

PART 5 | SECTION 10 - PLANNING CODE OF CONDUCT

1. SECTION 10 – PLANNING CODE OF CONDUCT

This Code of Practice supplements the Council's Code of Conduct for Members and where appropriate Members should refer to the Code of Conduct which is set out in the Council's Constitution. The Monitoring Officer's advice may be sought on the interpretation of the Code of Conduct or this Code.

2. Introduction

- 2.1 Planning affects land and property interests, including the financial value of land and the quality of their settings. It is not an exact science. It is often highly contentious because decisions affect the daily lives of everyone and the private interests of members of the public, landowners and developers. Opposing views are often strongly held by those involved. A key role of the planning process is balancing the needs and interests of individuals and the community.
- 2.2 The planning system can only function effectively if there is trust among those involved. There must be trust between Members and Officers and between the public and the Council. The Third report of the Committee on Standards in Public Life (the Nolan Committee) (1997) recommended that each local authority's practices and procedures were set out in a local code of planning conduct to avoid allegations of malpractice in the operation of the planning system.
- 2.3 The general principles that underlie the Council's Code of Conduct for Members and apply to this Code of Practice are:
 - 2.3.1 Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.
 - 2.3.2 Members should not place themselves in situations where their honesty or integrity may be questioned.
 - 2.3.3 Members should make decisions on merit.
 - 2.3.4 Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

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- 2.3.5 Members may take account of the views of others but should reach their own conclusions on the issues before them and act in accordance with those conclusions.
- 2.3.6 Members should respect the impartiality and integrity of Officers.
- 2.4 The Council is committed to open, fair and transparent decision-making. Planning decisions should be made impartially, with sound judgement and for justifiable reasons.
- 2.5 This Code of Practice sets out practices and procedures that Members and Officers of the Council shall follow when involved in planning matters. Planning matters include the consideration of planning applications, the preparation of Local Plans and other planning policy and the enforcement of planning control.
- 2.6 Failure to follow this Code without good reason could be taken into account in investigations into possible maladministration against the Council, or have implications for the position of individual elected members and officers. Breaches of this Code may also amount to breaches of the Council's Code of Conduct for Members. If in doubt about what course of action to take, a member or officer should seek the advice of the Council's Monitoring Officer.
- 2.7 This Code of Practice sets out principles to guide members and officers in determining planning applications and making other decisions within the terms of reference of Development Control Committee. Although of particular relevance to members of Development Control Committee it applies to all members of the Council who may become involved in planning and development matters.

3. The Role and Conduct of Members and Officers

- 3.1 Members and Officers have different, but complementary roles. Both serve the public but Members are responsible to the electorate, while Officers are responsible to the Council as a whole.
- 3.2 The role of a member of the Development Control Committee is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.
- 3.3 Whilst Members have a special duty to their ward constituents, including those who did not vote for them, their overriding duty is to the whole community. This is particularly pertinent to Members involved in making a planning decision. A key role of the planning system is the consideration of development proposals against the wider public interest.

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- 3.4 Members' decisions shall not discriminate in favour of any individuals or groups and, although they may be influenced by the opinions of others, they alone have the responsibility to decide what view to take. Members must, therefore, consider all of the material issues in the light of Local Plan policies, Government advice and their own individual judgement and make a decision in the interests of the area as a whole.
- 3.5 Whilst Members should take account of all views expressed, they shall not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.
- 3.6 Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's (RTPI) Code of Professional Conduct. Breaches of that code may be subject to disciplinary action by the Institute.
- 3.7 Officers in their role of advising Members shall provide:
- 3.7.1 Impartial and professional advice;
 - 3.7.2 Consistency of interpretation of planning policy; and
 - 3.7.3 Complete written reports covering all necessary information for a decision to be made.
- 3.8 The Council endorses the statement in the RTPI code that, 'RTPI members shall not make or subscribe to any statements or reports which are contrary to their own professional opinions', and extends it to apply to all officers in the authority advising on planning matters.
- 3.9 That the Council may not always follow the advice of their professional planning officers is perfectly proper. The professional officer too, may have a change of opinion, but this must be on the basis of professional judgement, and not because an authority, its Members or other Officers, have prevailed upon the Officer to put forward his or her professional view as something other than it really is. If the Development Control Committee is minded to refuse or grant an application contrary to Officer recommendation, it should consider whether to defer the application to the next available Committee, before making the final decision. This will allow Members to obtain further legal advice on the proposed reasons for acting contrary to the recommendation based on material planning considerations. If such a decision is made it must be clearly minuted, expressed clearly and be based upon sound planning reasons supported by evidence.
- 3.10 The Council shall have a designated head of the planning service, who is qualified for election to membership of the RTPI and who has direct access to elected members as their

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professional adviser on planning matters. A superior officer shall not have the power to overrule the professional advice of the head of the planning service.

- 3.11 Officers shall follow the guidance on their standards of conduct as set out in the Code of Conduct for Employees in the Council's Constitution and any National Code of Conduct for Local Government Officers issued by the Secretary of State under Section 82 Local Government Act 2000.
- 3.12 Members shall follow the advice in the Member's Code of Conduct about accepting gifts and hospitality. Members should treat with extreme caution any offer which is made to them personally; the normal presumption should be that such offers must be courteously declined. Similarly, officers shall politely decline offers of hospitality from people with an interest in a planning proposal. If receipt of hospitality is unavoidable, Officers shall ensure it is of a minimal level and declare it in the hospitality book as soon as possible.

4. Interests of Members

- 4.1 Where members have interests which may be thought likely to influence their decision, the fact should be declared at the meeting.
- 4.2 Where the interest is such that members of the public may feel that the member will not be able to approach matters with an open mind and consider the application on its planning merits, members should consider withdrawing from the Committee for that item.
- 4.3 These principles apply equally to members who are not members of the Development Control Committee. Members who have such interests should consider whether it is appropriate for them to participate in the planning process, and in any event, should declare such interest at any meeting which they may attend or in any letter which they may write.
- 4.4 Members should seek guidance from officers.
- 4.5 Members of the Development Control Committee and Officers who attend the Development Control Committee regularly should complete the Annual Return required for this purpose.
- 4.6 The Code of Conduct for Members provides guidance as to personal and prejudicial interests which may affect a member's ability to take part in the decision-making process. However, members may have other interests which may influence their decision which will not amount to personal or prejudicial interests for the purposes of the Code. In order to maintain the

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integrity of the planning system, members should be careful to ensure that such interests do not unduly influence their decisions. Examples of such interests are:

- 4.6.1 from ward concerns;
- 4.6.2 from membership of other Committees of the Council;
- 4.6.3 from membership of other public or community bodies;
- 4.6.4 from membership of voluntary associations and trusts (including where appointed by the Council);
- 4.6.5 from a connection with a particular policy initiative of the Council;
- 4.6.6 from membership of clubs, societies and groups; and
- 4.6.7 from hobbies and other leisure interests.

Such interests may mean that a Member is involved with a planning application before the matter comes before the Development Control Committee. Such involvement need not on its own debar a member from participating in making the planning decision when the matter is considered by the Development Control Committee providing that the member has not already decided how they will vote on the matter before the Committee. Members should, however, always consider carefully whether in any particular case they could reasonably be seen to approach the planning merits of the application with an open mind. If the member considers that this is not possible, the member should withdraw from consideration of that item.

- 4.7 As a minimum, the integrity of the planning system requires openness on the part of members; it must operate fairly and be seen to operate fairly.

5. Development Proposed by the Council or a Council-Owned Company

- 5.1 Planning legislation allows the Council to submit and determine proposals for development that it proposes to carry out itself. Council owned companies also submit proposals that are decided by the Council.
- 5.2 Proposals submitted by the Council or a Council owned company shall be considered in the same way as those by private developers.
- 5.3 Members of the Development Control Committee who sit on the board of a Council owned company which has submitted a planning proposal shall declare a personal and prejudicial

interest and take no part in the discussion and determination of that proposal, except where they are the local Member when they may speak on matters of local concern but shall not vote.

- 5.4 Officers who are involved in the preparation of development proposals shall not advise on, or take any part in the consideration of, planning applications in respect of such proposals.

6. Statutory Duties

The Council is also subject to a number of statutory duties which it must comply with when carrying out its statutory functions. These will apply to the planning function except when such matters are clearly immaterial because they are not capable of relating to the use of development land. Examples of these duties include:

6.1 Equality Act 2010

Section 149 provides that:

- 6.1.1 A Council must, in the exercise of its functions, have due regard to the need to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a protected characteristic and persons who do not share it.
- 6.1.2 The above powers relate to the following protected characteristics:-
- (a) Ages;
 - (b) Disability;
 - (c) Gender reassignment;
 - (d) Marriage and civil partnership;
 - (e) Pregnancy and maternity;
 - (f) Race (including colour, nationality and ethnic or national origins);
 - (g) Religion or belief;
 - (h) Sex; or

- (i) Sexual orientation.

6.2 Human Rights

Section 6(1) of the Human Rights Act 1998 provides that:

“It is unlawful for a public authority to act [or fail to act] in a way which is incompatible with a Convention right.”

6.3 Best Value

Section 3(1) of the Local Government Act 1999 provides that:

“A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.”

6.4 Crime and Order

Section 17(1) of the Crime and Disorder Act 1998 provides that:

“Without prejudice to any other obligation imposed on it, it shall be the duty of a [local authority] to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.”

7. Lobbying of and by Members

7.1 Lobbying is a normal and proper part of the political process. The applicant, supporters or those who may be affected by a proposal will often seek to influence the decision by an approach to their local member or members of the Development Control Committee.

However, reacting to lobbying can lead to the impartiality of a Member being called into question and require that Member to declare an interest.

7.2 The information provided by lobbyists is likely to represent an incomplete picture of the relevant considerations in respect of a planning matter. The views of consultees, neighbours and the assessment of the case by the planning officer all need to be considered before a Member is in a position to make a balanced judgement on the merits of the case. Members should provide officers with copies of any lobbying material they may have received, whether in favour or against a proposal.

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- 7.3 The time for individual Members of the Development Control Committee to make a decision on a proposal is at the Committee meeting when all available information is to hand and has been duly considered.
- 7.4 A Development Control Committee member shall be free to listen to a point of view about a planning proposal and to provide procedural advice (in particular referring the person to officers). Even though they may agree with a particular view, Development Control Committee members should take care about expressing an opinion indicating they have made up their mind before the decision-making meeting. To do so, without all the relevant information and views, would be unfair and prejudicial. A decision is at risk of being challenged if members do not retain open minds and are not genuinely susceptible to persuasion at the decision-making meeting. Members who are lobbied should:
- 7.4.1 make clear that they reserve their final decision on a proposal until the Committee meeting;
 - 7.4.2 only give procedural advice;
 - 7.4.3 consider referring those lobbying to the relevant Officer who can provide further advice; and
 - 7.4.4 not seek to meet an applicant or potential applicant alone.
- 7.5 Members of the Development Control Committee shall not, in general, organise support or opposition for a proposal, or lobby other Members (other than when addressing the Development Control Committee). Members shall not put improper pressure on officers for a particular recommendation.
- 7.6 The local Member who is not a member of the Development Control Committee will be allowed to attend and speak at the decision-making meeting (either presenting their own views if they are an affected party or representing the views of their ward members) but not vote. The member of an adjacent division substantially affected by the proposal shall, at the discretion of the chair of the Development Control Committee, be allowed to attend and speak but not vote. A local Member who has a personal or prejudicial interest in an application, within the meaning of the Code of Conduct, should seek prior advice from the Monitoring Officer about his or her position.
- 7.7 If a member of the Development Control Committee identifies himself or herself with group or individual campaigning for or against an application, he or she shall declare a personal and prejudicial interest and not vote or decide on the matter. However, that Member shall

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be given the opportunity to address the Committee and must leave the meeting as soon as they have spoken and not return until a decision has been made by Committee.

- 7.8 Members of the Development Control Committee must be free to vote as they consider appropriate on planning matters. A Member cannot be instructed how to exercise their vote on a planning matter.
- 7.9 Members 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), who will in turn advise the appropriate Officers.

8. Pre- and Post-Application Discussions and Negotiations

- 8.1 Discussions between an applicant and a planning authority, prior to the submission of an application can be of considerable benefit to both parties and is encouraged. Continued discussions and negotiations between these parties, after the submission of proposals, is a common and important facet of the planning process. However, they should take place within clear guidelines, as follows.
- 8.2 It should always be made clear at the outset that the discussions will not bind the Council to making a particular decision and that any views expressed are those of the Officer only, and are provisional.
- 8.3 Advice should be consistent and based upon the Local Plan and material considerations. There should be no significant difference of interpretation of planning policies by individual planning officers.
- 8.4 A written note should be made of all potentially contentious meetings. Two or more officers should attend potentially contentious meetings. A note should also be taken of potentially contentious telephone discussions.
- 8.5 Members need to preserve their role as impartial decision makers and should not take part in pre- or post- submission discussions and negotiations with applicants regarding development proposals. Should there be occasions when Members are involved, it should be part of a structured arrangement with Officers, including a senior planning officer. Members must avoid indicating the likely decision on an application or otherwise committing the authority during contact with applicants.

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8.6 Members may receive information from applicants and give information to applicants and Members of the public but, to safeguard their impartiality, they should maintain a clear distinction between receiving information and negotiating. Any information received by Members should be provided to the officers dealing with the application. Members who are approached for planning, procedural or technical advice should refer the applicant to the relevant officer.

9. Officer Reports to Committee

9.1 The Head of Built Environment will submit written reports to the appropriate Planning Committee on planning applications to be determined by the Council. The reports will give the background to the application including any relevant planning history of the site, a description of the proposals and their likely effects, and the relevant Local Plan and Government policy considerations, together with any other material considerations. Where a planning application requires an environmental impact assessment, the Head of Built Environment shall include in his/her report a summary of the environmental statement, comments by bodies consulted and representations from members of the public together with his/her own comments. The reports will include a summary of representations made about the application. The Head of Built Environment in his/her report will give a reasoned assessment of the proposals and a justified recommendation.

9.2 Oral reports (except to present and update a report) should be extremely rare and fully minuted when they do occur.

9.3 The Head of Built Environment will have available for inspection by members the full planning application, environmental statement (where required) and representations from bodies consulted and members of the public.

10. Planning Considerations

10.1 Planning decisions should be made on planning considerations and should not be based on immaterial considerations.

10.2 Members of the Development Control Committee should attend training sessions which may be organised from time to time. All other members are encouraged to attend.

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- 10.3 Planning legislation, as expanded by Government Guidance and decided cases, defines which matters are material considerations for the determination of planning decisions. There is much case law on what are material planning considerations. The consideration must relate to the use and development of land.
- 10.4 Briefly, at the date of the preparation of this Protocol, material planning considerations include:
- 10.4.1 the Local Plan;
 - 10.4.2 Government Guidance (contained in such documents as Circulars, Planning Policy Guidance Notes, Mineral Policy Guidance Notes, Planning Policy Statements and Ministerial announcements);
 - 10.4.3 Supplementary Planning Documents adopted by any related Committee;
 - 10.4.4 non-statutory planning policies adopted by the Council;
 - 10.4.5 the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas;
 - 10.4.6 the statutory duty to pay special attention to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses;
 - 10.4.7 representations made by statutory consultees and other persons making representations in response to the publicity given to applications, to the extent that they relate to planning matters;
 - 10.4.8 planning obligations (given unilaterally or by way of agreement) under section 106 of the Town and Country Planning Act 1990.
- 10.5 It should, however, be noted that the risk of costs being awarded against the Council on appeal is not itself a material planning consideration.
- 10.6 It is the responsibility of officers in preparing reports and recommendations to members to identify the material planning considerations and warn members about those matters which are immaterial planning decisions.
- 10.7 Personal considerations and purely financial considerations are not on their own material; they can only be material in exceptional situations and only insofar as they relate to the use and development of land – such as, the need to raise income to preserve a listed building which cannot otherwise be achieved.

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- 10.8 The planning system does not exist to protect private interests of one person against the activities of another or the commercial interests of one business against the activities of another. The basic question is not whether owners and occupiers of neighbouring properties or trade competitors would experience financial or other loss from a particular development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest.
- 10.9 Local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless that opposition or support is founded upon valid planning reasons which can be substantiated.
- 10.10 It will be inevitable that all the considerations will not point wither to grant or refusal. Having identified all the material planning considerations and put to one side all the immaterial considerations, members must come to a carefully balanced decision which can be substantiated, if challenged on appeal.

11. The Decision Making Process

- 11.1 Members shall recognise that the law requires that where the Local Plan is relevant, decisions should be taken in accordance with it, unless material considerations indicate otherwise.
- 11.2 Where an environmental impact assessment is required, the Development Control Committee shall take the information provided in the report into consideration when determining the application.
- 11.3 If the report's recommendation is contrary to the provisions of the Local Plan, the material considerations which justify this must be clearly stated.
- 11.4 Where the Development Control Committee decide to adopt the recommendation of the Head of Built Environment, the reasons contained in his/her report will be minuted, together with any additional reasons determined by the Committee.
- 11.5 Where the Development Control Committee is minded to approve or to refuse a planning application, contrary to the recommendation of the Head of Built Environment, or the Local Plan, agreement shall be reached at the meeting on the planning reasons for that decision. They shall be fully minuted by the Head of Law and Democracy.
- 11.6 The reasons for Committee's decision to defer any proposal should also be recorded.

12. Site Visits by the Committee

- 12.1 A site visit may be held if the Head of Built Environment in consultation with Chair of the relevant Committee considers it will assist members in reaching their decision. This would be, for example, where the impact of the proposed development is difficult to visualise from plans and supporting material. Members should try to attend site visits organised by the Council where possible.
- 12.2 Site visits will be organised in accordance with the following procedures:
- 12.2.1 The Head of Law and Democracy will invite the local Member to site visits. Where a proposal would have significant direct impact upon an adjacent electoral division, at the discretion of the Chair of the Development Control Committee the local Member for the adjacent division will also be invited.
 - 12.2.2 The role of the applicant during a site visit shall only be to secure access to the site in accordance with health and safety provisions. The applicant shall not participate in any discussions on site but may be asked to provide factual information.
 - 12.2.3 Objectors will not normally be invited to attend a site visit or participate in any discussions on site.
 - 12.2.4 On assembling at the site, at the time specified, the Chair will explain the purpose and procedures of the site visit so that all are aware that it is a fact finding exercise only and that no decision will be taken until the Committee meeting. The Head of Built Environment, or his/her representative, will explain the application as it relates to the site and relevant viewpoints. Following any questions to the Head of Built Environment, or clarification sought on matters which are relevant to the site inspection, the Chair will bring the site visit to a close.
 - 12.2.5 When a site visit is held prior to the meeting of the Development Control Committee it is desirable that all members attending the Committee should also attend the site visit. Members voting on a planning application without having attended the visit to the particular site may give the impression that they have not taken the opportunity to be fully informed about the application. Information gained from the site visit should be reported back to committee so that all members have the same information.

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12.3 Members should 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 you feel it is essential for you to visit the site other than through attending the official site visit and you have first spoken to the Head of Built Environment about your intention to do so and why (which will be recorded on file) and you can ensure you will comply with these good practice rules on site visits.

13. Representations on Planning Applications

13.1 Wherever possible, objections or representations to planning applications should be made in writing. Written representations received will be made available for public inspection and objections summarised and reported to the Development Committee. Members will be given the opportunity to inspect all letters received before the decision on the application is made.

13.2 There will be occasions when applicants or objectors, or both, may wish to make representations in person to the Development Control Committee. In such circumstances the following procedure will apply:

13.2.1 The applicant will be informed that the application and all supporting documents will be taken into account. The objectors will be informed that their written representations will be taken into account. Both the applicant and the objectors will also be informed that they have the right to attend the Committee and make representations in person. They will be asked to indicate whether they wish to do this and, if so, they will be invited to the meeting at which the decision is to be made. They must register to speak at the meeting by 16.00 hours on the last working day prior to the meeting and if they fail to do so they will not be allowed to speak unless the Chair exercises his discretion to permit them to do so. People wishing to speak at the Development Control Committee cannot hand out documentation to members of the Committee. Photographs may be handed out provided that a minimum of 20 copies have been delivered to the Council by 16.00 hours on the last working day prior to the meeting. Speakers can also use the Council's IT system to make electronic submissions to the Committee provided that the submission is delivered to the Council by 16.00 hours at the latest on the last working day prior to the meeting.

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- 13.2.2 Each group of speakers (objectors and supporters) will be allowed a maximum of five minutes to address the Committee. In the event that more than one person wishes to speak for or against a proposal the time will be divided. Groups of speakers will be encouraged to appoint a spokesperson.
- 13.2.3 At the meeting the Head of Built Environment will present his/her report first.
- 13.2.4 The objectors will make their representations, subject to a time limit of 5 minutes (except at the discretion of the Chair), and may be asked questions by the Committee.
- 13.2.5 The applicant will then make his or her representations, subject to a time limit of 5 minutes (except at the discretion of the Chair), and may be asked questions by the Committee.
- 13.2.6 Where the Chair exercises their discretion to extend the time limit for either the objectors or the applicant, then similar provision shall be made for the other parties (should they so wish) to ensure that all parties receive a fair hearing.
- 13.2.7 Officers may comment on the representations and the merits of the application
- 13.2.8 The Committee will proceed to debate the application and make a decision. The minute will include the reasons for the decision.

14. Review of Decisions

- 14.1 The Audit Commission's Report, 'Building in Quality', recommended that elected members should visit a sample of implemented planning permissions to assess the quality of decisions. This can improve the quality and consistency of decision-making and help with reviews of planning policy.
- 14.2 Visits to application sites previously considered by the Council shall be organised in tandem with visits to current application sites, as appropriate. Briefing notes shall be prepared in each case.
- 14.3 Attendance at the review site visits shall be restricted to members of the committee and the local Member.

15. Training

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- 15.1 Members 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.
- 15.2 Members should endeavour to attend any other specialised training sessions provided since these will be designed to extend Members' knowledge of planning law, regulations, procedures, Codes of Practice and the Local Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.