

## **CODE OF CONDUCT FOR COUNCIL MEMBERS AND OFFICERS IN RELATION TO PLANNING MATTERS**

### **1. Purpose of Code**

- 1.1 This Code of Conduct has been adopted by the Council to regulate the performance of its planning function.

The Code has the following objectives:

- i) To guide Members and Officers in dealing with planning related matters.
  - ii) To inform potential developers and members of the public generally, of the standards and procedures adopted by the Council in the performance of its planning function.
- 1.2 This Code of Conduct relating to Planning Matters is intended to supplement the overall Councillor Code of Conduct elsewhere in Part 5 of this Constitution. The purpose of this code is to provide more detailed guidance on the standards to be applied in relation to planning related issues.
- 1.3 Although this code refers to the Planning & Highways Committee (for brevity, “the Committee”), its provisions apply equally to any other body of the Council making decisions on planning matters.
- 1.4 Planning law requires local planning authorities to determine all planning applications in accordance with the approved development plan unless material considerations indicate otherwise. This responsibility must be performed without undue influence or personal interest.
- 1.5 Members should not decide what weight to give different material planning considerations until they have read the Head of Planning’s report, heard any representations and listened to the debate at Committee.
- 1.6 There is no reason why Members cannot attend briefing sessions with applicants, express views on individual applications or attend public meetings or campaign group meetings for or against individual applications; in many cases it can be helpful to applicants and Officers to alert them to concerns early in the application process. However Committee Members should not say or do anything which may indicate how they intend to vote on a particular application.

## 2. **Declaring Interests**

- 2.1 Members (and Officers) will have to decide whether or not they have a Disclosable Personal Interest (DPI) in anything being considered at a meeting.
- 2.2 The interests members must register are set out below they include the interests of the Member and his/her spouse/partner:-

### **Employment, office, trade, profession or vocation**

Any employment, office, trade, profession or vocation carried on for profit or gain.

### **Sponsorship**

Any payment or financial benefit in respect of any expenses incurred in carrying out duties as a member, or towards the election expenses.

This includes any payment or financial benefit from a trade union

This does not include hospitality payments e.g. going to a football match.

### **Contracts**

Any contract which is made between the member (or a body in which the relevant person has a beneficial interest) and the Council under which goods or services are to be provided or an existing contract delivering goods and services.

### **Land**

Any beneficial interest in land which is within the area of the Council.

### **Licences (property)**

Any licence (alone or jointly with others) to occupy land in the area of the Council for a month or longer.

### **Tenancies held by Companies in which the member has a beneficial interest**

Any tenancy where the landlord is the Council; and

### **Securities (shares, debentures etc)**

Any beneficial interest in securities of a body where —

- (a) that body has a place of business or land in the area of Council and
- (b) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body

There are more detailed rules if the shares held by a company are divided into more than one class.

Where a member has a DPI, it is a criminal offence to:

- fail to register that interest within 28 days of being elected;
- fail to declare an unregistered interest at a meeting; and
- participate in a relevant item of business

DPIs have a broader definition than the former prejudicial interest. It is a DPI even if there is no likelihood that it might prejudice the member's perception of the public interest. This means that a decision which has only a minimal impact on a member's property or employer can trigger a criminal offence if it is not registered.

- 2.5 If you have a DPI which relates to a matter being considered at a meeting you must declare what the interest is if you have not already done so and withdraw from the meeting by leaving the room.
- 2.6 Members should also refer to the Councillor Code of Conduct for guidance on disclosure of Other Registerable Interests and Non-Registerable Interests. If in doubt it is advisable to seek the views of the Monitoring Officer.

### **3. Lobbying**

- 3.1 Provided that Members comply with the general guidance in 1.6 there is no restriction in principle on being lobbied by developers, applicants or local interest groups. Written representations received, whether for or against an application, should be forwarded to the Head of Planning so that they can be considered and included in any report to the Committee or on the delegated decision file.
- 3.2 As explained in 1.6, briefing sessions or meetings with applicants can be very helpful but members must avoid giving the impression that they have already made up their mind, so it may be helpful if members make it clear that any views they express are provisional.

#### **4. Reports by Officers to Committee Members**

- 4.1 Members are required to arrive at a decision on granting or refusing permission by using planning criteria and by excluding non-planning considerations. In determining planning applications Members are required to have regard to the development plan for the area and to any other material considerations. To this end, the reports of Officers to Members must be accurate and cover all relevant points. These reports:
- (a) Should contain a section on the relevance of the development plan, a description of the site and any related planning history and all other relevant material considerations will be outlined.
  - (b) Should deal with the substance of any planning objections received and the views of people who have been consulted or notified
  - (c) Should incorporate a recommendation for the consideration of Members; oral reporting (except to introduce a report or update it) should be extremely rare and carefully minuted when it does occur.
  - (d) Should contain a technical planning appraisal which clearly justifies the stated recommendation.
  - (e) If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify this must be clearly stated.

#### **5. Public Speaking at Committee Meetings**

- 5.1 Public speaking at Committee meetings allows interested parties, including the public and applicants, to have direct access to Councillors at the point in time just before a decision is to be made. This should enhance public confidence in the process.
- 5.2 It is important that the 'Chance to Speak' offered in Sheffield is operated in a clear and equitable manner. The following procedure applies:
- (a) The 'Chance to Speak' applies to the public, community groups, applicants, Town and Parish Councillors, City Councillors, or any representatives of the above.

- (b) Where a request is made, speaking is at the Chair's discretion but will always include at least one person, if present, from each principal point of view (support or opposition).
- (c) If there are groups of people wishing to speak, wherever possible the Chair will seek a representative to put the whole case. Additional speakers should be strictly limited to any genuinely different viewpoints or additional considerations. Repetition of points already made is unnecessary and will cause delay. Whilst a dialogue will not be permitted the Chair can use his discretion to allow Members to put a question to the applicant or other parties if that will help in the decision-making process and provided that officers are given the opportunity to advise on material considerations
- (d) Speaking is limited to a maximum of 5 minutes per speaker.
- (e) It is intended that the 'Chance to Speak' in Sheffield is operated with the minimum of bureaucracy while enabling the meeting to run efficiently. Speakers must register their wish to speak to the Committee Secretary in advance of the meeting (for example by 2.00 pm on the Friday before a meeting on a Tuesday); the Committee Secretary will advise the Chair of their names and the item they wish to speak on. There are significant advantages to a flexible approach, but it is critical that this is operated in an equitable manner to maintain the confidence of all parties.
- (f) The Chair should consider the advantages of bringing forward on the agenda items where there are identified speakers, to allow interested parties to leave the meeting without undue delay should they wish after their item.
- (g) The Chair should announce at the commencement of the meeting how s/he will manage the meeting to facilitate people being able to put their views to the Committee. The normal order of speaking on any item will be the Officer giving their report and recommendation followed by any public speakers. Only Committee Members will be able to question Officers and speakers for clarification. The Committee will then start to debate the item and from this point members of the public have no further opportunity to speak or be involved (unless the Chair determines there are exceptional reasons to do so for clarification). Certainly the public cannot take part in the debate or decision.

## **6. Committee Site Inspections**

- 6.1 Site visits will cause delay and additional costs and should only be used where the expected benefit is substantial. A decision by the Committee to carry out a site inspection should normally only take place:
- (a) If the impact of the proposed development is particularly difficult to visualise from the plans and any supporting material; or
  - (b) There is considerable local concern about a proposal, allied to planning reasons for carrying out the visit (e.g. the physical relationship of the site to other sites in the neighbourhood).

Normally Officers will identify such cases in advance to avoid delay.

- 6.2 Where an application is deferred by the Committee for a visit, clear reasons should be given at the meeting for the deferral so that the applicant and any third parties involved are able to understand the need for, and the benefit of, a site visit. This is to avoid misunderstanding either about the purpose of the site visit or the matters which are being considered.
- 6.3 Where it is intended to inspect the site it is essential that extremely careful arrangements are made to ensure that all parties are treated fairly and equitably, and that the appropriate standards of propriety are seen to be upheld.
- 6.4 When Members go on Committee site inspections they should realise that the function of the inspection is to visualise the development and assess the facts on the ground, and the following rules apply:
- (a) The visit will be led by a planning officer.
  - (b) Whilst discussions can take place with the applicant or objectors, these should concentrate on dealing with issues arising from the assessment of the development as seen on the site visit rather than dealing with issues of principle arising from the development itself.

## **7. Individual Site Inspections by Members**

- 7.1 Members are encouraged to look at an application site following the receipt of the agenda and prior to the date of the Committee meeting. This will enable them to acquaint themselves with the nature of the proposal and will help avoid delay and unnecessary site visits.

However, Members must conduct such site inspections from a public vantage point and should not discuss the application with any applicant/agent or third party. They should not enter a site even if invited.

7.2 Members of the Committee should not enter any premises not normally open to the public which are either:

- (a) The subject of, or affected by, a planning application; or
- (b) known by the Member to be likely to become the subject of, or affected by, a planning application

for any purpose in connection with such an application, save in the course of a Committee site inspection.

## 8. **Training**

8.1 Members of the Planning and Highways Committees must receive training in the planning system before serving on the Committee and their training must be refreshed every two years. Members will not be able to continue on the Committee without this. This is to ensure that correct procedures are followed and proper planning considerations are employed in decision making. The integrity of the planning system and the need for public confidence require this.

8.2 Refresher training, updates, or more detailed training on specific issues will also be provided every two years and must be taken up by all relevant Members.

## 9. **Complaints and Record Keeping**

9.1 Whatever procedures the Council operates, it is likely that complaints will be made. In order that any complaints can be fully investigated, record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. Every planning application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings or significant telephone conversations.

9.2 The same principles of good record keeping will be observed in relation to enforcement and development plan matters. Monitoring of record keeping will be undertaken on a continuous basis by managers in the Planning Service.

## 10. **Officer's Function**

- 10.1 An Officer's function is to advise Members on all matters of planning policy and procedure in their determination of planning and related applications by:
- (a) Providing impartial and professional advice.
  - (b) Making sure that all the necessary information is available for a decision to be made.
  - (c) Providing a clear and sufficient analysis of the issues including development plan policies and all other material considerations.
  - (d) Giving a clear recommendation.
  - (e) Carrying out the decisions of the Committee.
- 10.2 In addition:
- (a) Impartial advice will be given to prospective applicants prior to submitting an application. Advice will reflect approved Council planning policy. It will then be made clear that such advice will be without prejudice to any subsequent recommendation or formal decision by the Committee or a decision made under delegated powers.
  - (b) All application sites will be visited unless there is sufficient up to date photographic evidence for a decision to be made without the need for a visit.
  - (c) Officers will endeavour to deal with applications and make final recommendations for the grant or refusal of permission in a timely manner without undue delay , whilst ensuring that sufficient time is allowed for consultation to take place where required and as set out in the Statement of Community Involvement.
  - (d) All applications will be considered by at least two Officers, i.e. the case officer plus the Officer responsible for the final decision and/or recommendation.
  - (e) Members of the public, applicants, etc. will not be advised of the Officer's final recommendation to the Committee until agendas have been sent to Members, although Officers can use their judgment where the indication of a likely recommendation would
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be of particular assistance to an applicant or objector and is unlikely to cause difficulties for any other interested parties.

- (f) In all dealings with applicants, agents, and the public Officers should maintain a courteous and professional relationship adhering to the Council's policies and officer codes ensuring that all parties are treated fairly and respecting people's rights.
- (g) When an application is submitted by an Officer involved in the planning process the Officer shall advise the Head of Planning. Such applications shall not be determined under delegated powers.
- (h) Where an Officer has a relationship with any applicant, agent or organisation that could lead to a third party suggestion of bias, the Officer will inform the Head of Planning in writing and take no part in processing or determining the application.
- (i) Officers should not, under any circumstances, accept gifts or hospitality beyond simple basic refreshment where necessary or unavoidable. If, however, a degree of hospitality is unavoidable, it should be ensured that this is of the minimum and its receipt is declared as soon as possible. All offers of gifts and hospitality, whether accepted or not must be entered in the hospitality record book, with the exception of simple basic refreshment.

## **11. Decisions Contrary to Officer Recommendation and/or Development Plan**

- 11.1 The law requires that where the development plan is relevant, decisions should be taken in accordance with it unless material considerations indicate otherwise.
- 11.2 In discussing and then determining a planning application Members should confine themselves to the planning merits of the case and the reasons for making a final decision should be clear and convincing and supported by planning evidence. All decisions must be founded on planning reasons and there must be planning evidence to substantiate them.
- 11.3 There is no reason in law why a Planning Committee may not make a decision contrary to the Officer's recommendation, whether it is for approval or refusal. Nevertheless, the law does require that in the case of refusals of planning permission detailed reasons are given, and it is clearly important that where Members have made a decision contrary to an Officer's recommendations the reasons for the decision should be

made clear such that there can be no suspicion of the decision being made for non-planning reasons. In such a situation, therefore, whether the decision by Members is to approve or refuse permission, the planning reasons should be clearly minuted, together with a reference to the evidence to substantiate them.

## **12. Consequences of Failure to Comply with the Code**

12.1 This Code sets out the standards that the Council will operate in dealing with planning applications. Members and Officers should realise that failure to comply with the Code may have legal consequences.

12.2 These include:

- (a) Investigation by the Local Government Ombudsman if complaints are received about the manner in which a planning application has been dealt with. In determining whether there has been maladministration the current test is that Members must “at all times avoid any occasion for suspicion and any appearance of improper conduct” and must not allow “the impression to be given that (the Member) is or may be using his position to promote a private or personal interest”. Individuals involved may be named and the Council may be found guilty of maladministration and ordered to compensate the claimant.
- (b) Appeal to the Secretary of State. As well as granting planning permission he can award costs against the Council if it has acted unreasonably - that can include bias and also whether the decision has been taken for non-planning reasons.
- (c) Court action to quash a planning decision either if a real danger of bias is shown or it is demonstrated that a decision was taken for non-planning reasons. Costs will be awarded against the Council which will have to re-determine the application correctly.