

## **Part 5A(1)**

# **Members' Planning Code of Good Practice**

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# **Part 5A(1) – Members' Planning Code of Conduct**

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## **Part 5A (1) - Members' Planning Code of Good Practice**

### **Background**

This Code of Good Practice has been based on a model produced by the Association of Council Secretaries and Solicitors which was prepared in response to the Local Government Association's Guidance Note on the preparation of Local Codes of Good Practice on Planning Matters in the light of the introduction of the new ethical framework and in consultation with the District Audit Service, Local Government Ombudsman and the Standards Board for England.

### **Introduction**

**The aim of this code of good practice:** 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.

**The key purpose of Planning:** to regulate the development and use of land in the public interest.

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

**When the Code of Good Practice applies:** this code applies to Members at all times when involving themselves in the planning process. This includes both decision making meetings of the Council when exercising the functions of the Planning Authority and less formal occasions, such as meetings with officers or the public and consultative meetings. It applies to planning enforcement matters or site specific policy issues as well as 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 or one of his or her staff, and preferably well before any meeting takes place.**

### **1. Relationship to the Members' Code of Conduct**

- **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 Good Practice, which seek to explain and supplement the Members' Code of Conduct for the

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purposes of planning control. If you do not abide by this Code of Good Practice, 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 Code of Conduct, a complaint being made to the Standards Board for England.

## 2. Development Proposals and Interests under the Members' Code

- **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter. *(You can use the attached form for disclosing interests.)*
- **Do** then act accordingly. **Where your interest is personal and prejudicial:-**
  - **Do** withdraw from any meeting at which the matter is being considered and
  - **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.
  - **Don't** try to represent local views, get another Member to do so instead.
  - **Don't** get involved in the processing of the application.
  - **Don't** 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. This would include, where you have a personal and prejudicial 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 personal and prejudicial interest to an appropriate officer, in person or in writing, the Code places greater limitations on you in representing that proposal than would apply to a normal member of the public. Therefore, where you have a personal and prejudicial interest in a proposal to be put before a meeting, you will have to withdraw from

the room or chamber whilst the meeting considers it, whereas an ordinary member of the public would be able to make use of the public speaking scheme to address the meeting on the proposal and observe the meeting's consideration of it.

### 3. Fettering Discretion in the Planning Process

- **Don't** fetter your discretion by making up your mind, or appearing to have made up your mind on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the planning authority or prior to hearing the officer's presentation and evidence and arguments on both sides. This is particularly important if you are contacted by an external interest or lobby group.

If you have done so then you will not be able to participate in the determination of the matter at the Board because if you did take part in the discussion or vote it would put the County Council at risk in a number of ways.

Firstly it would probably in the view of the Local Government Ombudsman constitute maladministration.

Secondly, the Council could be at risk of legal proceedings on a number of possible grounds

- that there was a danger of bias on your part; or
  - pre-determination or
  - a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- **Do** be aware you are likely to be considered to have fettered your discretion where the Council is the landowner, developer or applicant and you have been involved to such an extent in the preparation, submission or advocacy of a planning proposal on behalf of the Council as to make your participation in the decision-making process inappropriate.
  - **Do** also be aware that, although the Members' Code of Conduct provides for a presumption that you may regard yourself as not having a prejudicial interest in matters which relate to the following organisations:
    - another local or public authority of which you are a member; or
    - a body to which you have been appointed or nominated by the Council as its representative,

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you must decide in relation to any planning proposal, whether you have been involved to such an extent in the preparation, submission or advocacy of a planning proposal on behalf of the body as to make your participation in the decision making process inappropriate.

If you have then you should always disclose a prejudicial as well as a personal interest and withdraw.

- **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (ie where you are also a member of the district/borough council as well as being a County Councillor), provided:
  - the proposal does not substantially affect the well being or financial standing of the consultee body;
  - you make it clear during the discussion at the consultee body that
    - (i) your views are expressed on the limited information before you only;
    - (ii) that you will reserve judgement and the independence to make up your own mind on each separate proposal when it comes before the determining body, based on your overriding duty to the whole community and not just to the people in your ward, and you hear all of the relevant information;
    - (iii) you will not in any way commit yourself as to how you or others may vote when the proposal comes before the determining body; and
    - (iv) you disclose the personal interest regarding your membership of the consultee body or role when the determining body comes to consider the proposal.
- Where you decline to speak or vote on a proposal because you have fettered your discretion (but do not have a prejudicial interest), you do not also have to withdraw, but you may prefer to do so for the sake of appearances.

However if you decide to stay explain that you do not intend to speak and 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. Use the disclosure form provided for disclosing interests.

**If you are a local member whose Division is directly affected by the application:**

- Do consider whether you should take the opportunity to exercise your separate speaking rights as a Local Member subject to the consent of the Chairman of the Board under Meeting Procedure Rule 34 where you have represented your views or those of local electors and fettered your discretion, but do not have a personal and prejudicial interest. Where you do:
  - advise the proper officer or Chairman that you wish to speak in this capacity before commencement of the item;
  - remove yourself from the member seating area for the duration of that item; and
  - ensure that your actions are recorded.

#### **4. Contact with Applicants, Developers and Objectors**

- **Do** refer an applicant, developer or objector who approaches you about a planning application to officers for planning, procedural or technical advice.
- **Don't** agree to any meeting with applicants, developers or groups of objectors where it can be avoided. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself as this may be seen as your promoting one point of view or the other. Request the Director of Community Services to organise it. The officers 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 Board.
- **Do** remember to:
  - follow the rules on lobbying (below);
  - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
  - report to the Director of Community 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.

#### **In addition in respect of presentations by applicants/developers:**

- **Do remember to**
  - **Attend** a planning presentation only where this has been sanctioned by the County Council and officers are in attendance.

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- **Ask** questions only for the purposes of clarifying your understanding of the proposals.
- **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 Development Control and Regulatory Board.
- **Remember** that a presentation is a form of lobbying and you must not express any view or state how you or other Members might vote.

### LOBBYING

Lobbying is an area with which many Members have a great deal of difficulty. Lobbying in respect of other aspects of their work as a Councillor is commonplace and is an accepted part of the democratic process. However if such lobbying of Members of a planning committee oversteps the mark it can lead, unless care is taken, to the impartiality and integrity of Members being called into question. It is essential that a Member bears in mind that he/she has an overriding duty to the whole community not just the people in his/her division. This can be especially difficult for the 'patch' member who is also a Member of the Board. Therefore special considerations apply when lobbying of and by Members occurs during the consideration of a planning application.

### 5. Lobbying of Councillors

The safest advice would be for a Councillor who is a Member of the Board not to place him/herself in a position where lobbying can occur. If that cannot be achieved and frequently it will not be possible to do this then

- **Do** explain to those attempting to lobby you that, whilst you can listen to what is said you are not in a position to express an intention to vote one way or another or to express such a firm point of view that it amounts to the same thing because this will mean you cannot participate in the Board's decision making
- **Do** pass on any representations you receive and copy or pass on any lobbying correspondence you receive to the Director of Community Services at the earliest opportunity
- **Do** refer any offers made to you of planning gain or to restrict the development through a proposed s.106 Planning Obligation or otherwise to the Director of Community Services

- **Don't** 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 and its acceptance is registered in accordance with the County Council's Code of Conduct as soon as possible
- **Do** indicate that you will pass on that person's views to the Director of Community Services and if necessary the Board when it considers the matter but that you cannot commit yourself to vote in any particular way. If you intend to speak at the Board in this way make it clear at the start of the meeting that this is what you are doing.

Unless you have a personal and prejudicial interest in the matter, if you follow this and the other advice in this Code, you will be able to speak and vote at the Board meeting.

- **Do** inform the Monitoring Officer if you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will take the appropriate action.

## 6. Lobbying by Councillors

In this context

**Lobbying is** asking fellow Councillors to hear or share one's thoughts and concerns on an issue.

**Excessive lobbying is** applying such pressure on a fellow Councillor that it amounts to an attempt to obtain a commitment as to how that Member will vote (whether spoken or unspoken). Pressure of this sort is an attempt to pre-determine the outcome of the issue (making the decision potentially unlawful) and may also amount to the Member using their position improperly to confer an advantage or disadvantage (breaching paragraph 5(a) of the County Council's Members' Code of Conduct).

It may be difficult to determine when lobbying becomes "excessive" and it may only become apparent to the world at large (objectively) as an outcome. In view of this if you approach a fellow Councillor on a planning application:

- **Do** be mindful that another Councillor may feel under undue pressure more readily in the following situations:
  - a senior Member lobbying a less senior Member

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- a number of Members lobbying a Member
- persistent lobbying of a Member
- **Do** always be clear that your lobbying is to solicit interest only and is not to solicit a voting commitment
- **Do** cease to lobby a Member if it appears there is a risk that the Member will feel subject to pressure as to how he/she votes
- **Don't** lead or act as spokesperson of an organisation whose primary purpose is to lobby or promote or oppose a planning application. This does not preclude you from joining general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning applications eg The Victorian Society, The Ramblers, CPRE or a local civic society. You should however make sure that you declare a personal interest when the matter is discussed.
- **Don't** discuss how to vote on a planning proposal at a political group meeting or lobby other Councillors to do so. The Ombudsman has made it clear that in his view the use of political whips to determine planning applications could amount to maladministration.
- **Don't** put pressure on a planning officer for a particular recommendation as this may be seen as prejudicing his/her professional integrity and impartiality

### 7. Site Visits

- **Do** attend site visits organised by the Council.
- **Do** ensure that any information which you gained from the site visit is reported back to the Board, 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 factual matters which are relevant to the site inspection.
- **Don't** express opinions or views on the proposal to anyone.
- **Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
  - you feel it is essential for you to visit the site other than through attending the official site visit,

- you have first spoken to the Director of Community Services about your intention to do so and why (which will be recorded on the file) and
- you can ensure you will comply with these good practice rules on site visits.

## **8. Pre-Meetings**

Briefing meetings for the Chairman and Spokesmen of the Board are held to facilitate the smooth running of the Board Meeting. Discussion will be limited to procedural issues such as the organisation of site visits, arrangements for members of the public to exercise their speaking rights at the meeting and to ensure all relevant paperwork and information is available for the meeting. This information can be used by the Chairman and Spokesmen to brief their colleagues at group meetings in advance of the formal meeting.

- **Don't** discuss the determination of applications at either briefing meetings or group meetings.
- **Do** use pre-meetings to resolve procedural issues to facilitate the smooth running of the formal meeting.
- **Don't** ever use the political whip on a planning matter. This would leave the decision open to challenge and could give rise to a finding of maladministration by the Local Government Ombudsman.

## **9. Public Speaking at Meetings**

- **Don't** allow members of the public to communicate with you before or during the Board's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.

## **10. Officers**

- **Don't** put pressure on officers to put forward a particular recommendation. This does not prevent you from asking questions or submitting views to the Director of Community Services 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 any

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appropriate officer and 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 Members.

### 11. Decision Making

- **Do** come to meetings with an open mind and 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 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 the application.
- **Don't** vote or take part in the decision on a proposal unless you have been present to hear everything that has been said at that meeting, including the officers' introduction to the matter.
- **Do** make sure that if you are proposing, seconding or supporting a decision (especially one 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 may have to justify the resulting decision by giving evidence in the event of any challenge.

### 12. Member Awareness

The planning system is a quasi judicial process involving complex legal and technical issues which require the application of sound judgement in the assessment of planning proposals. A failure to follow proper practice and procedures can lead to serious consequences for the planning authority. Therefore:

- **Do** endeavour to participate in any sessions provided to raise awareness on planning matters and this Code of Good Practice which will assist you in carrying out your role properly and effectively.
- It would not be appropriate for Members who have not attended these sessions to be involved in determining planning proposals.

**DISCLOSURE OF INTERESTS AT MEETINGS CONSIDERING PLANNING MATTERS**

The County Council's Code of Conduct requires elected members and co-opted members to disclose the existence and nature of any personal interests at the commencement of that consideration or when the interest becomes apparent. In practice this is usually done at the beginning of the meeting concerned under a specific agenda item entitled 'Declarations of Interest'.

The Members' Planning Code of Good Practice adopted by the Council also requires members to disclose where members consider they may have fettered their discretion on a particular planning matter.

This form has been prepared to assist members in declaring such matters.

Name of Member \_\_\_\_\_

Meeting \_\_\_\_\_

Date \_\_\_\_\_

Item \_\_\_\_\_

*Please answer all questions.*

**Personal Interests**

1. Is the matter Financial?  or Other?
2. The interest relates to Myself?  or Another Person?

**Prejudicial Interests**

3. Is the interest prejudicial? YES  or NO

**Fettered Discretion**

4. Is the interest disclosed on the grounds of planning good practice in that you consider that you may have fettered your discretion in relation to this matter and therefore will not be participating in the debate or voting? YES  or NO
5. Do you nevertheless wish to exercise your right to speak as the local member (if appropriate)? YES  or NO

**Reserving the Right to Judge**

6. Do you wish to declare that you are reserving the right to judge the matter elsewhere and therefore you will not be participating in the debate or voting. YES  or NO

Signed \_\_\_\_\_ Date \_\_\_\_\_

Completed forms should be handed to the Committee Officer servicing the meeting, or sent to the Head of Democratic Services and Administration, Chief Executive's Department, County Hall, Glenfield, Leicester, LE3 8RA.