

## Part 5.2 Code of Conduct for Members in relation to Planning matters

Elected members can involve themselves in discussions with developers, applicants, their constituents and others about planning and licensing matters. However, difficulties can be avoided if you follow these useful general rules:

### Do

- Inform officers about any approaches made to you and seek advice
- Familiarise yourself with the Code of Conduct for Members and follow it when you are representing the authority
- Keep your register of interests up to date
- Be aware of what predisposition, predetermination and bias mean in your role
- Keep a note of meetings and calls; and make clear at the outset that you are not speaking on behalf of the Council and will make any decision taking account of all relevant information.
- Be aware of Disclosable Pecuniary Interests (DPIs) and other interests that need to be declared and may preclude involvement in decision-making
- Recognise the distinction between advising on process and engaging in negotiation and what is appropriate in your role
- Make decisions based on evidence and advice from professional officers.
- Use meetings to show leadership and vision
- Recognise that you can lobby and campaign but that this may remove you from the decision making process
- Feed in both your own and your local community's concerns and issues
- Be aware that you can engage in discussions but you must have and be seen to have an open mind at the point of decision making

### Do not

- Use your position improperly for personal gain or to advantage your friends or close associates
- Meet developers/applicants alone or put yourself in a position where you appear to favour a person, company or group – even a 'friendly' private discussion with a developer/applicant could cause others to mistrust your impartiality
- Avoid accepting any gifts or hospitality which could call into question your impartiality and ensure you register and take appropriate advice, before accepting any gifts and hospitality. Prejudge or be seen to prejudge an issue if you want to be a decision maker on a proposal
- Seek to improperly influence officers or put pressure on them to support a particular course of action in relation to an application
- Compromise the impartiality of officers or councillors who are members of the planning committee.

## **1. INTRODUCTION**

- 1.1 This Code has been written to advise all those concerned with discharge of the Council's statutory planning functions. The Code applies to all elected members and is relevant to officers, potential developers and the public in setting out the high standards of ethical conduct that can be expected of the Council in the exercise of planning functions. This Code compliments the Code of Conduct for Members.
- 1.2 If elected members have any doubts about how to comply with this Code, they should seek early advice from the planning team, democratic services, legal services or the Monitoring Officer. Advice should be sought well in advance of any meeting to allow for a proper consideration of the facts.

**Within this code the following terms are defined as follows:**

<b>Elected members/members</b>	<b>All members of the authority</b>
<b>Committee member</b>	<b>Member of the Planning Committee</b>
<b>Ward councillor</b>	<b>Local ward councillor for the ward affected by the application in question</b>

### **Planning**

- 1.3 The planning process has the potential to deliver sustainable planned growth aspirations for the Borough and planning decisions are often based on balancing competing interests (social, economic and environmental). It relies on informed judgement within a firm policy context. It can also be highly contentious because its decisions affect the daily lives of everyone and the private interest of individuals, landowners, and developers. This is heightened by the openness of the system (it actively invites public opinion before taking decisions) and the statutory framework, which includes a combination of national and local planning policies and guidance. It is important, therefore, that the process is characterised by open and transparent decision-making.
- 1.4 One of the key purposes of the planning system is to control development in the public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of land holdings and the quality of their settings. It is important, therefore, that the Council should make planning decisions affecting these interests openly, impartially, with sound judgement, and for justifiable reasons. The process should leave no grounds for suggesting with any justification, that a decision has been partial, biased, or not well-founded.
- 1.5 Thus the successful operation of the planning system in Slough depends upon the Council always acting in a way which is clearly seen to be fair and impartial. This requires a shared understanding of the respective roles of elected members (including the differing roles of committee members, ward councillors, cabinet members and the wider group of members) and officers.

## **2. GENERAL PRINCIPLES**

- 2.1 The seven principles of public life, also known as the Nolan Principles, apply to all public office-holders. This includes elected members and officers. By law the Council must promote and maintain high standards of conduct and adopt a local code of conduct, which should set out the rules for registering pecuniary interests, investigating alleged breaches of the code and imposing sanctions. In addition to the Code of Conduct for Members, the Council has published this Code related specifically to planning and this should be read alongside the substantive Code of Conduct for Members.
- 2.2 Officers who are chartered town planners are regulated by the Royal Town Planning Institute's Code of Professional Conduct, breaches of which may be subject to disciplinary action by the Institute. All officers are bound by the Council's Employee Code of Conduct and by law must always act in a politically neutral manner.
- 2.3 Officers and elected members should not act as agents for people pursuing planning matters within their own authority, even if they are not involved in the decision making on this. Advice should be sought from the Monitoring Officer if an elected members is employed or has a business involved with development in the local area.
- 2.4 A key principle is that Councillors should seek to represent all their constituents in a fair way and make decisions in the public interest. Councillors should take account of all views expressed, they should not be biased or appear to be partial towards any person, company, group or locality. A political party whip cannot be used to direct committee members on how to vote on a planning committee and planning decisions cannot be made on a party political basis. Evidence supporting the use of a party whip is likely to be regarded as maladministration and lead to a successful appeal or judicial review.

## **3. GENERAL ROLES OF MEMBERS AND OFFICERS**

- 3.1 Members and officers have different, but complementary roles. Effective communication and a positive working relationship between officer and members is essential to deliver a good planning service.
- 3.2 Members of Cabinet set the Council's planning policies and committee members will determine planning applications and other matters which are not delegated to officers. Members in their ward councillor role also have an important role in raising issues of local concern. Most councils delegate certain planning decisions to officers to determine. These officers are bound by the same policies and standards as committee members, but will deal with the more routine applications. Effective delegation can help ensure that decision on applications that raise no significant planning issues are made quickly and that resources are appropriately concentrated on applications of greatest significance to a local area. These are the most complex, larger and potentially controversial applications.

- 3.3. When making decisions, officers and committee members must:-
- (a) Act fairly and openly
  - (b) Approach each application with an open mind.
  - (c) Carefully weigh up all relevant issues.
  - (d) Determine each application on its own merits.
  - (e) Avoid contacts with interested parties which might be taken to indicate that they were unduly influenced by one party or another.
  - (f) Ensure that there are clear and substantial reasons for their decisions, and that those reasons are clearly stated.
  - (g) Seek and follow professional advice.
- 3.4 Members who also serve on parish councils may need to clarify their separate roles in each authority. The public and other interested parties should be clear at all times when the member is acting as a parish councillor and when they are acting in their role as an elected member, including a committee member. Advice should be sought in advance of a meeting if a committee member is concerned about whether their role on another public body will affect their ability to be a committee member when determining particular applications.

#### **4. DECLARATIONS OF INTEREST**

- 4.1 Elected members are required to keep a register of interests with all disclosable pecuniary interests and other registrable interests. This register must be kept up to date throughout their term of election. It is a criminal offence to fail to register a disclosable pecuniary interest, give false or misleading information on registration or to participate in discussion or vote in a meeting on a matter in which the member has a disclosable pecuniary interest. A member with an interest that is not a disclosable pecuniary interest, must declare this at the meeting and they may be able to participate, speak or vote on the item depending on the circumstances. However, the potential for conflicts of interest and need to withdraw from the decision-making process can apply to these interests as well, therefore early advice should be sought. Members should think about how a reasonable member of the public, with full knowledge of all the relevant facts, would view the matter when considering whether the member's involvement would be appropriate or not.
- 4.2 Gifts and hospitality give rise to particular problems in respect of the credibility of the planning process. The Code of Conduct for Members sets out the requirements in relation to whether to accept and to register any gifts and hospitality. Members involved in planning decisions should not accept over-frequent or over-generous hospitality and should always ensure that the acceptance of such does not give rise to a conflict of interest.

## **5. PRE-APPLICATION DISCUSSIONS**

### **Planning**

- 5.1 Discussions between a potential applicant and the Council prior to the submission of an application can be of considerable benefit to both parties, and is regarded as best practice. Discussions can take place for a variety of reasons, for example: to establish whether an application can be improved in design, to overcome planning objections, meet relevant neighbour concerns or concerns on matters relating to owner and disorder or noise or the presence of children.
- 5.2 It should always be made clear at the outset that pre-application discussions will not bind the Council to making a particular decision and that any views expressed are provisional, until all relevant information is submitted and consultations on it have taken place.
- 5.3 Officers will ensure that their advice is neither partial, nor seen to be and is in line with Council policy. This is because a consequent report could be seen as advocacy for a particular point of view. A written attendance note should be made of pre-application discussions, and important telephone conversations and placed on the relevant file.
- 5.4 Committee members may be encouraged to participate in pre-application submissions on specific applications, including through officer briefings, public forums and meetings. Committee members should ensure that an officer is in attendance and a written note is made of the meeting and placed on the case file. Other ways of members being involved in pre-application stages include committee information reports, all councillor briefings, informal committee briefings, developer presentations to committee, such presentations will normally be held in public and ward councillor briefings.
- 5.5 For the avoidance of doubt, committee members are prohibited from negotiating with the applicant and no elected member should seek to present themselves as having authority to negotiate on behalf of the Council.

## **6. PREDETERMINATION, PREDISPOSITION AND BIAS**

- 6.1 Committee members need to avoid any appearance of bias or having “predetermined” views when making a decision on a planning matter. Clearly expressing an intention to vote in a particular way before the meeting could be indicative of a closed mind and be seen as predetermination.
- 6.2 Predisposition is where a committee member has a pre-existing opinion or attitude but remains open to listening to all the arguments and changing their mind in response to these. A reasonable bystander test should be applied to determine whether a member who has expressed a view should continue to take part in the decision-making process.

- 6.3 If a member has predetermined their position, they should withdraw from being a member of the committee. This will apply if the member wishes to speak for or against a proposal. There is also a need to avoid the appearance of bias, therefore even if a member believes that they have an open mind, their actions or role may give a perception of bias. For instance, if a cabinet member is also a committee member, they should withdraw when the committee is considering the Council's own schemes or other applications that they have been seen to support in their Cabinet role.

## **7. RESPONSE TO LOBBYING OF MEMBERS**

- 7.1 Lobbying is a normal part of the planning process. An effective way of a local resident or developer of raising issues is via the local elected representative. Lobbying, however, can lead to the impartiality and integrity of a member being called into questions.
- 7.2 If they are approached, committee members should use all reasonable endeavours to refer the person to another member who is not a committee member or to officers. If, however, the lobbying persists then committee members should expressly state that whilst they can listen to what is said, they will only be in a position to take a final decision after they have heard all the relevant arguments and have taken account of all relevant material and planning considerations at the committee meeting.
- 7.3 Other than for formal site visits, committee members should not enter premises or sites (if the visit is in relation to the application) which are, or are likely to be, the subject of a planning application.
- 7.4 Elected members should not organise support, opposition or put undue pressure on other councillors or officers for a particular decision/recommendation.

## **8. REPORTS BY OFFICERS**

- 8.1 Reports to the Planning Committee on applications and other planning matters must be clear and accurate and comprise:-
- (a) a description of the site/summary of the application
  - (b) any related planning history
  - (c) full details of any relevant policies of the Development Plan and other material considerations.
  - (d) a technical appraisal of which clearly justifies the written recommendation.
  - (e) a written recommendation setting out clear and unambiguous reasons for:
    - (i) granting planning permission (with conditions to be attached); or
    - (ii) refusal.

Officer reports should be proportionate to the planning issues. It will be acceptable for reports to summarise analysis when there is compliance with policies and concentrate analysis on issues where there is conflict or some variance with policies. The content of reports is the responsibility of the Planning Manager.

- 8.2 Officers may supply written information at the Planning Committee to take account of additional relevant matters that arise between the publication of the agenda and the date of the meeting. Plans of the proposed development will be available for inspection at Committee. The Chair, at the request of any Member of the Committee, shall adjourn the meeting for a reasonable period of time to enable the Committee Members to have an opportunity of reading any information which has been tabled by the officers at the meeting.
- 8.3 As a general rule the Members of the Committee will not take into account any written information at the meeting which has not been submitted by the developer/applicant or any consultees (including local residents) as part of the application process. However in exceptional circumstances the chair, in consultation with the officers present, may exercise his/her discretion to consider new information if it is appropriate to do so.
- 8.4 The relevant planning officer must be available at the Committee to answer any questions or clarify any queries raised by committee members.

## **9. SITE VISITS**

### **General**

- 9.1 Site visits are:-
- (a) fact finding exercises
  - (b) not part of the formal consideration of the application and therefore public rights of attendance do not apply
  - (c) to enable Officers and the Applicant to point out relevant features
  - (d) to enable questions to be asked on site for clarification. However, discussion on the application will only take place at the subsequent Committee as all relevant parties may not be in attendance on site.
- 9.2 At the site visit committee members shall be accompanied by an officer who will record what takes place at the inspection. Committee members may ask questions of the officers and the applicant/agent. However, representations on the merits of the application will not be heard.
- 9.3 The site visit shall take place during normal working hours as far as is practicable unless there are exceptional reasons which dictate otherwise (which should be minuted). The Chairman or planning officer shall explain the purpose of the visit and how it will be conducted to all persons present at the site visit. Where possible, all committee members should attend the site visit,

however an inability to attend should not be used as a reason by an individual committee member to defer the application.

- 9.4 The Planning Officer who attended the site visit will prepare notes for the Planning Committee on the planning issues and any relevant information obtained by committee members. Whilst on site, members should not express an opinion on the planning application or its merits and should avoid making any comments or acting in a way which makes it clear that they have a closed mind.
- 9.5 The Officer attending the site visit will ensure that all correspondence in relation to site visits clearly identifies the purpose of the site inspection, the format and conduct of the inspection and the appropriate procedure for the applicants, agent to address committee members. The purpose of a site visit is not to be exposed to local opinion, therefore local objectors should not be present and committee members should not engage in any discussions with any local residents or interested parties who may have a view on the application.

## **10. TRAINING**

- 10.1 No councillor should be appointed to the Planning Committee without having agreed to participate in educational training programmes directed towards the role of councillors in making decisions.
- 10.2 The Council will, from time to time, consider and review the form of education and training that is most appropriate.
- 10.3 Training sessions for Planning Committee by the Council's Solicitors and Planning Officers will cover the following topics:-
- The Role of the Government in Planning
  - The Development Plan and Material Considerations
  - Section 106 Planning Obligations/Planning Conditions
  - Enforcement of Planning Control
  - Permitted Development
  - Planning Procedures
- 10.4 This training will be open to all elected members and brief handouts will be provided where appropriate.

## **11. PLANNING APPEALS**

- 11.1 Appeals against the planning decisions of the Council are heard by a Planning Inspector appointed by the Secretary of State. Any hearing or inquiry will be open to the public and Councillors are able to attend. Councillors are encouraged to attend such hearings, as they can be a good learning experience. This part of the Code is concerned with Councillors who wish to actively participate in these appeals.



- 11.2 If a Councillor wishes to attend a public inquiry or informal hearing as a Ward Councillor or as a member of the public, they are free to do so. It is strongly recommended that they discuss their participation with the chief planning officers to ensure that they are aware of the process and that they do not act in a manner which compromises their position as a Member of the Council, brings the Council into disrepute or puts the decision made at risk of challenge. RE Members' Planning Code of Practice – January 2018
- 11.3 Where the Planning Committee or an Area Planning Committee refuses an application against the officer's recommendation one Member of the Committee should attend any appeal on behalf of the Council and other Members may attend as observers if they so wish. The decision of the Committee will be documented in the minute and set out in the decision notice. The planning officer will present the Council's case on its planning merits, in accordance with the Committee's decision with such assistance from the nominated Committee Member as may be required. The inspector is required to determine the appeal on its planning merits and therefore all representations should be so directed.
- 11.4 Where the decision of planning committee members is contrary to the officer's recommendation, officers are generally able to present the Council's case in a satisfactory manner. Where this may not be possible, the case will be presented by a planning consultant employed by the Council.