



Planning Code of Practice

1. Introduction

The aim of this Planning Code of Practice (the Code) is to safeguard probity in the planning process to ensure decisions are equitable and lawfully made.

This Code forms part of the Council's ethical framework and should be read in conjunction with the Members' Code of Conduct and the Protocol on Councillor- Officer Relations.

The purpose of this Code is to provide additional guidance on the standards to be applied specifically in relation to planning matters. The key purpose of Planning is to control development in the context of the wider public interest.

Your role as a Member of the Local Planning Authority is to make planning decisions openly, impartially, consistently, with sound informed judgement, and for justifiable planning reasons. This is a duty to the whole community not just to residents and businesses within your wards. Local opposition or support for a proposal is not itself a ground for refusing planning permission, unless founded upon material planning reasons.

This Code applies to all Members at all times when involving themselves in the Council's planning process. This includes when taking part in the decision making meetings of the Council in exercising the functions of the Local Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings including Local Area Forums and Planning Presentation 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, and preferably in advance of the respective meeting.

2. Predisposition

As Community Champions it is legitimate for Members to campaign on local issues and advocate for their residents. This is supported by Section 25 of the Localism Act 2011 which provides that Members should not be regarded as having a "closed mind" simply because they, directly or indirectly, previously said something that indicated a position they may take in relation to a particular matter. A Member is entitled to be predisposed on a matter, before it comes to Committee, provided they remain open to considering all the arguments and changing their views in light of the information presented at the meeting.



3. Predetermination or bias

Predetermination is a legal concept that may arise in circumstances where a Member is deemed to have a “closed mind”. This means that they have already formed a firm position in advance of the proper consideration of an issue or the merits of an application. Importantly, Members should avoid any appearance of bias or having formed a pre-determined view prior to taking a decision. Members must not take a decision on a matter if they are actually biased in favour of or against an application, or where it might appear to a fair-minded and informed observer that there is a real possibility of bias, or where the Member had predetermined the matter by closing their minds to the merits of the decision.

Any planning decision made by a Member who can be shown to have approached a planning decision with a closed mind will expose the Council to risk of legal challenge.

4. Relationship to the Members’ Code of Conduct (Part 5A of the Constitution)

Do apply the rules in the Members’ Code of Conduct first, which must always be complied with.

Do then apply the rules in this Planning Code of Practice, which supplements the Members’ Code of Conduct for the purposes of planning control.

If you do not abide by this Planning Code of Practice, you may jeopardise the Council’s position by placing it at risk of challenge to the legality or maladministration of the particular planning decision. A failure to abide by the Code is also likely to be a breach of the Members’ Code of Conduct. This could result in a complaint being made against you to the Monitoring Officer, leading to the commencement of an investigation and potential imposition of sanctions.

5. Interests

In order to avoid allegations of bias it is important that Members declare any interests they may have at the meeting. These interests are defined in Table 1 and Table 2 of the Members’ Code of Conduct.

6. Disclosable Pecuniary Interest

The Localism Act 2011 places statutory requirements on Members regarding the registration and disclosure of pecuniary interests (‘DPIs’) and the consequences for a councillor taking part in the consideration of a decision in light of those interests.

DPIs are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and set out in the Members’ Code of Conduct.



A Member must provide the Monitoring Officer with written details of interests which fall within the categories set out in Table 1 (DPIs) and Table 2 (Other Registrable Interests) in the Members' Code of Conduct within 28 days of their election to office and subsequently upon becoming aware of relevant changes. This is a continuing duty.

A failure to register or declare a DPI or the provision of false or misleading information on registration, or participation, discussion or voting at a meeting on a matter in which a Member has a DPI, are criminal offences.

7. Other Registrable Interests

For further information about interests please consult the Members' Code of Conduct.

8. Development Proposals and Interests under the Members' Code of Conduct (including a Member's own personal planning application)

Do disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members.

Do ensure your Register of Interests is up to date.

Do disclose your interest at the beginning of the meeting. If you have failed to do so you must do so as soon as you become aware of the relevance of the interest to the matter under discussion.

Do then act accordingly.

Where your interest is pecuniary (for definitions of interests please see Members' Code of Conduct):

- Do not participate, or give the appearance of trying to participate, in the making of any decision on the matter by the local planning authority. A DPI relating to an item under discussion requires immediate withdrawal of the Councillor from the Committee. This means leaving the room when the matter is under discussion.
- Do not try to represent ward views, get another Ward Member to do so instead.
- Do not get involved in the processing of the application.
- Do not 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 Member. This would include, where you also have an Other Registrable Interest in a proposal, using your position to discuss that proposal with Officers or Members when other 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 pecuniary interest to an appropriate Officer, in person or in writing, the Code place limitations on you in representing that proposal. For example, a planning application for your own property.



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- Do notify the Monitoring Officer in writing of a planning application in which you have a disclosable pecuniary interest and note that:
 - you should send the notification no later than submission of that application where you can;
 - the proposal will always be reported to the Committee as a main item and not dealt with by Officers under delegated powers (subject to the procedure set below); and
 - it is advisable that you employ an agent to act on your behalf on the proposal in dealing with officers and any members of the public speaking at Committee.

9. Applications by a Member or Officer

Members may be required to determine an application submitted by or on behalf of a Member or an officer, or by a company or individual with which a Member or officer has an interest or relationship. For the avoidance of doubt, the term 'Member' or 'Officer' here includes any former Member or Officer who have left office or employment within the preceding three years, and Officer means an employee at least at the level HMG1 on the pay scale at the London Borough of Hounslow or any equivalent level at a wholly owned subsidiary.

In these circumstances, it is important to ensure that the application is handled in a transparent manner to avoid any suggestion of favouritism or bias. Accordingly, such applications will be processed as follows-

- (a) If a Member or an Officer submit their own planning application to the Council they must take no part in its processing or the decision-making process.
- (b) Current Member applicants are likely to be deemed to have a DPI.
- (c) Such applications will be referred to the Chief Planning Officer who shall decide whether or not the application is in compliance with the respective development plans and all other material planning considerations.
- (d) The Chief Planning Officer will confirm their assessment as to whether the application should be recommended for the grant or refusal of planning permission and pass a copy of the application to the Monitoring Officer. The Monitoring Officer will then satisfy themselves of which forum for determination of the application is appropriate.
- (e) If the application is recommended for refusal, it will be determined by way of officer decision in accordance with delegated powers set out in the Constitution and Planning Scheme of Delegation.
- (f) If the application is recommended for approval, it will be determined by the Planning Committee.
- (g) Current Members and Officers should not address the Planning Committee in their capacity as applicant but can appoint an independent agent to represent their views.
- (h) Members of the Planning Committee determining any such planning application must consider whether the nature of any relationship with the person (either a



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Member or an Officer) applying for planning permission requires that they make a declaration of interest and, if necessary, also withdraw from the meeting.

- (i) In respect of former Members or former Officers, the above requirements shall apply for a period of three (3) years following their departure from the Council.

The onus is on the Member or Officer to bring to the attention of the Chief Planning Officer that they are personally involved in an application as well as the nature of that involvement.

10. Fettering Discretion in the Planning Process.

Do not fetter your discretion, and therefore your ability to participate in planning decision making at this Council, by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group) on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the local planning authority and hearing the officer's presentation and evidence and arguments on both sides.

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.

11. Applications by the Council

Members may need to determine an application submitted by or on behalf of the Council for its own development. It is perfectly legitimate for such proposals to be submitted to and determined by the Local Planning Authority. It is important that such proposals are treated with the same transparency and impartiality as those of private developers so as not to give rise to suspicions of impropriety.

Do be aware that you are likely to have fettered your discretion 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 not speak or vote on a proposal where you have fettered your discretion. Do explain that you do not intend to speak or 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 consider if you would like to take the opportunity to exercise your separate speaking rights as a Ward Councillor/Local Member where you have represented your views or those of local electors and fettered your discretion. Permission to do so is at the



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discretion of the Chair. This does not apply where you have a pecuniary interest. In this case you will need to leave the room for that item and not take part in any debate on it or vote on it.

If you wish to address the Planning Committee about a planning application in your ward, you will not be able to vote on the item. In this situation you could ask a fellow Ward Councillor to express the ward views.

Where you wish to speak as a Ward Member:

- advise the Committee Officer or Chair that you wish to speak in this capacity before commencement of the item;
- remove yourself from the Committee Member seating area for the duration of that item; and
- ensure that your actions are recorded.

If you are a non-Committee Member with a pecuniary interest in the matter, you will not be able to address the Committee, but you can ask a Ward Councillor or any other non-Committee Member to speak on your behalf.

12. Contact with Applicants, Developers and Objectors

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

Do not agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. 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 Planning Officers to organise it. The officer(s) 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, and that the meeting is properly recorded on the application file.

Do also:

- consider whether or not it would be prudent in the circumstances to make notes when contacted;
- report to the Planning Officer 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; and
- declare this at the relevant meeting.

In addition, in respect of presentations by applicants/developers:

Do not attend any private planning presentation unless an officer is present and/or it has been organised by officers.

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



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determination of any subsequent application, this will be carried out by the appropriate Committee of the planning authority.

Do be aware that a presentation can be a form of lobbying and you must not express any strong view or state how you or other Members might vote.

13. Lobbying of Councillors

Do explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality, and therefore your ability to participate in the Committee's decision making, to express an intention to vote one way or another or such a firm point of view that it amounts to the same thing.

Do remember that your overriding duty is to the wider community not just to the people in your ward 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.

Do not 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 add it to the register of interests where its value is over £25 within 28 days of receipt (in accordance with the authority's rules on gifts and hospitality).

Do copy or pass on any lobbying correspondence you receive to the Planning Officers at the earliest opportunity.

Do promptly refer to the Planning Officers 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 pecuniary interest, you will not have fettered your discretion or breached this Planning Code of 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;
- asking one of your fellow Ward Councillors to represent the ward views at planning committee to avoid you having to do so.

14. Lobbying by Councillors

Do not become a member of, lead or represent an organisation whose primary purpose is to lobby, promote or oppose planning proposals. If you do, you will have fettered your



discretion and are likely to have a non-pecuniary interest.

Do remember if you are a member of a general interest group which reflects your areas of interest and which usually concentrates on issues beyond particular planning proposals, such as the Ramblers Association, Campaign for Real Ale (CAMRA), or a local civic society, but occasionally comments or lobbies against particular planning applications, you will need to disclose your interest and consider if your membership of the group means that you should not take part in that item on the agenda.

Do not 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

Do not 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.

15. Site Visits

Do try to attend site visits organised by the Council.

Do request a site visit if you feel it is 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 gain from the site visit is reported back to the Committee, so that all Members have the same information.

Do ensure that you treat the 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 which are relevant to the site inspection.

Do not hear representations from any other party, with the exception of the Ward Member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.

Do not express opinions or views to anyone during the site visit or engage individually in discussion with the applicants or objectors about the merits of the application (if in attendance).

16. Unaccompanied Site Visits

Members can attend organised committee site visits facilitated by Planning Officers but



should not make unaccompanied solo site visits. Members can view the site from the public highway.

17. Public Speaking at Meetings

Do not allow members of the public and non-committee members, to communicate with you during the Committee's proceedings (orally or in writing including social media messages) other than through the scheme for public speaking, as this may give the appearance of bias.

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

18. Officers

Do not put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Planning Officer, which may be incorporated into any committee report).

Do recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with a Head of Service or those officers who are authorised by their Head of Service to deal with the proposal at a Member-level.

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.

19. Decision Making

Do ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your planning reasons are made clear to the Committee (also known as Call In). Your request for Call In must be based on strong, pertinent, planning reasons.

Do come to meetings with an open mind and demonstrate that you are open-minded.

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.

Do not 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 and that this is in accordance with the Committee Procedure Rules on deferrals.

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 prior to the vote and be recorded. Be aware that you as a Member may have to justify the resulting decision by giving evidence in the event of any challenge.

20. Training

Do not participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.

Do ensure you attend any other specialised training sessions provided to assist you in carrying out your role properly and effectively. You may not be allowed to sit on the Committee without such training.

Do participate in any annual review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations.

21. Planning Appeals and legal challenges

Members are not expected to be involved in planning appeals and legal challenges in usual circumstances. However, on the rare occasions when this is necessary, Members will be advised by officers. For further information contact the Monitoring Officer.

22. Other information

For the Terms of Reference, and Procedure Rules for the Planning Committee, please see elsewhere in this Constitution.

Please note that Licensing is a separate regime to Planning and is set out elsewhere in this Constitution.

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