



<b>Title:</b>	<b>Constitution of the Council (Part 5E: Councillors' Planning Code)</b>
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**Adopted by Full Council on 20<sup>th</sup> June 2016**



# PLANNING CODE OF GOOD PRACTICE FOR COUNCILLORS

## 1 BACKGROUND AND INTERPRETATION

- 1.1 This Planning Code of Good Practice takes into account the Local Government Association's Guidance Note: Probity in Planning (2013 version).
- 1.2 In this Code of Good Practice, "Interest", "Disclosable Pecuniary Interest" and "Ordinary Interest" have the meanings given in the Code of Conduct for Councillors and "Private Interest" means either:
  - 1.2.1 a Disclosable Pecuniary Interest; or
  - 1.2.2 an Ordinary Interest where that interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Councillor's judgment of the public interest.

## 2 INTRODUCTION

### THE AIM OF THIS CODE OF GOOD PRACTICE

- 2.1 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

- 2.2 To control development in the public interest.

### THE ROLE AS A MEMBER OF THE PLANNING AUTHORITY

- 2.3 To make planning decisions openly, impartially, with sound judgement and for justifiable reasons.

### WHEN THE CODE OF GOOD PRACTICE APPLIES

- 2.4 This Code of Good Practice applies to Councillors at all times when involving themselves in the planning process. This includes when taking part in the decision-making meetings of the

Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings. It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

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

### 3 RELATIONSHIP TO THE CODE OF CONDUCT FOR COUNCILLORS

- 3.1 The rules in the Code of Conduct for Councillors must always be complied with first.
- 3.2 The rules in this Planning Code of Good Practice must then be applied. They seek to explain and supplement the Code of Conduct for Councillors for the purposes of planning matters. If a Councillor does not abide by this Code of Good Practice, they may put:
- 3.2.1 the Council at risk of proceedings on the legality or maladministration of the related decision; and
  - 3.2.2 themselves 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 for Councillors, a complaint being made to the Standards Committee.

### 4 DEVELOPMENT PROPOSALS AND INTERESTS UNDER THE CODE OF CONDUCT FOR COUNCILLORS

- 4.1 Councillors must disclose the existence and nature of any Interest at any relevant meeting, including informal meetings or discussions with officers and other Councillors. Interests should preferably be disclosed at the beginning of the meeting and not just at the commencement of discussion on that particular matter.
- 4.2 Where the Councillor has a Private Interest they must:
- 4.2.1 not participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Council. However, they may address the Committee but only to make a presentation in the same manner that would apply to a normal member of the public, after which they must leave the room whilst the meeting considers it (they must not remain in the public gallery).
  - 4.2.2 not try to represent ward views; they should get another Ward Councillor (or another Councillor) to do so instead.
  - 4.2.3 not get involved in the processing of the application.

- 4.2.4 not seek or accept any preferential treatment, or place themselves in a position that could lead the public to think they are receiving preferential treatment, because of their position as a councillor. This would include using their position to discuss that proposal with officers or councillors when other members of the public would not have the same opportunity to do so.
- 4.2.5 be aware that, whilst they are not prevented from seeking to explain and justify a proposal in which they have a Private Interest to an appropriate officer, in person or in writing, the Code of Conduct for Councillors places limitations on them in representing that proposal.
- 4.2.6 notify the Monitoring Officer in writing and note that:
  - 4.2.6.1 they should send the notification no later than submission of that application where they can;
  - 4.2.6.2 the proposal may be reported to the Committee as a main item and not dealt with by officers under delegated powers in some circumstances; and
  - 4.2.6.3 it is advisable that they employ an agent to act on their behalf on the proposal in dealing with officers and any public speaking at Committee.

## 5 FETTERING DISCRETION IN THE PLANNING PROCESS

- 5.1 Councillors must not fetter their discretion, and therefore their ability to participate in planning decision-making at the Council, by making up their mind, or clearly appearing to have made up their mind (particularly in relation to an external interest or lobby group), on how they will vote on any planning matter prior to formal consideration of the matter at the meeting of the Council and of their hearing the officer's presentation and evidence and arguments on both sides.
- 5.2 Fettering their discretion in this way and then taking part in making 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 material considerations enabling the proposal to be considered on its merits.
- 5.3 Councillors are likely to have fettered their discretion where the Council is the landowner, developer or applicant and they have acted as, or could be perceived as being, a chief advocate for the proposal. This is more than a matter of membership of both the proposing and planning determination committees, but that through their significant personal involvement in preparing or advocating the proposal they 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.

- 5.4 Councillors are able to take part in the debate on a proposal when acting as part of a consultee body (where they are also a member of the parish council or County Council, for example), provided:
- 5.4.1 the proposal does not substantially affect the well being or financial standing of the consultee body;
  - 5.4.2 they make it clear to the consultee body that:
    - 5.4.2.1 their views are expressed on the limited information before them only;
    - 5.4.2.2 they must reserve judgement and the independence to make up their own mind on each separate proposal, based on their overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Committee and they hear all of the relevant information; and
    - 5.4.2.3 they will not in any way commit themselves as to how they or others may vote when the proposal comes before the Committee; and
  - 5.4.3 you disclose the Ordinary Interest regarding their membership or role when the Committee comes to considers the proposal.
- 5.5 Councillors must not speak (other than as a Ward Member) and vote on a proposal where they have fettered their discretion. They do not also have to withdraw (if they don't have a Private Interest in the matter), but they may prefer to do so for the sake of appearances.
- 5.6 Councillors should explain that they do not intend to speak (other than as a Ward Member) and vote because they have or they could reasonably be perceived as having judged (or reserved the right to judge) the matter elsewhere, so that this may be recorded in the minutes.
- 5.7 Councillors may take the opportunity to exercise their separate speaking rights as a Ward Member where they have fettered their discretion, but do not have a Private Interest. Where they do exercise these rights they should:
- 5.7.1 advise the proper officer or Chairman that they wish to speak in this capacity before commencement of the item;
  - 5.7.2 remove themselves from the Committee Member seating area for the duration of that item; and
  - 5.7.3 ensure that their actions are recorded.

## 6 CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS

- 6.1 Councillors should refer those who approach them for planning, procedural or technical advice to officers.

- 6.2 Councillors should not agree to any private meeting with applicants, developers or groups of objectors where they can reasonably avoid it. Where they believe that a private meeting would be useful in clarifying the issues, they should never seek to arrange that meeting themselves but should request Sal Khan or the Planning Manager 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 Council 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.
- 6.3 Councillors should:
- 6.3.1 follow the rules on lobbying;
  - 6.3.2 consider whether or not it would be prudent in the circumstances to make notes when contacted; and
  - 6.3.3 report to Sal Khan or the Planning Manager any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and their involvement in them, and ensure that this is recorded on the planning file.
- 6.4 In addition, in respect of presentations by applicants/developers, Councillors should:
- 6.4.1 not attend a planning presentation unless an officer is present and/or it has been organised by officers;
  - 6.4.2 ask relevant questions for the purposes of clarifying their understanding of the proposals;
  - 6.4.3 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 appropriate Committee of the planning authority;
  - 6.4.4 be aware that a presentation is a form of lobbying and they must not express any strong view or state how you or other Councillors might vote.

## 7 LOBBYING OF COUNCILLORS

- 7.1 Councillors should explain to those lobbying or attempting to lobby them that, whilst they can listen to what is said, it prejudices their impartiality and therefore their ability to participate in the Committee's decision-making to express an intention to vote one way or another or such a firm point of view that it amounts to the same thing.
- 7.2 Councillors must remember that their overriding duty is to the whole community not just to the people in their ward and, taking account of the need to make decisions impartially, that

they should not improperly favour, or appear to improperly favour, any person, company, group or locality.

- 7.3 Councillors should not accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, they must ensure it is kept to a minimum, that its acceptance is declared as soon as possible and that they remember to register interests where their value is over £25 (in accordance with the Council's rules on gifts and hospitality).
- 7.4 Councillors should copy or pass on any lobbying correspondence they receive to Sal Khan or the Planning Manager at the earliest opportunity.
- 7.5 Councillors should promptly refer to Sal Khan or the Planning Manager any offers made to them of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- 7.6 Councillors should inform the Monitoring Officer where they feel they have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality). The Monitoring Officer will in turn advise the appropriate officers to follow the matter up.
- 7.7 Unless they have a Private Interest, Councillors will not have fettered their discretion or breached this Planning Code of Good Practice through:
- 7.7.1 listening or receiving viewpoints from residents or other interested parties;
  - 7.7.2 making comments to residents, interested parties, other Councillors or appropriate officers, provided they do not consist of or amount to pre-judging the issue and they make it clear that they are keeping an open mind;
  - 7.7.3 seeking information through appropriate channels; or
  - 7.7.4 being a vehicle for the expression of opinion or speaking at the meeting as a Ward Councillor, provided they explain their actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, they have not committed themselves to vote in accordance with those views and will make up their own mind having heard all the facts and listened to the debate.

## 8 LOBBYING BY COUNCILLORS

- 8.1 Councillors should not lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If they do, they will have fettered their discretion and are likely to have a Private Interest.
- 8.2 Councillors may join general interest groups which reflect their 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 they must disclose any Interest



where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that they have reserved judgement and the independence to make up their own mind on each separate proposal.

- 8.3 Councillors should not excessively lobby fellow councillors regarding their concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- 8.4 Councillors must not decide or discuss how to vote on any application at any sort of Political Group Meeting, or lobby any other Councillor to do so. Political Group Meetings should never dictate how Councillors should vote on a planning issue.

## 9 SITE VISITS

- 9.1 Councillors should attend site visits organised by the Council where possible.
- 9.2 Councillors should not request a site visit unless they feel it is strictly necessary because:
  - 9.2.1 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
  - 9.2.2 there are significant policy or precedent implications and specific site factors need to be carefully addressed.
- 9.3 Councillors should ensure that any information which they gain from the site visit is reported back to the Committee, so that all Councillors have the same information.
- 9.4 Councillors must ensure that they treat the site visit only as an opportunity to seek information and to observe the site.
- 9.5 Councillors may ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- 9.6 Councillors must not hear representations from any other party, with the exception of the Ward Councillor(s) whose address must focus only on site factors and site issues. Where they are approached by the applicant or a third party, the Councillor should advise them that they should make representations in writing to the Council and direct them to or inform the officer present.
- 9.7 Councillors must not express opinions or views to anyone.
- 9.8 Councillors must not 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:

- 9.8.1 they feel it is essential for them to visit the site other than through attending the official site visit,
- 9.8.2 they have first spoken to Sal Khan or the Planning Manager about their intention to do so and why (which will be recorded on the file); and
- 9.8.3 they can comply with these good practice rules on site visits.

## 10 PUBLIC SPEAKING AT MEETINGS

- 10.1 Councillors must not allow members of the public to communicate with them 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.
- 10.2 Councillors must ensure that they comply with the Council's procedures in respect of public speaking.

## 11 OFFICERS

- 11.1 Councillors must not put pressure on officers to put forward a particular recommendation. This does not prevent them from asking questions or submitting views to Sal Khan or the Planning Manager, which may be incorporated into any committee report.
- 11.2 Councillors must recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with a Head of Service or those officers who are authorised by their Head of Service to deal with the proposal at a Councillor level.
- 11.3 Councillors must recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or Councillors.

## 12 DECISION-MAKING

- 12.1 Councillors should ensure that, if they request a proposal to go before the Committee rather than be determined through officer delegation, that their reasons are recorded and repeated in the report to the Committee.
- 12.2 Councillors should come to meetings with an open mind and demonstrate that they are open-minded.

- 12.3 Councillors must make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- 12.4 Councillors must come to their decision only after due consideration of all of the information reasonably required upon which to base a decision. If they feel there is insufficient time to digest new information or that there is simply insufficient information before them, they should request that further time or information. If necessary, Councillors may ask for a matter to be deferred.
- 12.5 Councillors should not vote or take part in the meeting's discussion on a proposal unless they have been present to hear the entire debate, including the officers' introduction to the matter.
- 12.6 Councillors should make sure that the reasons for Committee's decisions are recorded.
- 12.7 Councillors should make sure that if they are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that they clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Councillors may have to justify the resulting decision by giving evidence in the event of any challenge.

## 13 TRAINING

- 13.1 Councillors should not participate in decision-making at meetings dealing with planning matters if they have not attended the mandatory planning training prescribed by the Council.
- 13.2 Councillors should endeavour to attend any other specialised training sessions provided, since these will be designed to extend their knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plan beyond the minimum referred to above and thus assist them in carrying out their role properly and effectively.
- 13.3 Councillors should participate in any annual review of planning decisions.