

CODE OF PRACTICE FOR THE DETERMINATION OF PLANNING MATTERS

1.0 BACKGROUND

1.1 This Code of Practice for the determination of planning matters ('the Planning Code') substantially follows the Model Code produced by the Association of Council Solicitors and Secretaries following consultation with the Audit Commission, the Local Government Ombudsman and the Standards Board for England. It has been updated to reflect changes brought about by the Members Code of Conduct 2007.

2.0 INTRODUCTION

2.1. **The aim of this code of good practice is** 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.

2.2 **The key purpose of Planning** is to control development in the public interest.

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

2.4 **The Planning Code applies** at all times when Members are involved in the planning process. This includes taking part in decision making meetings of the Council in exercising the functions of the Planning Authority and 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 issues as it does to planning applications.

2.5 **If you have any doubts** about the application of this Planning Code, you should seek early advice, preferably well before any meeting takes place from the Chief Planning Officer and/or the Assistant Chief Executive (Corporate Governance).

3.0 RELATIONSHIP WITH THE MEMBERS' CODE OF CONDUCT

3.1 Leeds City Council's Members' Code of Conduct was adopted by the Council on 24 May 2007 and must be complied with throughout the decision making process.

- **Do** apply the rules in the Members' Code of Conduct first and at all times.
- **Do** then apply the rules of this Planning Code which seek to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not abide by this Planning Code you may put:
 - the Council at risk of proceedings on the legality or maladministration of the related decision; and

- yourself at risk of either being named in a report made to the Standards Committee or Council or, if the failure is also likely to be a breach of the Members Code of Conduct, a complaint being made to the Standards Committee – Assessment Sub-Committee.

4.0 DEVELOPMENT PROPOSALS AND INTERESTS UNDER THE MEMBERS CODE OF CONDUCT

4.1 It is your responsibility to declare any personal or prejudicial interest you may have, or be perceived as having, in a matter at any relevant meeting, including informal meetings or discussions with officers and other Members preferably at the beginning of the meeting.

4.2. Do then act accordingly. Where your interest is **personal and prejudicial**:-

- **Do not** participate or give the appearance of trying to participate in the making of any decision on the matter by the planning authority. You must withdraw from the meeting room when the matter is discussed however please see paragraph 16.0 for your right to attend and make representations.
- **Do not** try to represent ward or Area Committee views but get another 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 councillor.
- **Do** be aware that, whilst you are not prevented from seeking to explain or justify a proposal in which you have a personal or prejudicial interest to an appropriate officer, the Code places greater limitations on you than would apply to an ordinary member of the public and sensible steps must be taken to ensure openness and fairness in the decision making process. In particular you should
 - Notify the Monitoring Officer in writing of your own application (or that of a relative or employer where known) or where you are employed as an agent
 - Note that the proposal will always be reported to Panel for decision and not dealt with by officers under the scheme of delegation
 - Consider whether it is advisable to employ an agent to act on your behalf in dealing with officers and any public speaking at Panel
 - Note that you have a right to make written representations to officers about the proposal and may address the Panel pursuant to the Public Speaking Protocol subject to certain additional restrictions (see para 16 below for more detailed advice on this point).

5.0 FETTERING DISCRETION IN THE PLANNING PROCESS

5.1 Given the requirement that Members of the Plans Panel should exercise an independent mind and decide proposals in accordance with the relevant planning considerations, Members must not favour any person, company, group or locality or commit themselves to a particular point of view on a planning application prior to its full consideration at the Council's Plans Panel.

- **Do not** make up your mind or give the impression of making up your mind (particularly in relation to an external interest or lobby group) prior to the decision making meeting and of your hearing the officer's presentation and the evidence and arguments on both sides.
- **Do** be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant if you have been or are perceived as being, a chief advocate for the proposal. This will not necessarily arise from being a member of the proposing board or the Executive but through a significant personal involvement in preparing or advocating the proposal by which you may be perceived as being unable to act impartially or determine the proposal purely on its planning merits and in the public interest
- **Do remember** that you are, of course, free to listen to a point of view about a planning proposal, give procedural advice and agree to forward any comments, but should then refer the person to the appropriate planning officer.
- **Do not** use any political group meetings prior to the Panel meeting to determine how you or other Councillors should vote. There is no objection to a political group having a predisposition, short of predetermination, for a particular outcome or for you to begin to form a view as more information and opinions become available but decisions can only be taken after full consideration of the Chief Planning Officer's report and information and consideration at the Plans Panel.

6.0 MEMBERSHIP OF PARISH COUNCILS AND OUTSIDE BODIES

6.1. This section concerns the position of Members of Leeds City Council who are also parish councillors or members of an outside body.

- **Do not** take part in the decision making process of the Plans Panel and withdraw from the meeting if the matter directly relates to the affairs of the Parish Council or the outside body. However please note your right to make representations pursuant to paragraph 16.0.
- **Do** consider yourself able to take part in debate and vote on a proposal at a meeting of the Parish Council or outside body where the Parish Council or outside body is a consultee provided:

- The proposal does not substantially affect the well being or financial standing of the consultee body
 - You make it clear that that you are keeping an open mind and may vote differently at the Plans Panel when full details are available,
 - You do not commit yourself so far to a particular point of view that you cannot be considered as open to persuasion at Plans Panel when the proposal is decided.
 - You disclose a personal interest regarding your membership or role when the proposal comes before Plans Panel
- **If** you cannot comply with the above criteria, or may be perceived as not complying, you should declare a personal and prejudicial interest at Plans Panel and leave the meeting.

7.0 AREA COMMITTEES

7.1 The introduction of Area Committees within Leeds City Council also requires recognition of the "Dual Hatted" roles which members of the Plans Panel and of Area Committees must consider. There is a possibility that you may be considered as pre determining a matter if you have spoken in support or against it or are closely associated with such a decision taken at the Area Committee. If you are unsure, you should take advice from the Chief Officer (Legal Licensing and Registration) or the Chief Planning Officer.

- **Do** consider whether it is appropriate for you to speak at the Area Committee if you wish to speak also on the application at Plans Panel.
- **Do** consider, whatever your own views, whether as Chair of the Area Committee or a member of any Plans Group, you would be so closely associated with that decision that it would be unreasonable to expect you to disregard it.
- **Do** remember that you can speak and vote on an application which is before the Area Committee for consultation so long as you make it clear that you have only formed a provisional view and will still approach the issue with an open mind and be open to persuasion when the matter is discussed at Plans Panel.
- **Do** remember that it is not always sufficient to make such a statement if it is not demonstrably genuine. The more controversial the application and or the more vehemently you have supported or opposed it, the more difficult it will be to show that you have not predetermined the matter and therefore render the decision susceptible to challenge. In those circumstances you should not attend the Plans Panel for that application.

8.0 SPOUSE/PARTNER COUNCILLORS

8.1 There are occasions when the spouse or partner of a member, usually a member for the same Ward or planning area, is also a Member of the Plans Panel. That Member might quite properly refer constituents who wish to make representations to his or her spouse or partner rather than be directly lobbied. Generally the fact that the spouse or partner Councillor has been approached will not affect your ability to speak and vote at Plans Panel.

- **Be** aware that the Members Code of Conduct defines a Personal Interest as one where a decision based upon it might reasonably be regarded as affecting the well being or financial position of that spouse or partner to a greater extent than other council tax payers, ratepayers or inhabitants of the ward affected by the decision.
- **Acknowledge** that in certain circumstances, such as a particularly controversial application in the run up to an election, there is the possibility that a Personal and Prejudicial interest could exist.
- **Consider** if your spouse or partner is so closely involved with the support for, or opposition to, an application that a member of the public might reasonably think that the involvement is such that you must be biased or have predetermined the application.

9.0 EXECUTIVE BOARD MEMBERS

9.1 There is no Constitutional or legal reason why an Executive Board member should not also be a member of the Plans Panel and take part in the decision making processes which are not part of the executive function.

- **Be** aware that you should not speak or vote on any matter which you have discussed at Executive Board unless you have demonstrated there and can do so at Plans Panel that you have not predetermined the application.
- **Do not** take part in any meeting of the Plans Panel on a matter in which you may have been seen as advocating a proposal as an Executive or Deputy Executive Member.

10.0 PANEL MEMBERS CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS

10.1 It is recognised that pre-application discussions can be of great benefit to the planning process provided that they take place within clear parameters and governance arrangements. Further guidance will be developed in respect of this in due course and protocols put in place within which pre-application discussions can be taken forward in appropriate cases. In the meantime, the following guidance is given:

- **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 helpful in clarifying the issues, you should not arrange it yourself, but request the Chief Planning Officer to do so. The officer will then ensure that those present are aware that any discussion will not bind the Council and maintain a written file record of the meeting.
- **Do** refer those who approach you for planning, technical or procedural advice to officers.
- **Do** follow the rules on lobbying.
- **Do** report any significant contact with the applicant or other parties to the Chief Planning Officer explaining the nature and purpose of the contacts and your involvement and ensure that this is recorded on the planning file.
- **Do not** attend a planning presentation by an applicant or developer unless an officer is present and/or it has been arranged by an officer.
- **Do** ask relevant questions for the purpose of clarifying your understanding of the proposals but do not express any strong view or state how you or other members might vote.
- **Do** make it clear that the presentation is not part of the formal decision making process and any view is both personal and provisional since not all relevant information will be to hand and the views of interested parties will not have been obtained.

11.0 MEMBERSHIP OF A LOBBY GROUP

11.1 Lobbying by Councillors is a legitimate activity but in the case of members of the Plans Panel significant care needs to be taken to avoid any challenge of bias or predetermination or an allegation of bringing the Council into disrepute.

- **Do** register your membership of any lobby group.
- **Do** declare the existence and nature of your interest in any lobby group at Panel meetings so that members of the public are informed about interests that may relate to your decisions. Often this will be a personal interest and you can continue to participate but note that it can sometimes be a prejudicial interest or lead to allegations of bias or predetermination and in those circumstances you must withdraw from the meeting.
- **Do** not take part in any matter which relates directly to the lobby group of which you are a member rather than the views it holds. If the Panel is discussing a planning application submitted by the group you should consider that you have a prejudicial interest and should act accordingly.

- **Do** weigh up the following factors where your lobby group has expressed a public view on a matter and consider whether a reasonable member of the public, knowing the relevant facts, would think that you appear biased. The factors are:
 - the nature of the matter to be discussed
 - the nature of your involvement with the lobby group
 - the publicly expressed views of the lobby group
 - what you have said or done in relation to the particular issue
- **Do not** lead, be part of the management of, or represent an organisation whose primary purpose is to promote or oppose planning proposals. If you do, you may have fettered your discretion and have a personal and prejudicial interest and have to withdraw.
- **Do not** become a member of an organisation whose primary purpose is to promote or oppose specific planning proposals or those within a limited geographical area as you may be perceived as having fettered your discretion.
- **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals such as the Victorian Society, the CPRE or a local Civic Trust but declare a personal interest where that organisation has made representations on a particular proposal and make it clear to both the organisation and the Panel that you have not made up your mind on each separate proposal.
- **Do** remember that if the local branch of a general interest group has been vociferous or active on a particular issue or you are closely associated with the management or decision making process of that organisation such as its Chairperson or a member of the Board or Committee, it will become increasingly difficult to demonstrate your ability to judge the matter with an open mind and you may appear biased and therefore you should consider whether it is appropriate for you to take part in the decision making process.
- **Do not** excessively lobby fellow members regarding your concerns or views or attempt to persuade them that they should decide how to vote in advance of the Panel meeting at which the decision is to be made. It is difficult to define “excessively” but you need to consider whether a member of the public, knowing the facts, would think that, through your representations, the lobbied member was no longer able to take a view on the matter in the public interest but had predetermined it.
- **Do not** publicly support a particular outcome on a proposal within your Ward or actively campaign for it if you wish to take part in the decision making process. It would be very difficult for you to demonstrate that you had the necessary degree of impartiality to properly weigh the arguments presented and the decision would be open to challenge. Again it is a question of maintaining the fine balance between a predisposition where your mind is not totally made up and a predetermination. This would, however, not prevent you from expressing the

views of your constituents provided you are capable of determining the Application in accordance with the law.

12.0 ATTENDANCE AT PLANS PANEL AND SITE VISITS

- 12.1 Planning applications may in some cases come before Plans Panels on more than one occasion. For example where members decide to defer an application for a site visit, or further information or, particularly with larger schemes where a position statement or issues paper are presented to the Plans Panel in order to inform the Panel and engage with members at key stages in the process.

It is important to ensure that members taking planning decisions are in possession of all the facts, including matters that may have been pointed out or come to light during a site visit by Plans Panel, matters that may have been raised during public speaking and matters that may have been discussed and considered by Plans Panel on earlier occasions. Attendance of members on all occasions during the application phase i.e. once the application has been submitted, will not only demonstrate that members are fully informed but will also ensure that high quality consistent and sound decisions are made, and that the risks of legal challenge are minimised.

- **DO** attend all Plans Panel meetings and formal site visits of the Plans Panel during the application phase¹ if you wish to take part in the decision making process.

The expectation is that all Plans Panel Members will attend all formal site visits and a record of attendance will be maintained and monitored.

If you have not attended on each occasion during the application phase and want to vote and take part in the decision on an application, you must carefully consider whether or not you are fully apprised of all the facts and relevant information necessary to properly reach a decision. This may include factors such as matters which have been pointed out or come to light during a site visit by the Plans Panel, matters that have been raised during public speaking and matters that may have been discussed and considered by Plans Panel on earlier occasions. You should only take part in the decision making process if you are satisfied that you can reasonably and properly do so in all the circumstances. If you are unsure, you should take advice from the Chief Planning Officer and Chief Officer (Legal Licensing and Registration).

13.0 SITE VISITS

- 13.1 Site Visits can play a legitimate part in the decision making exercise but must be limited to inspections by viewing and as a fact finding exercise. They are not to be

¹ For these purposes, the application phase does not include the pre-application stages or workshops, but following the submission of a planning application will include each of the occasions when an application comes before Panel not just for a decision but also to include presentations, position statements, issues papers and formal site visits. For the avoidance of doubt outline applications and detailed or reserved matters applications, or a new application for an amended scheme are distinct and separate applications and attendance is not required across both or all of these.

used to determine a proposal prior to the meeting of the Plans Panel. It should be noted that this Section applies to Members requests for a Site Visit and that the Chief Planning Officer may arrange Site Visits without prior discussion at the Plans Panel where, in his professional opinion, there is a real benefit from viewing the site.

- **Do not** request a site visit unless there is a real benefit from viewing the site. This might arise where:-
 - 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 or
 - Details of the proposed development cannot be ascertained from plans and any supporting information to members satisfaction at the Plans Panel or
 - Where design considerations are of the highest importance particularly in relation to the surrounding locality.
- **Do** raise the need for a site visit at Plans Panel if the Agenda has been published and be prepared to give reasons why it is of real benefit. The name of the member requesting it and the reasons that it is agreed will be recorded in the Minutes.
- In considering whether a site visit is appropriate the Panel will take into account whether a site visit has been made to the property within the last 12 months.
- **Do** try to attend all site visits organised by the Council.
- **Do** ensure that any information which you gained from the site visit is reported back to the Panel.
- **Do** ensure that you treat the site visit as an opportunity to seek information and to observe the site. It is not to be used to determine a matter prior to the meeting of the Plans Panel.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **Do** be prepared to listen to and ask questions of fact from the Applicant or other parties but do not be drawn into arguments or detailed discussions on the individual merits of an application or give the impression that you have made up your mind . The decision can only be made at the Plans Panel and you should make this clear to any applicant or other party and suggest that they make written representations or use of the Public Speaking arrangements and direct them to, or inform, the officer present.

- **Do** note comments of Ward members or the Chair of the Area Committee which are made solely for the purpose of making members aware of any specific local circumstances and issues relevant to the proposal.
- **Do not** express opinions or views to anyone which can suggest bias or pre-determination. As indicated above, you should make it clear that formal consideration of the proposal will take place in public at the next meeting of the Plans Panel.
- **Do not** enter a site which is subject to a proposal otherwise than on a formal site visit although this does not prevent you from viewing the site from the highway or other publicly accessible area.

14.0 OFFICERS

14.1 Councilors and officers have different but complementary roles. Both serve the public but Councilors are responsible to the electorate whilst officers are responsible to the Council as a whole. Instructions to officers can only be given through a decision of the Council, the Executive, Panel or under delegated powers and not by individual members acting outside those powers.

- **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 Chief Planning Officer which may be incorporated in any Panel report.
- **Do** recognise that officers are part of a management structure and only discuss a proposal, in accordance with any guidance provided by the Chief Planning Officer and with those officers who are authorised to deal with the proposals at Member level.
- **Do** be aware of the Protocols on Member/Officer Relations and the Roles of Members and Officers in Decision Making as set out in Part 5 of the Constitution.
- **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 RAPT 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 occasions, be at odds with the views, opinions or decisions of the Panel or its Members.

15.0 MEETINGS OF THE PLANS PANEL

15.1 A clear distinction has to be drawn between a Member and an Officer attending a Public Meeting and their roles when they attend meetings of the Plans Panel.

- 15.2 When a planning application has been deferred following a resolution not to accept officer's recommendation to refuse the application, the Chair shall put to the meeting a proposed statement of why the Chief Planning Officer's recommendation for refusal is not considered acceptable to the Panel, which, when agreed by the Panel, will be formally recorded in the Minutes.
- 15.3 When a planning application has been deferred following a resolution referred to in Paragraph 15.2 above, then at the subsequent meeting, the Chief Planning Officer shall have the opportunity to respond both in a further written report and orally to the reasons formulated by the Panel for granting permission. If the Plans Panel is still of the same view, then it shall again consider its reasons for granting permission, and a summary of the planning reasons for that decision shall be given, which reasons shall then be formally recorded in the Minutes of the meeting.
- 15.4 When a planning application has been deferred following a resolution not to accept the Chief Planning Officer's recommendation to grant the application, the Chair shall put to the meeting the proposed statement of the reasons for proposing refusal which, when agreed by the Panel, will be formally recorded in the minutes.
- 15.5 When a planning application has been deferred following a resolution referred to in Paragraph 15.4 above, then at the subsequent meeting the Chief Planning Officer shall have the opportunity to respond both in a further written report and orally to the reasons formulated by the Panel for refusing permission. If the Plans Panel is still of the same view, then it shall again consider its reasons for refusing permission, and a summary of the planning reasons shall then be formally recorded in the minutes of the meeting.
- 15.6 If the Plans Panel makes a decision contrary to the Chief Planning Officer's recommendation, the officer should be given an opportunity to explain the implications of the contrary decision. The Courts have expressed the view that reasons for the contrary decision should be clear and convincing.
- 15.7 A senior legal officer should always attend meetings of the Plans Panel to ensure the probity and propriety of the planning and decision-making processes.
- **Do** ensure that if you request a proposal to go before the Panel rather than be dealt with under officer delegation, your reasons are recorded and repeated in the Panel report.
 - **Do** come to the meeting with an open mind and demonstrate that you are open-minded. A recent Ombudsman case concerning Macclesfield Borough Council found maladministration where the Ombudsman was persuaded that a Councillor, because of his publicly stated opposition to a proposal had entered the planning meeting with his mind already made up even though she accepted that he had put forward sound planning reasons for the rejection of the application.

- **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 circumstances determine otherwise.
- **Do** come to your decision only after due consideration of all the information reasonably required upon which to base a decision. If you feel that there is insufficient time to digest new information or that there is insufficient information before you, request that further information and, if necessary, seek a deferral.
- **Do not** vote or take part in the discussion and voting on a proposal unless you have been present to hear the entire debate, including the officers presentation.
- **Do not** allow members of the public to communicate with you during the Panel proceedings other than through the public speaking protocol, as this may give the appearance of bias.
- **Do** have recorded the reasons for the Panel's decision to defer any proposal.
- **Do** make sure that if you are proposing or supporting a decision contrary to officer recommendations that you clearly identify and understand the planning reasons leading to this conclusion. These reasons must be given before the vote and be recorded. Remember that you may have to justify these by giving evidence in the event of a challenge.

16.0 PUBLIC SPEAKING PROTOCOL

16.1 All members are entitled to speak at a Panel meeting in accordance with the Public Speaking Protocol either as an individual, representative or ward member. However, where you might be regarded as having a personal and prejudicial interest in the application then you may attend and speak in accordance with the protocol but only for the purpose of making representations, answering questions or giving evidence relating to the matter in the same manner as would apply to a normal member of the public. Immediately after doing so you must leave the meeting room whilst the meeting considers the proposal even though members of the public may remain.

17.0 TRAINING

17.1 Members serving on Plans Panel must attend two training sessions each and every year: a Planning Update session, to receive guidance in relation to regulations and procedures and a Governance and Conduct session for training on declaration of personal and prejudicial interests. Failure to undertake either or both sessions will result in the Elected Member being unable to sit on Plans Panel.

- **Do not** participate in decision making at the Plans Panel if you have not undertaken mandatory planning training.

- **Do** try to attend any other specialised training session provided, since these will be designed to extend your knowledge of planning law, regulations, procedures and the Development Plan beyond the minimum required and assist you in carrying out your role properly and effectively.
- **Do** revisit a sample of implemented planning permissions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, thereby strengthening public confidence in the planning system, and can help with reviews of planning policies.

18.0 MONITORING AND REVIEW

18.1 The Chief Planning Officer will report annually to the Standards Committee regarding whether the arrangements set out in this Code have been complied with and will include any proposals for amendment in the light of any issues that have arisen during the year.

18.2 In particular, the Chief Planning Officer shall monitor the following:-

- (a) the number of complaints made about breaches of the Code and the outcome of those complaints.
- (b) the number of appeals upheld.
- (c) any external inspection reports in respect of relevant issues.
- (d) the level of awareness of the Code among Members and Officers to be established by means of an ethical audit.
- (e) the number of Ombudsman reports finding maladministration by Members in the conduct of planning issues.

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19.0 BREACHES OF THE CODE OF PRACTICE

19.1 Maintaining high ethical standards enhances the general reputation of the Council, its Members and its officers. Open and transparent decision making enhances local democracy and should lead to better informed citizens. This Planning Code, along with Leeds Council's Members Code of Conduct are intended to promote these standards.

- **Do** be aware of your responsibilities under this Code and the Members Code of Conduct.
- **Do** report any apparent breaches of either Code to the Monitoring Officer.
- **Do** seek advice if you are in doubt.

19.2 Failure to comply with the Members Code of Conduct may lead to a complaint to the Standards Committee – Assessment Sub-Committee who can, in certain

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circumstances disqualify a Councillor. Failure to comply with this Planning Code may lead to a finding of Maladministration by the Ombudsman or could lead to a decision being challenged in the courts.

- 19.3 Allegations on any breach of this Protocol by Members may be referred to the Assistant Chief Executive (Corporate Governance) for referral to the Standards Committee, the relevant Leader and/or Chief Whip of the political group.