

# Local Planning Code of Conduct

## 1. Development Proposal Submitted by the City Council, Members and Officers

1.1 Applications submitted by the City Council and Members or Officers employed by the City Council can give rise to a suspicion of impropriety by the public. This relates to both planning applications and development plan proposals. Whilst Members and Officers are entitled to make such submissions, it is essential that they are handled in a way that gives no grounds for preferential treatment. Similarly, applications submitted by the Council or private applications in respect of Council owned land (i.e. prior to a land sale being agreed or negotiated) should be treated in the same way as private individuals or developers. To safeguard against claims by the public that preferential treatment has been given, decisions must be made strictly on planning merits and without regard to any financial or other gain. The following guidance should therefore be applied:-

- (i) Members and Officers shall give written notice to, the Monitoring Officer and the Service Lead - City Development of any development proposals in which they have a direct involvement at the time of submission.
- (ii) Members or Officers submitting a planning application shall take no part in the decision making process.
- (iii) All such applications shall be determined by the Planning Committee and not through delegated powers.

## 2 Pre-Application Discussions

Discussions between an applicant and the Council prior to a planning submission can be of considerable benefit to both parties. However, it is important to establish clear guidelines within which discussions can take place to ensure that they do not become part of the lobbying process. By the very nature of such meetings not all relevant information will be to hand or formal consultation with interested parties have taken place. Applicants must be made aware that the effectiveness of these meetings relies upon the informal exchange of views and opinions by both parties. If Officers feel that their comments will prejudice the decision making process, then it is less likely that any more than general factual or procedural advice can be offered. However, where a range of various approaches can be examined, without the decision being prejudiced, a more satisfactory conclusion can be achieved. To address these areas of concern, the following points should be observed:-

- (i) officers should make clear from the outset that discussions are on a without prejudice basis and any views expressed are personal and provisional and can in no way bind the Council to making a particular decision;

- (ii) officers shall clearly indicate whether or not they are the decision maker for the purposes of the application and discussion;
- (iii) advice should be consistent and based upon the Development Plan and other material planning considerations. Every effort should be made to ensure that there are no significant differences or interpretation of planning policies between officers;
- (iv) a written note should be made of all potentially contentious meetings and placed upon the relevant file. If plans or supporting information are left with the Council a follow up letter is advisable as a matter of good practice; and,
- (v) Members should not normally take part in pre-application discussions with applicants. Should there be occasions when Members are involved, such as at Planning Member Working Group, their contribution to the discussions should be recorded as a written note and placed on the relevant file.

### **3. Declaration of Interests**

3.1 It is essential that both Members and Officers identify situations where a conflict of interest may arise and that any such interest is declared prior to consideration. The key principles and procedures concerning a Member's interest are contained in the Council's Model Code of Conduct. A Member or Officer should not use his/her position to further any private or personal interests. Interests (these are examples and not an exhaustive list) can arise from:-

- ownership of shares in a company which, for example, has applied for planning permission or with which the Council is proposing to enter into any contract;
- being an employee of any person or company which has a financial interest in the contract or other matter;
- close personal friendship or close personal acquaintance with an applicant for planning permission or an objector, or person with an interest;
- membership of the same club or organisation as some other person, such that close acquaintanceship might reasonably be inferred;
- regular business dealings with some other person; and
- living or running a business in proximity to a particular site which may be affected by any proposals in respect of it.

3.2 The Model Code of Conduct says that the test for deciding whether an interest should be declared is whether a member of the public, knowing all the facts, would reasonably think that the Councillor may be influenced by it. The following guidance should be applied:

- (i) Members and officers should ensure that their declarable interests are kept up to date and recorded on the statutory register of interests. The

responsibility for declaring an interest lies with the individual Member or Officer.

- (ii) Where any changes to a Member's or Officer's interest occur, whether by way of an addition or deletion, the Member and the Officer should notify the charge as soon as possible and, in the case of a Member, not later than 28 days after becoming aware of the change.
- (iii) If a Member/Officer is in any doubt about the relevance of an interest or an appropriate course of action to take, he or she should always consult the Council's Monitoring Officer.
- (iv) Members who have substantial property interests or other interests which prevent them from voting on a regular basis should not serve on the Planning Committee.
- (v) Members/Officers must always declare any interest they have in relation to any contract or other matter under discussion and must withdraw from the meeting during the consideration of that item where that interest is considered to be 'prejudicial'.

#### **4. Lobbying**

4.1 Lobbying is a normal and perfectly proper part in the political process, and those who may be affected by a planning decision will often seek to influence it through an approach to their elected Ward Member or to a Member of Planning Committee. However, such lobbying can, unless care and common sense is exercised by all parties concerned, lead to the impartiality and integrity of a Member being called into question. A report on North Cornwall and Warwick District Councils identified lobbying as a major cause of public mistrust with the planning process. Accordingly, when being lobbied, Members of Planning Committee should take care about expressing any opinion which may be taken as indicating that they have already made up their mind about a proposal.

4.2 In reality, Members will often form a judgement about an application before the Committee stage, whether or not they have been lobbied. However, Members of the Planning Committee should not openly declare which way they intend to vote in advance of the meeting before hearing all the evidence and arguments. Indeed, it may be necessary for Members, who fully commit themselves to a particular view on a planning application, prior to the consideration at Committee, to take no part in the formal decision making process. Members are recommended that the following guidance should therefore be applied:-

- (i) Members should exercise care and common sense if they agree to meet an applicant or potential applicant alone.

- (ii) Members should try to avoid expressing an opinion in advance of the determination of an application until hearing all the evidence and arguments to be presented to them at Committee.
- (iii) Where Members do express an opinion, the applicant or objector should be made aware that a final decision cannot be made until all the relevant facts and arguments are presented to the Committee meeting.
- (iv) Members should restrict themselves to giving applicants or lobbyists procedural advice only.
- (v) Members should direct lobbyists, applicants or objectors to the relevant Officer so that their views can be incorporated within the Committee report.
- (vi) Members of Planning Committee should not directly organise support for, or opposition to, a planning application. However, this does not preclude other non Committee Members, such as Ward Councillors, from representing public opposition/support for a scheme.
- (vii) Members should not pressurise Officers for a particular recommendation.
- (viii) Members should not use their political group meetings to decide how they should vote.
- (ix) Where Members consider that their impartiality has been significantly compromised, they should declare an interest and withdraw from the decision making process.

## **5. Officers' Reports to Committee**

- 5.1 All reports to Planning Committee must be accurate and cover all relevant points. Committee reports on planning applications shall normally include the history of the site including any Section 106 Agreement requirements, details of the proposal, a summary of consultations and objections, relevant Development Plan policies, an appraisal identifying all the material considerations and a written recommendation.
- 5.2 The comprehensive nature of the report is particularly important, not only as a matter of good practice, but to ensure that the public are clear as to the reasoning behind a recommendation and that the approach has been consistent with previous decisions. Committee reports which fail to adequately address all the relevant issues can give rise to judicial review or claims of maladministration. In particular, if the recommendation is contrary to the Development Plan this will need to be clearly identified and justified. Additional information received after the written agenda has been produced shall be reported orally at the Planning Committee meeting. Heads of Terms for Section 106 Agreements in respect of planning applications must always be incorporated within the report to the Planning Committee.

## **6. Decisions Contrary to Officers' Recommendations**

- 6.1 Members will, from time to time, make decisions contrary to Officers' professional advice. It is important that on these occasions the Committee make their decision on clear reasons, having regard to any statutory or other appropriate requirements. Reasons, which can be substantiated, must be given in the case of a refusal and clear conditions imposed in the case of approval of an application.
- 6.2 Before overturning an Officer's recommendation, the Planning Committee should give the Officer concerned an opportunity to explain the implications of a contrary decision, including the possibility of an appeal being lodged and/or costs being awarded.
- 6.3 The Planning Committee minutes should always include a detailed explanation stating why an Officer's recommendation was rejected and a copy of this should be placed on the planning application file.

## **7. Hospitality and Gifts**

- 7.1 During the course of carrying out their duties Members and Officers may be offered hospitality from people with an interest in a planning proposal. Members and officers should be very careful about accepting gifts and hospitalities and the presumption should be that any gift should be politely declined. If the receipt of hospitality is inevitable, the Monitoring Officer should be notified and recorded if this is beyond the offer of coffee or tea. Gifts delivered to the Council offices should be politely returned or given to charity as the Monitoring Officer may decide is most appropriate. Further advice on gifts and hospitality is available in the relevant code of conduct for Members and Officers.

## **8. Members' Training**

- 8.1 The Nolan Committee, Local Government Association and Royal Town Planning Institute, place particular emphasis on the need for Members to have adequate knowledge of the planning process. Workshops should be arranged for Members on an annual basis or when there are material changes in legislation, policy or Government advice. Regular reports will continue to be made to Planning Committee and Planning Member Working Group on relevant issues in order to keep Members fully updated.

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

- 9.1 Whatever procedures a Council operates, it is likely that complaints will be made. However, the adoption of the advice in this Code should greatly reduce the occasions on which complaints are justified. So that complaints may be fully investigated, and as a matter of general good practice, record keeping should be complete and accurate.

- 9.2 Every planning application file should contain an accurate account of events throughout its life, showing the decisions that were taken and the reasons for them including any special circumstances or information that influenced the decision.
- 9.3 Particular care needs to be taken with applications determined under Officers' delegated powers, where there is no Committee report. Such a decision should be as well documented as those taken by Members.