

SWINDON BOROUGH COUNCIL

MEMBERS PLANNING
CODE OF GOOD PRACTICE

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Background

This Code of Good Practice has been prepared in response to the Local Government Association's Guidance Note on the preparation of Local Codes of Good Practice on Planning Matters in the light of the introduction of the new ethical framework and is based on a Model Code produced by the Association of Council Secretaries and Solicitors in consultation with the District Audit Service, Local Government Ombudsman and the Standards Board for England.

Introduction

The aim of this code of good practice: 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: to control development in the public interest.

Your role as a Member of the Planning Authority: to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.

When the Code of Good Practice applies: this code applies to Members at all times when involving themselves in the planning process. (This includes, where applicable, when part of 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.

If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer (Stephen Taylor, Director of Law and Democratic Services, 01793 463012), or one of his staff, and preferably well before any meeting takes place.

Any complaints covering any breach of the Code should be reported to the Monitoring Officer.

1. Relationship to the Members' Code of Conduct

- **Do** apply the rules in the Members' Code of Conduct first, which must be always be complied with.
- **Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not abide by this Code of Good Practice, you may put:
 - the Council at risk of proceedings on the legality or maladministration of the related decision; and
 - yourself at risk of being named in a report made to the Standards Committee or Council.

2. Development Proposals and Interests under the Members' Code

- **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter. A 'Declaring Interests Flowchart' is attached to this Code.
- **Do** then act accordingly. Unless otherwise permitted under the Members Code of Conduct, where your interest is personal and prejudicial:-
 - **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.
 - **Don't** try to represent ward/local views, get another Ward/Local Member to do so instead, except where permitted under the Members' Code of Conduct.
 - **Don't** get involved in the processing of the application.
 - **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a Councillor. This would include, where you have a personal and prejudicial interest in a proposal, using your position to discuss that proposal with officers or Members when members of the public would not have the same opportunity to do so.
 - **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate officer, in person or in writing, the Code places greater limitations on you in representing that proposal than would apply to a normal member of the public. For example, where you have a personal and prejudicial interest in a matter, you may address the Planning Committee but only in the same manner as would apply to a member of the public, after which you must leave the room whilst the meeting considers the matter.
 - **Do** notify the Monitoring Officer in writing of your own application and note that:
 - notification to the Monitoring Officer should be made no later than submission of the application;
 - the proposal will always be reported to the Committee as a main item and

not dealt with by officers under delegated powers; and

- it is advisable that you employ an agent to act on your behalf on the proposal in dealing with officers and any public speaking at Committee

3. Fettering Discretion in the Planning Process.

- **Don't** fetter your discretion and therefore your ability to participate in planning decision-making by making up your mind, or clearly indicating that you have made up your mind on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the planning authority and of your hearing the officer's presentation and evidence and arguments on both sides. Every person making application to the Council or objecting to an application is entitled to expect that in considering the matter before it, the Committee will give consideration to all views that are expressed, that such views will be openly heard, and fairly considered in a balanced way before the Committee's decision is made.

Fettering your discretion in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

- **Do** be aware that you can have legitimate 'pre-disposition' in relation to a planning application. The statutory position as set out in the Localism Act 2011 is that a Councillor who has expressed a preference for a particular outcome of an application as it proceeds to determination, will not be taken to have had a closed mind when making the decision just because they have previously done or said anything to indicate their view in respect of that matter. However, it is important that a fair-minded observer would think that you were open to changing your mind in the light of different or additional information, advice or evidence presented.
- **Do** be aware that if you are a leading member who has participated in the promotion of schemes such as regeneration on council owned land, or the development of planning policies and proposals, you need not, and should not, normally exclude yourself from decision-making meetings provided that you can demonstrate that you have an open mind in determining planning issues,
- **Do** be aware that you may, however, be considered to have fettered your discretion or be biased, where the Council is the landowner, developer or applicant and you 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 your significant personal involvement in preparing or advocating the proposal you 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.)
- **Do** also be aware that, whilst the Members' Code of Conduct provides for a presumption that you may regard yourself as not having a prejudicial interest in matters which relate to the organisations mentioned below, you must exercise your discretion in deciding whether or not to participate in each case and where:
 - you have been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of:
 - another local or public authority of which you are a member; or

- a body to which you have been appointed or nominated by the Council as its representative; or
- you are a trustee or company director of the body submitting the proposal and were appointed by the Council

you should always disclose a prejudicial as well as personal interest and withdraw.

- **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (for example, where you are also a member of the parish council), provided:
 - the proposal does not substantially affect the well being or financial standing of the consultee body;
 - you make it clear to the consultee body that:
 - your views are expressed on the limited information before you only;
 - you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Committee and you hear all of the relevant information; and
 - you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee; and
 - you disclose the personal interest regarding your membership or role when the Committee comes to consider the proposal.
- **Don't** vote on a proposal where you have fettered your discretion. You do not also have to withdraw, but you may prefer to do so for the sake of appearances. If you are a ward councillor representing your ward interests and have made up your mind about a matter either for or against, you must disclose the details of your predetermined position and may continue to represent those ward interests as a spokesperson for your local community, but you should not take part in the vote, to avoid accusations of bias. If you speak on behalf of a lobby group at the decision making meeting, you should withdraw at the end of public speaking, to counter any suggestion of influencing members' decision by your presence.
- **Do** explain that you do not intend to vote because you have or you could reasonably be perceived as having judged the matter elsewhere, so that this may be recorded in the minutes.
- **Do** seek to take the opportunity to exercise your separate speaking rights as a Ward/Local Member where you have represented your views or those of local electors and fettered your discretion, but do not have a personal and prejudicial interest. Where you do:
 - advise the proper officer or Chair that you wish to speak in this capacity before commencement of the item;
 - remove yourself from the member seating area for the duration of that item; and
 - ensure that your actions are recorded.

4. **Contact with Applicants, Developers and Objectors**

- **Do** refer those who approach you for planning, procedural or technical advice to officers.

- **Do** agree to be briefed by an applicant or developer on an application (especially as a Ward Member). Don't commit to a view. Do consider taking another Councillor or Officer with you to any arranged meeting, if it is possible, according to your discretion. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Head of Planning (Head of Head of Planning, Regulatory Services, Heritage and Libraries) to organise it. The Officer will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.
- **Do** otherwise:
 - follow the rules on lobbying;
 - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
 - report to the Head of Planning any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

In addition in respect of pre-application discussions/presentations by applicants/developers:

- **Do** engage in pre-application discussions with developers, but follow the rules on lobbying and observe the 'do's' and 'don'ts' contained in *Positive Engagement – A Guide For Planning Councillors (2008)* which is attached to this Planning Code of Good Practice.
- **Don't** attend a planning presentation unless an officer is present and/or it has been organised by officers. At the start of the meeting it should be explained the merits of the case will not be discussed. If the applicant requests the views of the authority, these will be communicated subsequently and in writing. In such communication, officers will make it clear that any views expressed prior to formal determination of an application are preliminary.
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application; this will be carried out by the appropriate Council Committee.
- **Do** be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other Members might vote as other pre-application discussions may well also be taking place.

5. Lobbying of Councillors

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said and express a preference for a particular outcome, it potentially prejudices your impartiality and therefore your ability to participate in the Committee's decision making if you express an intention to definitely vote one way, regardless of any additional information or evidence that may be provided to you at

a later stage.

- **Do** remember that your overriding duty is to the whole community not just to the people in your ward/local area and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum; its acceptance is declared as soon as possible and remember to register the gift or hospitality in accordance with the Council's Code of Conduct on gifts and hospitality for Councillors.
- **Do** copy or pass on any lobbying correspondence you receive to the Head of Planning at the earliest opportunity, unless you know that it has already been received by the planning department.
- **Do** promptly refer to the Head of Planning any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- **Do** inform the Monitoring Officer where you feel you 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 to follow the matter up.
- **Do** note that, unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this Planning Code of Good Practice through:
 - listening or receiving viewpoints from residents or other interested parties;
 - making comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
 - seeking information through appropriate channels; or
 - being a vehicle for the expression of opinion or speaking at the meeting as a Ward/Local Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

6. Lobbying by Councillors

- **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and are likely to have a personal and prejudicial interest and have to withdraw.
- **Do**, if you are a member of a general interest group, disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal
- **Don't** excessively lobby fellow councillors regarding your 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

- **Don't** decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue.

7. Site Visits

- **Do** familiarise yourself with the location of the site of a planning application you are to consider.
- **Do** try to attend any site visits organised by the Council where possible.
- **Don't** request a site visit unless you feel it is strictly necessary because:
 - 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
 - there are significant policy or precedent implications and specific site factors need to be carefully addressed.
- **Do** ensure that any information which you gained from any site visit is reported back to the Committee, so that all Members have the same information
- **Do** ensure that you treat any site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters that are relevant to the site inspection.
- **Don't** hear representations from any other party with the exception of the Ward/Local Member(s) whose address must focus only on site factors and site issues. Where the applicant or a third party approaches you, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.
- **Don't** express definite opinions or views to anyone.
- **Don't** 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:
 - the site is open to members of the public
 - you feel it is essential for you to enter the site other than through attending any official site visit,
 - you have first informed the Council's Head of Planning about your intention to do so and why (which will be recorded on the file) and
 - you can ensure you will comply with these good practice rules on site visits.

8. Public Speaking at Meetings

- **Don't** allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- **Don't** allow documents to be circulated at Committee meetings which have not previously been submitted to the committee as all parties may not have time to

react to the submissions, and you may not be able to give proper consideration to the matter. Moreover, officers may not be able to provide considered advice on any material considerations arising. Those who intend to speak should be made aware of this. The acceptance of circulated material could imply a willingness to take the necessary time to investigate any issues raised and lead to the need to defer the application or risk a complaint about the way the material has been considered. For similar reasons, messages passed to members sitting in planning committees should be avoided. Care needs to be taken to avoid the perception of external influence or bias.

- **Do** ensure that you comply with the Council's procedures in respect of public speaking.

9. Officers

- **Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Head of Planning, which may be incorporated into any committee report).
- **Do** contact the Case Officer to seek advice and guidance on the material planning issues related to the application. Officers have a professional obligation to advise any Member or interested party of the material factors to be taken into account in the evaluation of a proposal. This can benefit Members' consideration of the proposal and focus the decision making process on planning matters.
- **Do** 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 its Members.
- **Don't** insist that an officer should change their professional judgment or decision on a delegated matter but **do** bring all relevant matters to the officer's attention in order that the decision is properly made

10. Decision Making

- **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your reasons are recorded and repeated in the report to the Committee.
- **Do** come to meetings with an open mind and demonstrate that you are open-minded – particularly if you have expressed a pre-disposition before the meeting.
- **Do** comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.
- **Don't** vote or take part in the meeting's discussion on a proposal unless you have

been present to hear the entire debate, including the officers' introduction to the matter.

- **Do** have recorded the reasons for Committee's decision to defer any proposal.
- **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given as part of your motion prior to the vote and be recorded. It may help to have prior discussions of those reasons with planning officers before the meeting. In some cases, it may be necessary to adjourn the meeting for a few minutes for reasons to be properly discussed. In cases where there is a very strong objection from officers as to the planning merits of those reasons, you should consider deferring the planning application to another meeting. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

11. Training

- **Don't** participate in decision-making at meetings dealing with planning matters if you have not attended planning training provided by the Council.
- **Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.
- **Do** participate in the annual review of a sample of planning decisions to ensure that judgements have been based on proper planning considerations.