

# BOROUGH COUNCIL OF KING'S LYNN AND WEST NORFOLK

## MEMBERS CODE OF GOOD PRACTICE FOR PLANNING

### 1. INTRODUCTION

- 1.1 This Code has been prepared and adopted for the guidance of Councillors in their dealings with planning matters.
- 1.2 The aim of this code is to ensure that, in the planning process, there will be no grounds for suggesting that a planning decision has been biased, partial or not well founded on planning considerations and to inform potential developers and members of the general public of the standards adopted by the Borough Council and the performance of its planning function.
- 1.3 **When this code applies** – to all members of the Planning Committee and substitutes. This would include, for example, making decisions at planning and other committees, or on less formal occasions such as meetings between members and officers and/or members of the public on planning matters. The code applies equally to planning enforcement matters or site-specific policy issues and to planning applications.
- 1.4 Planning decisions made by Councillors can have a considerable effect on the value of land, the nature of its development and on the lives and amenities of people living in the vicinity. The process of arriving at decisions on a planning matter must be open and transparent and the involvement of both Officers and Members must be clearly understood. The main principles which Members should have clear regard for are: -
  - The key purpose of planning is to deliver sustainable development which effectively balances economic, social and environmental interests and takes relevant local circumstances into account.
  - Your overriding duty as a Councillor is to all residents of the Borough Council area and in relation to planning issues to help ensure that the council's planning policies are achieved.
  - Your role as a member of the planning authority is to make planning decisions openly, impartially, with sound judgement, and for justifiable reasons.
  - Whilst you may be strongly influenced by the views of others and of your party in particular it is your responsibility alone to decide what view to take on any question which councillors have to decide.
  - Section 38(1) and 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act requires you to take planning decisions in accordance with the provisions of the development plan unless material considerations indicate otherwise. You should ensure that all decisions that you make have regard to

proper planning considerations and are made impartially and in a way, which does not give rise to public suspicion or mistrust.

- The Code applies to all decisions of the Council on planning related matters. This includes Members involvement in any planning application, whether or not it is reported to a committee, all applications determined by any committee or by Full Council acting as a local planning authority.
- When acting in your capacity as a Councillor you must have regard to the Council's adopted Code of Conduct.

1.6 If you have any doubts regarding whether this code of conduct for members or officers applies to their particular circumstances then you should take advice at the earliest possible opportunity from the Monitoring Officer Service or from a member of her staff. Any such advice should be sought well before any meeting of the local planning authority takes place.

## **2. RELATIONSHIP TO THE MEMBERS' CODE OF CONDUCT**

2.1 The Members' Code of Conduct sets out the standards of behaviour expected of Councillors and the requirements in relation to the declaration of interests in the Members Register of Interests and at meetings. Not only should impropriety be avoided but also any appearance or ground for suspicion of improper conduct. When considering any planning matter you should have primary regard for the Code, and particularly the requirement to properly declare all interests: -

- **Do** comply with the requirements of the adopted Code of Conduct first then apply the rules in this Planning Code of Good Practice.

2.2 If you do not follow and apply the code then you may put the Council at risk of proceedings challenging the legality of the decision made or of a complaint to the Ombudsman in respect of alleged maladministration and yourself at risk of sanction if there has been a failure to comply with the adopted Members' Code of Conduct.

## **3. DEVELOPMENT PROPOSALS AND DECLARATION OF INTERESTS UNDER THE MEMBERS' CODE OF CONDUCT**

When considering planning matters Members may find that they need to;

- declare interests in accordance with the requirements of the adopted Code of Conduct

or

- indicate whether or not they may have come to a fixed view on a planning application prior to the meeting (i.e. pre-determination)

The existence and nature of any interest should be disclosed in accordance with this Code at any planning committee, working party meeting and any informal meetings or discussions with officers and any other Members.

Members should preferably disclose their interest at the commencement of the meeting and not at the beginning of the discussion on that particular matter.

Members should notify the Monitoring Officer in writing of your interest and ensure that such notification should be no later than submission of that application and ensure that a proper record of the interest is noted at any meeting.

**Where you have a Disclosable Pecuniary Interest** (Your pecuniary interests (or those of your spouse/partner), are business interests; for example their employment, trade, profession, contracts, or any company with which you are associated and wider financial interests that you have for example trust funds, investments, and assets including land and property):

**Do Not** participate or give the appearance of trying to participate in the making of any decision by the Local Planning Authority.

**Do not** get involved with the processing of the application and direct any queries or technical matters to the relevant officer.

**Do not** seek or accept preferential treatment or place yourself in such a position so as members of the public would think you are receiving preferential treatment because of your position as a Councillor. You may need to identify another local member who is prepared to represent local interests

**Do** note that there is a requirement to **leave the room** whilst the item is being discussed.

#### **4. PRE-DETERMINATION IN THE PLANNING PROCESS**

The allowance made for Councillors to be predisposed to a particular view is a practical recognition of;

- (a) The role played by party politics in local government and
- (b) The need for Councillors to inform constituents of at least an initial view on a matter as part of their public role
- (c) The structure of local government which ultimately requires the same Councillors to make decisions.

It is therefore particularly important for elected Councillors to have a clear understanding about the implications of expressing strong opinions or views on planning matters. Section 25 of the Localism Act 2011 introduces provisions for dealing with allegations of bias or pre-determination or matters that otherwise raise an issue about the validity of a decision, where the decision maker(s) had or appeared to have a closed mind (to any extent) when making the decision.

This does allow Councillors to express preliminary views on planning matters however they will still need to be open minded at the point of decision in the sense of listening to all of the arguments, and weighing them against their preferred outcome, before actually voting.

Councillors can listen to views expressed by both applicants and objectors, but should try to ensure that they are acting in an even handed manner.

**In practice:**

This can be demonstrated by the Committee Chairman asking the Councillor at the beginning of the meeting to confirm whether or not they still have an open mind on a proposal.

A Councillor quoted in a newspaper having said, “Over my dead body will that planning application be approved. I will never support it under any circumstances” could be said to have predetermined the decision. These extreme statements should still be avoided.

It is important to note that if a member has expressed particularly extreme views, it will be more difficult in practice to be able to get away from the impression that they would approach the decision with a closed mind.

**5. CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS**

- 5.1 Local Authorities are encouraged to enter into pre-application discussions with potential applicants.
- 5.2 The Council encourages member involvement provided members roles in such discussions are clearly understood by members, officers, developers and the public. In particular members of development control committees need to be aware of the distinction between the giving and receiving information and engaging in negotiations. Members should also be aware that presentations by developers are, in effect, a form of lobbying and that the principles set out in paragraph 6 are relevant.

**Do** take advice from the Monitoring Officer if you are invited to attend meetings with applicants, developers or groups of objectors if you are a member of the Planning Committee and therefore likely to be part of the decision-making process. You will then be in a position to make a decision about your attendance having taken proper count of the issues relating to pre-determination.

**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 feel that a formal meeting would be useful in clarifying the issues, such presentation or discussion with an applicant, developer or objector should be part of a structured arrangement organised by officers. 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, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.

**Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the appropriate Committee of the Planning Authority

**Do** be aware that a presentation is a form of lobbying and if you express a view, you will need to carefully consider if you have pre-determined the matter prior to the vote;

- Follow the rules on lobbying;
- Report to the Executive Director (Development Services) 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.

## **6. LOBBYING OF MEMBERS**

6.1 It is acknowledged that lobbying is an integral part of the planning process. However, care has to be taken to avoid members' integrity and impartiality being called in question and accordingly there is a need to declare publicly that an approach of this nature has taken place. Lobbying can take place by professional agents as well as unrepresented applicants/landowners and community action groups.

6.2 Members must enter hospitality in accordance with the rules on gifts and hospitality

**Do** remember that your overriding duty is to the whole community and not just the people in your own particular ward

**Do** explain to those lobbying or attempting to lobby you that whilst you can listen to what is being said it prejudices your impartiality and may affect your ability to participate in the Committee's decision making to express an intention to vote one way or another.

**Do** not accept any gifts or hospitality from any person or group involved in or affected by a planning proposal. Whilst a degree of hospitality may be unavoidable, members must ensure that such hospitality is of a minimum and its acceptance is declared as soon as is possible.

**Do** copy or pass on any lobbying correspondence you receive to the Executive Director (Environment and Planning) at the earliest opportunity as this will enable proper officer advice to be given in the report and avoid the situation where officers are asked to respond to new information at the meeting itself, leading to deferral or decisions made on partial advice.

**Do** immediately refer any offers to the Executive Director (Environment and Planning) made to you of planning gain or a constraint of development through a proposed s106 obligation or otherwise.

**Do** inform the Monitoring Officer where you feel that you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality) that may require an investigation.

**Do** note that you **will not have pre-determined a matter** or breached this Code if:

- You have listened or have received views from residents or other interested parties;
- You have made comments to residents, interested parties, other Members or appropriate officers, provided the comments have not amounted to a pre-determination of the issue and you have made it clear that you are keeping an open mind;
- You have sought information through appropriate channels;

or

- You are being a vehicle for the expression of opinion or speaking at the meeting as a Ward/Local Member, provided that you explain your actions at the beginning of the meeting or item and make it clear that, having expressed the opinion or ward/local view, that you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

## **7. LOBBYING BY PLANNING COMMITTEE MEMBERS**

It is recognised that a Planning Committee Member who represents a ward affected by a particular application is in a difficult position particularly if it is a controversial application around which a lot of lobbying takes place. There is a balance to be struck between the duties to be an active ward representative and the overriding duty as a Councillor to the whole community. In these circumstances;

**Do** join general interest, resident or amenity groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals. Examples of such groups are local civic societies, the Ramblers' Association, the Victorian Society and CPRE. Members must, however, disclose any interest in accordance with the adopted code of conduct when that group has made representations on a particular matter and such members should make it clear to that group and to the Planning Committee that you have reserved judgment and the independence to make up your own mind on each and every proposal.

**Do** not excessively lobby fellow members regarding your concerns or views and nor attempt to persuade other members how they should vote in advance of a meeting at which a planning decision is to be taken.

**Do** not decide or not discuss at any political group meeting how to vote on a planning matter or lobby any other member to do so. Political group meetings should never dictate how members should vote on a planning issue.

## **8. SITE VISITS BY MEMBERS**

8.1 Sites inspection by Committee can be helpful in reaching a decision on issues where site circumstances are clearly fundamental to that decision as outlined below. Any Member of the Planning Committee may request a site visit.

**There is an expectation that Members will attend site visits. However there will be exceptional circumstances where this is not possible. If this is the case, please speak to the Executive Director or Monitoring Officer.**

**If you have difficulties in accessing the site, please speak to the Committee Chairman, prior to the site visit if possible. If during a site visit, it is not possible for you to continue, please speak to the Chairman, before leaving.**

**Do** ensure that any information which you gained 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 of seeking information and to observe the site.

**Do** ask the officers questions and seek clarification from them on matters, which are relevant to the site inspection, but this is not the time for a debate.

**Do not** hear representations from any other party at the site visit. If you are approached by the applicant or a third party, advise them that they should make representations in writing to the Council and direct them to or inform the officer that is present.

**Do not** express opinions or views to anyone at a site visit.

**Do not** enter a site that is subject to an application or proposal other than on an official site visit, even if it is in response to an invitation, as this may give the impression of bias.

**Do** try to stay with the rest of the Members and officers during a site visit – it helps to keep members safe on potentially dangerous sites and it ensures that all members receive all the relevant information.

## **9. THE DECISION MAKING PROCESS**

All applications considered by Planning Committee or by way of a delegated decision shall be the subject of written reports and clear recommendations. If the recommendations are contrary to the provisions of the Development Plan the material considerations, which justify this, shall be clearly stated. If in the view of the officer the matter is finely balanced the report will say so. The recommendations put forward by officers and the decision by members are separate parts of the same process, which should be justified by the report and debate respectively.

### **9.1 MEMBERS RELATIONSHIP WITH 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 relevant planning officer, and such views may be incorporated into any committee report.

**Do** recognise and respect that officers in the processing and determining of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct. You should therefore appreciate that officers' views, opinions and recommendations will be based on their overriding obligation of professional independence,

which may on occasion be at odds with the views, opinions and decisions of a committee or its members.

**Do** consider the Council's protocol for member/officer relationships, which governs the working relationship you have with officers. This is a relationship based on mutual trust and courtesy, and all meetings should be guided by this principle.

## **9.2 PUBLIC SPEAKING AT MEETINGS BY MEMBERS**

**Do** not allow members of the public to communicate with you during the committee proceedings (orally or in writing) other than through the scheme for public speaking.

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

## **9.3 DECISION MAKING BY MEMBERS**

**Do** come to a meeting with an open mind on a matter and do demonstrate that you are open-minded.

**Do** make decisions in accordance with the Development Plan unless material considerations indicate otherwise.

**Do** come to your decision only after due and proper consideration of all of the information reasonably required upon which to base a decision. If you feel that there is insufficient time to consider new information or there is insufficient information before you then you should request that further information and, if necessary, defer the application.

**Do not** vote or take part in a discussion at a meeting unless you have been present for the entire meeting or for the whole of the matter in question and this includes the public speaking and the officers' introduction to the matter. If a member needs to leave a meeting for a short period, such as for a comfort break, that member should seek an adjournment.

**Do** give reasons for Committee's decision to defer any proposal.

**Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendation or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons, like all reasons in such matters, must be given prior to the vote and be recorded. Members should also be aware that you might have to justify their decision by giving evidence in the event of any appeal or challenge.

**Do** ensure that the reasons you give for a decision must be your reasons. You cannot ask an officer to give the reasons for you. An officer may assist in the drafting of your reasons.

**Do not engage in social media or electronic communications, passing or receiving notes during the meeting.**

## **10. TRAINING OF MEMBERS**



All Members serving on the Planning Committee including substitute members in accordance with the Council's Constitution shall be trained in planning procedures prior to serving on the Committee.

Further training during the course of the year relating to planning will be provided. Members shall attend this as persistent failure to attend may be referred to the Monitoring Officer for action.

**Do not** take part in the decision making process at committee meetings unless you have attended the mandatory planning training prescribed by the Council's Constitution.

**Do** attend any other specialised training sessions provided, since these will be designed to extend their knowledge of planning law, procedures, Regulations, Codes of Practice and the Development Plan. The training will be devised to assist you in carrying out your role properly and effectively.

## **11. SANCTIONS**

A failure to adhere to the Code gives rise to potential consequences to individual Members. Any allegation of a serious breach of this Code should be made in writing to the Monitoring Officer.