

CODE OF PRACTICE - PLANNING SERVICES

1. INTRODUCTION

- 1.1 The role of a Member serving on the Planning Committee involves balancing the representation of the needs and interests of individual constituents and the community, with the need to maintain an ethic of impartial decision-making on what can be highly controversial proposals.
- 1.2 This document has been prepared to guide Members and Officers in dealing with planning matters in a manner consistent with good practice, including the conduct of Members in its processes and procedures and is an extension of the statutory code of conduct.
- 1.3 Failure to follow the recommendations set out in this Code of Practice, without good reason, may be regarded as being incompatible with good administration by the Local Government Ombudsman and affect how the Council, its Officers or Members may be perceived by others.
- 1.4 By setting out clearly what is expected of both Members and Officers, it is anticipated that this Code will engender greater mutual understanding and support between all those involved in the planning process. The Code has been produced in the spirit of looking for continuous improvements in the delivery of services, discharging duties responsibly in an open, professional and consistent way compatible with the Council's Code of Conduct and its Protocol for Members/Officer relations.
- 1.5 Both Members and Officers dealing with planning matters and advising Committees will be required to observe all the provisions of this Code. Any allegations that the Code has been breached may be reported to the Standards Committee,. If the Standards Committee finds the allegation(s) proven, it has the power to take any sanctions which it deems appropriate, including the removal, either temporarily or permanently, of a Member of the Planning Committee, but excluding formal disciplinary action against an Officer, which must be taken by the appropriate Head of Service, or the Head of Paid Service.
- 1.6 The Code is set out in the form of a series of headings followed by a brief discussion of the issues involved and best practice advice.

2. THE ROLE OF COUNCILLORS

- 2.1 The role of Members is central to the planning system, which operates within a political arena. It is well recognised that planning is not an

exact science and, provided that Members are properly briefed by Officers, they are well placed to make decisions.

Ward Interests

- 2.2 Members have a special duty to their ward constituents but their overriding responsibility is to the whole community. In terms of the planning process, this can produce a conflict of interest between Members legitimately and effectively giving vent to local, sometimes individual, concerns and the need to reflect the interests of the wider community in decisions reached on planning merits alone. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst Members should take account of these views, they should not favour any person, company, group or locality above the wider community interest, nor put themselves in a position where they appear to do so. Members should be mindful of the need to carefully weigh up all of the arguments before deciding what view to take.
- 2.3 Members should also be very cautious about accepting gifts and hospitality. The Code of Conduct requires any Members receiving any gift or hospitality, in his or her capacity as a Member, over the value of £25, to record that gift or hospitality in the Register of Interests which is open to inspection by the public. A personal or prejudicial interest may arise as a result of accepting such a gift or hospitality.

Lobbying

- 2.4 It is a fact of public life that Members will be subject to varying degrees of lobbying. This is part of the democratic process. However, when individuals or groups seek to influence the outcome of a planning decision, which should be treated upon its individual planning merits in the wider public interest, the impartiality of the decision may be questioned. Such problems might arise if Members indicate their voting intention or support for a particular cause in advance of all the relevant information and Officer advice.
- 2.5 When being lobbied, Members should take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the likely outcome of a planning application before they have heard all the evidence and arguments. If they do express an opinion, they should make it clear that they will only be in a position to make a final decision when all the facts are known and they have heard both sides of the argument at Committee. However, if the Member responds to lobbying by deciding to go public in support of a particular outcome, or even campaigning actively for it, the proper course of action for such a Member would be to withdraw from the meeting while the application is being considered.
- 2.6 Members should not represent an applicant or individual objector and should not organise support or opposition. In particular, they should avoid representing applicants or objectors in discussions with Planning

Officers which may take place before an application is considered by the Planning Committee. Instead they should suggest to those who are lobbying, that they should speak or write to the relevant Planning Officer, in order that their opinions can be included in the officer's report to committee. Any letters referred to and relied upon by Councillors in speaking on an application should be given to the Head of Planning & Environment Services to be placed on the respective planning file immediately after the meeting.

- 2.7 Members should not lobby other Members or put pressure on Officers to make a particular recommendation. Therefore no political group meeting must take place prior to the committee meeting to discuss the planning applications.
- 2.8 Members of the Planning Committee need to take account of the general public's expectation that a planning application will be processed and determined in an open and fair manner. There is the possibility that an aggrieved party may seek judicial review on the way in which a decision has been arrived at, or complain to the Local Government Ombudsman on the grounds of maladministration or complain to the Standards Committee that a Member has breached the Code of Conduct.
- 2.9 Members who are unsure as to whether an interest should be declared should seek the advice of the Council's Monitoring Officer.

3. MEMBERSHIP OF PARISH COUNCILS

- 3.1 Parish Councils are consulted and asked to comment on planning applications prior to their being considered by the District Council's Planning Committee. Sometimes, a member of the Planning Committee will also be a member of a Parish Council and such a situation could give rise to a perception that there is a conflict between these two roles.
- 3.2 Members of the Planning Committee may participate in the formulation of their Parish Council's comments on a planning application and may vote on motions put forward in connection with the making of such comments. However, in doing so, they must recognise that they have not yet received full information about the application e.g. the planning history, comments by other consultees and officer recommendation. They should therefore declare, at the Parish Council's meeting, that in assisting in the formulation of the Parish Council's comments, that they are only forming a preliminary view on the application, that they recognise that there is further information about the application which they have not yet received, and that they reserve the right to change their preliminary view, in the light of such further information, when the application is considered by the District Council's Planning Committee.

- 3.3 In this way, members of the Planning Committee, who are also members of Parish Councils, will avoid any perception that they have fettered their judgment on an application before knowing the full facts about it.

4. PLANNING SITE VISITS PROCEDURE

- 4.1 Members visit sites to which applications for planning permission relate because the Planning Committee has decided that Members should have the opportunity of seeing a site or its relationship to adjoining property so that they will be in the best position to decide whether or not planning permission should be granted when next the Committee meets, or whether, say, a condition should be imposed on any grant of planning permission. Site visits may also take place on request by members of the Committee, or by Ward Councillors, prior to the planning application first being considered by the Planning Committee.
- 4.2 The undertaking of site visits by Members should not be agreed to as a matter of course, bearing in mind the need to determine applications as quickly as possible in accordance with Government advice. A Member should justify/explain any request and the Committee should have regard to whether such justification/explanation is sufficient to warrant the undertaking of a site visit. If not, the request should be refused.
- 4.3 The site visit does not constitute a meeting of the Planning Committee.
- 4.4 Accordingly, Members should not form a collective view on the issue.
- 4.5 Since Members are attending a site merely to “see what is to be seen”; it is inappropriate to hear either the applicant or his representative. Similarly, it is inappropriate to hear anybody else who wishes to make representations. The occasion is not a local hearing.
- 4.6 Members should leave each site with no collective view - the occasion is simply to assist them individually to form a view.
- 4.7 Consequently, when the application is next considered by the Planning Committee, the Chairman of the Committee should remind Members that the application was the subject of a site visit, and then let the debate proceed normally.

5. THE ROLE OF OFFICERS

- 5.1 Officers, as the paid employees of the Council, have the principal responsibility for carrying out the Council’s work. They should provide professional and impartial advice to Members to assist them in reaching their decisions and to the public at large on all planning matters. It is very important that such advice is consistent with the

provisions of the prevailing planning policies and guidance so that the planning system is seen to be fair whatever the outcome.

- 5.2 The Planning Committee has given delegated authority to the Head of Planning & Environment Services to approve certain categories of planning application as set out in the Council's Scheme of Delegation.
- 5.3 Any decisions delegated to Officers should be clearly minuted.

6. OFFICER REPORTS TO COMMITTEE

- 6.1 All reports shall provide a clear technical appraisal of the application including site location and description, planning history, consultations received and the policy contents for the recommendation, which should be justified in the Officers' written comments.
- 6.2 Reports should have a written recommendation of action; oral reporting (except to update a report) should be avoided and carefully minuted.
- 6.3 Reports should contain technical appraisals, which clearly justify a recommendation.
- 6.4 If the report's recommendation is contrary to the provisions of the development plan or Local Development Framework, the material considerations, which justify the departure, must be clearly stated.
- 6.5 Terms for Planning Obligations (Section 106 Agreements) must be clearly set out, discussed openly and recorded in the minutes.
- 6.6 The Monitoring Officer or his or her representative shall attend all Planning Committee meetings and provide advice, together with legal advice as required.

7. PRE-APPLICATION DISCUSSIONS

- 7.1 Officers are often asked informally during meetings whether planning permission is required for changes of use and/or for new development.
- 7.2 Officers will always endeavour to be as helpful as they can in this matter but can only offer an informal opinion as to whether or not planning permission is required for the development someone wishes to undertake, whether it is a new building, an extension to a home, or a change of use of land or building. Any advice that they offer in this respect is an individual opinion based on the information the enquirer has provided at the time. It is not binding on the Council.
- 7.3 For an official decision, enquirers should be invited to apply for a Certificate of Lawfulness of Proposed Use or Development, under

Section 192 of the Town and Country Planning Act 1990. A fee is payable for the processing of such an application but the enquirer will be presented with a legally binding determination, in other words, an official decision of the Council telling him/her whether or not planning permission is required.

7.4 The fee varies according to the type of development proposed and staff will be able to advise on the amount payable. It is in the interests of the enquirer to have an official written determination relating to development should he/she want to sell his/her land/property or should any legal challenge arise relating to the work which has been undertaken.

7.5 The following guidelines have been adopted to ensure that all parties involved are treated fairly and that the Planning Officers' role is clearly understood:

- Planning Officers will give informal advice in the spirit of helpfulness. It is however only informal advice which is not binding on the Local Planning Authority;
- Planning Officers will negotiate and offer advice to overcome problems at application stage where a solution is apparent and the proposal can be determined within eight weeks as a consequence;
- The onus to negotiate falls upon the applicant/agent to offer alternatives to the original submission;
- Planning Officers cannot advise what a potential recommendation will be should an application be made.

8. DECISIONS CONTRARY TO THE DEVELOPMENT PLAN/ LOCAL DEVELOPMENT FRAMEWORK

8.1 The law requires that where the development plan/Local Development Framework is relevant, decisions should be taken in accordance with it, unless material considerations indicate otherwise.

8.2 If an application does not conform to the development plan/Local Development Framework it must be identified as soon as possible and then advertised in the local press. If it is intended to approve such an application, the material considerations must be clearly identified, and how these considerations justify overriding the development plan/Local Development Framework. The application may then have to be referred to the Government Office for the West Midlands, depending on the scale of the development.

9. DECISIONS CONTRARY TO OFFICER RECOMMENDATION

- 9.1 Members are perfectly entitled to reach different decisions to those recommended to them by Officers by attaching different weight to the various relevant planning criteria. That this happens from time to time is inevitable but it is essential that the public be left in no doubt as to how the decision was reached. Officer reports must be well structured and the public should not be given the impression that decisions reached contrary to advice are made hastily or new conditions imposed on the spur of the moment. A full detailed minute of the Committee's reasons should be made. The Officer should also be given an opportunity to explain the implications of the contrary decision.
- 9.3 Where a Member is minded to raise new issues, information or questions, they are advised to contact the respective Planning Officer or Head of Planning & Environment Services before the meeting wherever possible.
- 9.4 Where a Member is minded to make a recommendation, which is contrary to the Officer recommendation, then:-
- (i) in the case of a refusal, the planning reasons should be clearly set out;
 - (ii) in the case of an approval, the type of conditions proposed should be indicated.
- 9.5 If an imminent decision is thought to be perverse, the Head of Planning & Environment Services or the Monitoring Officer should so advise the Committee, but it remains the role of the Chairman to decide whether or not it would be preferable to defer consideration to allow for a period of reflection on the advice given before proceeding.
- 9.6 Where an application is refused or conditions imposed contrary to an officer recommendation, it may not be in the Council's best interests for the Case Officer to give evidence at any subsequent public inquiry or hearing resulting from an appeal. In such circumstances it will be a matter for the Head of Planning & Environment Services in consultation with the Head of Legal, Equalities and Democratic Services to establish whether a suitably experienced and qualified Officer exists within his establishment who is able to concur professionally with the decision taken. If so, then they will act as the Council's professional witness. If not, then the use of planning consultants will be explored. It is rarely in the Council's best interests for individual Members to represent the Council but this may be appropriate where factual evidence is in dispute particularly in enforcement appeals.
- 9.7 All planning approvals and refusals shall be fully minuted. Unless otherwise stated, these should accord with those set out in the Agenda subject to the incorporation of any further conditions or reasons (or

variations) thought to be necessary by the Head of Planning & Environment Services to give full effect to the Council's wishes about any particular application.

10. DEALING WITH APPLICATIONS SUBMITTED BY MEMBERS AND OFFICERS AND COUNCIL SERVICE AREAS

10.1 The submission of planning applications and/or development plan proposals by serving Members, Officers, or their close friends and relatives can easily give rise to suspicions of impropriety, including proposals for the Council's own development. The following points should be taken into account:

Members

10.2 Serving Members and Officers should never act as agents for people pursuing a planning matter.

10.3 Members should take no part in the processing of their own applications or those of their immediate family or close friends or anyone with whom the Member has a close personal association, and the necessary prejudicial interest must be declared in accordance with the Code of Conduct.

10.4 As soon as a planning application is received from a Member, the Head of Planning & Environment Services must inform the Council's Monitoring Officer, who will take such steps as are necessary to ensure that applications for dispensations from other Members of the Planning Committee are considered as soon as possible by the Standards Committee.

10.5 Members who are members of the Planning Committee should declare a prejudicial interest in respect of applications prepared by them or on their behalf and leave the meeting while such applications are under consideration, subject to any rights of public speaking agreed by the Council which are exercised in accordance with the Code of Conduct.

10.6 Applications of currently serving Officers and Members should not be dealt with under delegated powers and should be decided by the Planning Committee.

Officers

10.7 Serving Officers should never act as agents for people pursuing a planning matter.

10.8 Officers should take no part in the processing of their own applications or those of their immediate family or close friends.

10.9 Applications of currently serving Officers should not be dealt with under delegated powers and should be decided by the Planning Committee.

Developments by the Council

- 10.10 Planning applications made by Council Service Areas must be processed in accordance with existing policy and treated in the same way as a private application except that all such applications shall be considered by the Planning Committee and not determined under delegated powers. Any Members on the Planning Committee who also sat on an initiating Committee (usually the Cabinet) should consider if they have a personal or prejudicial interest.

Applications submitted by former Members and former employees

- 10.11 There has been some considerable concern about former employees setting up their own consultancies and providing planning advice in the Bromsgrove District area and about the consideration of applications by or on behalf of former Members. Both circumstances occur from time to time and the guiding principles should be that:-

- (i) applications by former Members will be treated in the same way as any other application;
- (ii) applications by former employees whether they are acting for themselves or an agent for others will be treated in exactly the same way as any other application.

Applications by Members of Political Associations

- 10.12 Where a planning application is made by someone who is not a Member, but is known to be a member of the same Political Association as some of the members of the Planning Committee, those Members will need to give consideration as to whether they should declare a personal or prejudicial interest when the application is considered; the Code of Conduct states that a Member has a personal interest in any business where it might reasonably be regarded as affecting the well-being or financial position of a member of his or her family or any person with whom he or she has a close association. Standards Board for England guidance states that a person with whom you have a close association is someone that you are in either regular or irregular contact with over a period of time who is more than an acquaintance. It is someone a reasonable member of the public might think you would be prepared to favour or disadvantage when discussing a matter that affects them. A personal interest will also be a prejudicial interest if a member of the public with knowledge of the relevant facts would reasonably regard the interest as so significant that it is likely to prejudice the Member's judgment of the public interest.

- 10.13 In some cases, no declaration will be necessary, but in other cases the relationship between the parties may be close enough to warrant a declaration of interest. Councillors should have regard to the Council's Code of Conduct and should err on the side of safety.

11. REVIEW AND MONITORING

The effectiveness of this Code will be monitored by regular reports to the Standards Committee by the Monitoring Officer. Formal complaints made under the Council's Customer Feedback System and on investigations made by the Local Government Ombudsman will also be taken into account in monitoring the effectiveness of the Code.