Personal Interest is contained in the Members' Code of Conduct. The first question is whether an interest is a Disclosable Pecuniary Interest or a Personal Interest.

All such interests should be declared at meetings, with a brief description of the nature of the interest. This includes interests that may already have been registered in the register of Members' financial and other interests. The Member must (subject to certain exemptions specified in the Members' Code of Conduct) leave the room. He/she must also not seek improperly to influence a decision on the matter. Members should refer to the Members' Code of Conduct for detailed guidance on the meaning of Disclosable Pecuniary Interest and a Personal Interest and the circumstances in which a Member with a Personal Interest which impairs his/her ability to judge the public interest may still participate by making a statement.

2.5 The responsibility for declaring an interest lies with the individual Member. A Member who is also a Parish/Town Councillor will not have a declarable interest in a planning application made by a private individual simply because the Parish/Town Council has submitted observations to the Borough Council on that application, or because of his/her vote on the Parish/Town Council. However, the member should have regard to the guidance on pre-judging applications in section 4 of this Local Code.

2.6 Members who are also Parish/Town Councillors should adopt the practice of making it clear, when they participate in a debate on development proposals at a Parish/Town Council meeting, that the views they express are based on the information before them at that time, and might change in the light of further information and/or debate at the Committee meeting.

## Gifts and Hospitality

- 2.7 All Members must register gifts or hospitality worth more than £25 within 28 days of their receipt. However, Members dealing with planning matters should be particularly alert to the possibility that they may be called upon to determine, or make representations on, a planning application submitted by someone who has offered them a gift or hospitality, even if an application has not yet been submitted. If a gift or hospitality is received from an actual or potential planning applicant, even if its receipt is registered and/or its value does not exceed £25, the recipient should still consider what the public perception might be. Cases where Members have accepted hospitality from planning applicants have been the subject of criticism by the Local Government Ombudsman. For this reason, all gifts, of whatever value, should be refused if there is any reason to suspect that the person offering them is an actual or potential planning applicant. If a gift is accepted, its receipt should be notified. If acceptance of a degree of hospitality by Members and/or officers is unavoidable, it should be ensured that this is of a minimum and that its receipt is notified. Members should be mindful of the need to declare a personal or disclosable pecuniary interest, as appropriate, in respect of the interests of any person from whom he/she has received a gift or hospitality within three years of the receipt. Members and officers should also consider whether it would be appropriate in a particular case to notify instances where gifts or hospitality have been offered, but refused. Officers should notify their the Chief Executive or Deputy Chief Executive, who will inform the Monitoring Officer. Members should send written notice to the Monitoring Officer. In all cases details will be entered in the appropriate register.

### **3. DEVELOPMENT PROPOSALS SUBMITTED BY OR ON BEHALF OF MEMBERS AND OFFICERS, AND COUNCIL DEVELOPMENT**

#### Acting as agents for a planning applicant

- 3.1 Serving Members and officers should never act as agents for individuals (including a company, group or body) pursuing a planning matter with the Council.

#### Planning Applications by a Member or Officer

- 3.2 Proposals submitted by Members and officers must be reported to the relevant Planning Committee and not dealt with by officers under delegated powers, see paragraph 2.5.
- 3.3 If a Member submits a planning application he/she will be subject to the Localism Act 2011 relating to disclosable pecuniary interests. If officers submit their own development proposal to the Council, they should take no part in its processing. Officers will have the same rights as any member of the public to seek to explain and justify their proposal to an officer in advance of the Committee meeting and to attend the Planning Committee meeting and address the Committee under the Public Participation Scheme.

## Proposals for the Council's Own Development or Development on Council Land

- 3.4 Proposals for the Council's own development (or a development involving the Council and another party) should be treated in the same way as those by private developers and in accordance with the National Planning Guidance. This Guidance outlines that the same administrative process, including consultation, should be carried out in relation to the Council's own planning applications, and that they should be determined against the same policy background (the Development Plan and any other material planning considerations). This paragraph also applies to private applications on Council owned land (e.g. before a land sale is agreed or negotiated). Decisions must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Council if the development is permitted. It is important that the Council treats such applications on an equal footing with all other applications, and is seen to do so.

## **4 LOBBYING AND REQUIREMENTS RELATING TO PUBLIC MEETINGS**

### Lobbying of Members by the Public or Planning Applicants

- 4.1 If Members are to undertake their constituency roles fully it is inevitable that they will be subject to lobbying on planning matters and specific planning applications. When Members are lobbied, great care is essential to maintain the Council's, and indeed the Member's own, integrity and the public perception of the planning process.
- 4.2 Members who are likely to be involved in determining a planning matter at any meeting should, before the meeting, simply listen to points of view about the proposal. They should actively take steps to explain that, whilst they can listen to what is said, it prejudices their impartiality to express a firm point of view or an intention to vote one way or another. (If however they do form a definitive view on the proposal, they should be guided by paragraphs 4.7 to 4.9 below). Where the applicant requires planning or procedural advice, he/she should be referred to officers.
- 4.3 If Members consider they have been exposed to undue or excessive lobbying or approaches, these should be reported to the Monitoring Officer, so that the Monitoring Officer can place on record the Members' concern.

### Members' Duty not to Pre-Judge Applications/Lobbying by Members

- 4.4 As a general principle, and taking account of the need to make decisions impartially, Members involved in decision making on planning should not organise support or opposition to a proposal, lobby other Members, act as an advocate, or put pressure on officers for a particular recommendation.
- 4.5 Members need to take account of the general public's expectations (and the expectations of those who might investigate any complaint), that a planning application will be processed in a fair and open manner in which Members making the decision will take account of all the evidence presented before arriving at a decision, and that to commit themselves one way or the other before hearing all the arguments makes them vulnerable to an accusation of partiality. Members should not indicate (or give the impression of) support for or opposition to a proposal in a manner which suggests that they have a closed mind to any views or further



information which may be available at the meeting at which the matter is discussed. In particular, Members should not declare their voting intention before the meeting at which a decision is to be taken. To do so without all relevant information and views would be unfair and prejudicial and may amount to maladministration.

- 4.6 Whilst Members involved in making decisions on planning matters will begin to form a view as more information and options become available, a decision can only be taken by the relevant Planning Committee when all available information is to hand and has been duly considered. Individual Members should reach their own conclusions on an application or other planning matter rather than follow the lead of another Member. In this regard, the views of the Cabinet, or an individual member of the Cabinet, should be accorded no more weight than those of any other Member. Likewise, any political group meetings before Committee meetings should not be used to decide how Members should vote. Decision can only be taken after full consideration of the officers' report and information and discussion at the Committee.
- 4.7 If a Member does appear to fully commit to a particular view on a planning issue before it is considered at Committee or Council, the public, or any other person, might well believe the Member had prejudiced their position and could not take part in a debate on the full facts before determining the application. If a Member has openly advocated a particular course of action, or feels that the public would reasonably believe he/she had come to a conclusive view on the matter before the meeting, he/she should leave the meeting room and take no part in the debate (subject to paragraph 4.8 below), nor vote on the application.
- 4.8 If, however, a Member (whether or not a member of the relevant Planning Committee) has publicly committed him/herself to a view on an application, he/she may be permitted to make a speech on the item at the Committee meeting, pursuant to the Public Participation Scheme provided he/she first declares his/her position. The Member will thereafter have no further involvement in determining the item, and should leave the meeting. If he/she is a Committee Member, he/she should not move or second a proposal or vote on the application. This will be recorded in the minutes. Members in this situation should also satisfy themselves that in speaking on the application there could be no reasonable allegation that they had breached any provision in the Members' Code of Conduct, in particular that relating to their duty to act solely in terms of the public interest.
- 4.9 Where the Monitoring Officer believes that a Member has prejudiced his/her position by expressing a conclusive view on an application before the Committee determines it, the Monitoring Officer will advise the Member that it would be inappropriate for him/her to be present at the meeting (unless the Member wishes to openly declare his/her position and speak as in paragraph 4.8), or to vote on the application. If the Member does not follow the Monitoring Officer's advice, the Monitoring Officer will consider referring the matter to the General Purposes Employment Appeals & Ethics Sub-Committee.

### Chairman's Pre-Meeting Briefing

- 4.10 The Chairman and Vice-Chairman should attend a briefing with officers before the Committee meeting, to help them give an effective lead in Committee.

### Members' and Officers' Attendance at Other Public Meetings

- 4.11 Officers and Members who intend to take part in the decision-making process, should be very cautious about attending meetings in connection with development proposals or submitted planning applications, unless those meetings have been arranged for the purpose of disseminating information by the Council, or by an appropriate local body (such as a Parish Council), that is not openly advocating support for or opposition to the proposal, or unless it is known that those with different views will also be attending, so that a balance of views will be expressed. Members should take advice from officers before deciding whether to attend meetings that appear to have been organised for lobbying purposes. When attending public meetings of any kind, officers and Members should do no more than explain background or policy, and should give no view on the merits or otherwise of the proposal. It should be explained that a decision can only be made when all relevant information is available.
- 4.12 The reason for being cautious and taking advice beforehand, particularly for Members involved in the decision-making process, is that those with opposing views could make allegations of bias or prejudice because a balance of views was not presented. In some circumstances, Members might feel it is valuable to attend meetings to listen to particular points of view, but should always make it clear that they must also listen to opposing arguments before reaching any conclusion.

## **5. PRE-APPLICATION AND PRE-DECISION DISCUSSIONS WITH APPLICANTS**

### Action by Officers

- 5.1 In any discussions on planning issues, officers will always make it clear at the outset that any views they express are based on the officer's provisional professional judgement and do not commit the Council to any particular decision.
- 5.2 Advice given will be consistent and based upon the Development Plan and other material considerations. Every effort will be made to ensure that there are no significant differences in interpretation of planning policies between Planning Officers.
- 5.3 Officers taking part in discussions should make it clear whether they or the Committee are likely to take the decision, or if this is not yet known, the criteria used to decide whether an application is referred to the Committee.
- 5.4 Where the Planning Officer considers it appropriate, a written note of discussions will be made, and/or a follow up letter sent explaining the conclusions of the discussion. Two or more officers will attend potentially contentious meetings.

## Attendance by Members at Officers' Pre-Application or Pre-Decision Discussions

5.5 To maintain impartiality it is normally not good practice for Members to take part in officers' discussions with applicants. If Members are involved, they will be advised by the appropriate professional officers of the Council, which will always include a senior Planning Officer. Members should not seek to advise applicants, their agents or objectors on the likely acceptability of planning proposals. The involvement of Members in such discussions will be recorded as a written file record.

## **6. OFFICER REPORTS TO COMMITTEE**

6.1 Reports to Committee on planning matters must be accurate and cover all relevant points, including the substance of any objections and the views of those consulted. Where a planning application is subject to a full report this will refer to the provisions of the Development Plan, and all other relevant material planning considerations

6.2 All reports will have a written recommendation of action/decision, and oral reporting (other than to update an existing report) will only be used on rare occasions and carefully minuted when this does occur. Whenever possible, an update on an existing report will be by way of a further written report.

6.3 All reports will contain a technical appraisal that clearly justifies the stated recommendation.

6.4 All reasons for refusal, and conditions to be attached to a permission, must be clear and unambiguous.

6.5 Members will not seek to interfere with the impartiality of the advice contained in officers' reports or to put improper pressure on officers for a particular recommendation. This would be contrary to the Code of Conduct, which requires Members not to do anything which compromises, or is likely to compromise, officers' impartiality.

6.6 If the report of the Head of Planning and Building Services recommends approval of a departure from the Development Plan, the material considerations justifying the departure must be clearly stated in the report.

## **7. THE DECISION MAKING PROCESS**

### Public Participation

7.1 At meetings of the Council's Planning Committees applicants/agents, Parish and Town Councils, and other interested parties will be allowed to address Members in accordance with the Public Participation Scheme in operation at the time of the meeting.

### Decisions Contrary to Officer Recommendation

7.2 In discussing, and then determining, a planning application or other planning matter, Members will confine themselves to the planning merits of the case. The reasons for making a final decision should be clear and convincing, and supported by planning evidence. If Members wish to refuse an application against officer advice, or impose different or additional conditions on a permission, the reasons for refusal

or the different or additional conditions must be clearly stated at the time the propositions are moved at the meeting.

- 7.3 If Members wish to approve an application that has been advertised as not in accordance with the Development Plan contrary to the officer's recommendation, the material considerations leading to the conclusion must be clearly identified, and how those considerations justify overriding the development plan clearly demonstrated. The material considerations, and the justification, will be minuted.
- 7.4 If a resolution is passed which is contrary to a recommendation of the Head of Planning and Building Services (whether for approval or refusal), a copy of the minute showing the Committee's reasons will be placed on the application file. Officers should also be given the opportunity to explain the implications of a contrary decision before a vote is taken.

### Conduct of Meetings

- 7.5 Conscious of the public arena in which planning decisions are made, Members will conduct the business of the Planning Committees in a fair and sensitive manner. Members and officers will address one another during the debate in a proper manner and shall not refer to one another by first names. Officers will sit separately from Members.
- 7.6 Senior Legal and Planning Officers should always attend meetings of the Planning Committees to ensure that procedures have been properly followed and planning issues properly addressed.
- 7.7 Because of the need to be properly informed as to all relevant issues on a planning matter, a Member who arrives at a meeting after the Case Officer has begun his presentation, or leaves the meeting before the vote is taken, should not debate the item, nor vote thereon.
- 7.8 As well as declaring interests (paragraph 2.4), Members will follow the Code of Conduct requirements relating to general behaviour; in particular the requirements to promote equality by not discriminating unlawfully; to treat others with respect; and not to use their position improperly to secure for any person an advantage or disadvantage.

### Member Representations on Appeals against Planning Decisions

- 7.9 Where a Member wishes to support the Council, or an appellant, on any appeal against a Council decision on a planning matter, that Member shall as a matter of courtesy give written notice of his/her intention to the Monitoring Officer and the appellant. Where the appeal is to be dealt with at an inquiry, the notice shall be delivered to the Monitoring Officer and the appellant normally not less than five working days before the start of the inquiry.
- 7.10 In deciding whether to make representations on an appeal, Members should consider very carefully beforehand whether there could be any allegation that they are in breach of this Local Code or any other provisions in the Members' Code of Conduct. Members are reminded that their over-riding duty as a Member is to the whole local community.

## **8. SITE INSPECTIONS**

- 8.1 Site visits should only be used where the expected benefit is substantial and the reasons for calling a site visit will be minuted.
- 8.2 A site visit should only be necessary if the impact of the proposed development is difficult to visualise from the plans and supporting material available at the meeting or there is good reason why the comments of the applicant and objectors cannot be expressed adequately in writing or the proposal is particularly contentious.
- 8.3 There shall be no discussion on the merits of a planning application at the site inspection. Site visits shall be unaccompanied except that the Planning Officer shall attend only for the purpose of pointing out important site features and to verify the relevant plans.
- 8.4 No recommendation or decision shall be made at a site inspection.

### Informal Site Visits

- 8.5 It is often helpful if Members familiarise themselves with a site before the application is debated by Committee. However, Members should be aware that the Members' Code of Conduct, and this Local Code, apply to them should they become involved in any conversation with a member of the public while visiting a site. Members are reminded that they have no legal right to enter private land without the permission of the owner or occupier. If Members consider a site visit desirable, in accordance with the above criteria, they should notify the Head of Planning and Building Services in writing or e-mail, setting out their reasons.

## **9. REVIEW OF DECISIONS**

- 9.1 The Development Managers will monitor Planning Committee decisions on a continuous basis. If concerns arise relating to decisions made contrary to the officer's recommendation, he/she will report these concerns to the relevant Committee.
- 9.2 The quality of decisions will be monitored through an annual tour of sites by Members.

## **10. COMPLAINTS AND RECORD KEEPING**

- 10.1 In order that any complaints can be fully investigated, record keeping will be complete and accurate. In particular, every planning application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings or significant telephone conversations.
- 10.2 The same principles of good record keeping will be observed in relation to enforcement and Development Plan matters. Monitoring of record keeping will be undertaken on a continuous basis by Managers in the Planning Service.