



- an introduction (paragraph 1)
- provisions relating to Members (paragraphs 2-9)
- provisions relating of Officers (paragraphs 10-14)
- Sanctions (paragraph 15)

2. The significant issues in the report are:

As set out in the report.

### **3. Policy**

3.1 One of the Audit Committee's functions is to advise the Council on the adoption or revision of a Code of Conduct for Members and Officers in Planning matters.

### **4. Consultation**

4.1 Senior Planning Officers and Legal Officers have been involved in the drafting of revisions to the Code. A copy of the Code and the report will be sent to all Members who sit on the Development Control Committees.

### **5. Context**

5.1 The existing Code of Practice for Members and Officers in relation to planning matters has been revised to include additional information on the Council's established standards of good practice and other guidance to aid interpretation of the Code. The aim of the revised Code is to ensure as far as is possible, that there will be no grounds for suggesting that a planning decision has been based on bias or not well founded on planning considerations. The Code supplements the Council's Code of Conduct for Members and Officers and is to be used throughout the planning process.

### **6. Proposal**

6.1 Members and Officers involved in the planning process, such as Members who sit on the Development Control Committees and Officers involved with the processing of applications will have to comply with the obligations contained in the Code.

6.2 The revisions to the Code include the Council's established standards of good practice and other guidance to aid interpretation of the Code. The main provisions of the Code are as follows:-

- (1) The relationship with the Members Code of Conduct: Members to whom this Code applies should always apply the Members Code of Conduct first and then the Planning Code of Good Practice which seek to explain and supplement the members' Code of Conduct for planning purposes.
- (2) Members must always disclose the existence and nature of any interest in a planning matter. If they have an interest or have come to a view (pre-determination) then they should follow the steps contained in paragraph 3 of the Code. Members are reminded to notify the Monitoring Officer in writing of their own interest and also to ensure that a proper record of the interest is noted at any meeting.
- (3) Members must note the new rules on 'Disclosable Precuniary Interests' (DPI's) which is a key change brought in by the Localism Act 2011. Members will be required to register DPIs and not take part in any discussion or vote on an item in which they have a DPI.

A Member who has a DPI in an item of business will commit a criminal offence by failing to disclose it and taking part in the discussion and voting on that item.

Members shall note that there will not be a requirement to leave the room while the item is discussed.

- (4) Members must take care so as not to pre-determine any item of business. Practical advice is given to Members in paragraph 3.1 of the Code.

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.

The provisions in the Localism Act do not involve a change in the law. It puts the common law position of bias or pre-determination on a statutory basis.

The Code has been drafted to minimise any legal challenge either to Members or to the Council's decisions in this area.

- (4) The provisions at paragraph 4 relate to contact with Applicants, Developers and Objectors. The Code includes a protocol for Member involvement in pre-application discussions. . Members

are encouraged to take part in meetings and discussions regarding pre-application proposals provided members roles in such discussions are clearly understood by members, officers, developers and the public. Members have to be careful that they do not predetermine the matter. Members to whom the Code applies should carefully study the protocol in such circumstances and/or seek advice from appropriate officers.

- (5) The provisions relating to the lobbying of Members are to be found at paragraph 5 of the Code. These provisions have been included to avoid Members integrity and impartiality being called into question.
- (6) Paragraph 6 of the Code contains provisions relating to lobbying by members of the Development Control Committee themselves and the procedure they should follow if an item by residents or amenity group of which he/she is a member should come before a Development Control Committee.
- (7) Paragraph 7 of the Code contains provisions relating to site visits. Members who participate in the decision making process should always attend a formal site visit where the relevant development control committee has resolved that a visit is required. If Members do not attend a formally arranged site visit, they will be unable to participate in the debate or vote on the relevant item when it is formally considered for decisions by the Committee. It should be noted the site visits should only be called if there are significant site factors to justify a site visit or there are significant policy or precedent implications that need to be carefully addressed.
- (8) Paragraph 8 provides guidance on the decision making process. The provision advises that a decision on a planning application cannot be made at the committee meeting until all of the available information is to hand and has been duly considered and provides guidance on pre-committee meetings.
- (9) Paragraph 8.1 contain provisions on the relationship between Members and Officers; The provisions advise Members as to which Officer to consult regarding an application and to remind Members that Officers when they determine and process planning matters must act in accordance with the Council's Code of Conduct for Officers and their own professional Codes of Conduct. Members must also consider the protocol for Member/Officer relations.
- (10) Paragraph 8.2 remind Members not to allow members of the public to communicate with them during Committee proceedings and to

remind Members to comply with the Council's procedures relating to public speaking.

- (11) Paragraph 8.3 contain provisions relating to decision making and stresses that Members must come to a meeting with an open mind on a matter and do demonstrate that they are open minded. In addition, the provision stresses that Members must make planning decisions in accordance with the Development Plan unless material considerations indicate otherwise. Additional guidance is provided at Appendix 1 in relation to good practice procedure at committee meetings if Members are proposing, seconding or supporting a decision contrary to officer recommendation.
- (12) Paragraph 9 contain provisions relating to the training of Members who take part in the decision making process. Such Members must attend the mandatory training prescribed by this Committee and are advised to attend other sessions.
- (13) Paragraphs 10 - 14 contains provisions relating to the role of officers in planning matters, discussions by officers regarding planning applications, officers disclosures of interest, hospitality given to officers and action to be taken by officers regarding decisions taking by Members contrary to professional advice.
- (14) Paragraph 15 contains provisions informing of Sanctions. A failure to adhere to the Code gives rise to potential consequences to the Council and individual Members. This paragraph identifies a number of specific consequences beyond the normal democratic process
- (15) The Addendum is advice regarding the latest Court of Appeal case regarding a Planning Members role at a Planning Committee.
- (16) The Code will be kept under review by this Committee.

## **7. Public Sector Equality Duties**

- 7.1 Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following "protected characteristics": age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
  - i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.

- ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to -
  - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
  - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
  - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
  - tackle prejudice; and
  - promote understanding.

## **6. Equalities Impact Assessment**

None undertaken

## **7. Legal and Resource Implications**

### **Legal Implications**

As set out in the report

## **8. Financial Implications**

None

**Appendices:** Appendix A – Code of Practice

Access to Information:

The Localism Act 2011

Local Government Association Code of Conduct

Lavender paper

November 2012

## **PART 5**

### **BRISTOL CITY COUNCIL**

#### **PLANNING CODE OF GOOD PRACTICE FOR MEMBERS AND OFFICERS – PLANNING MATTERS**

#### **ADOPTED CODE OF CONDUCT FOR MEMBERS AND OFFICERS – PLANNING MATTERS**

### **1. INTRODUCTION**

- This code has been prepared and adopted for the guidance of Officers and Councillors in their dealings with planning matters.
- **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 City Council and the performance of its planning function.
- **The aim of the planning process** is to control development in the public interest.
- **When this code applies** – to all members of the development control committees and officers at all times when they are involved in the planning process. This would include, for example, making decisions at development control committees, or if an officer, making delegated decisions on applications, 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.
- 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 City of Bristol 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
- 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 Service Director: Legal Services or from a member of his staff. Any such advice should be sought well before any meeting of the local planning authority takes place.

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

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
- **Do** then apply the rules in this Planning Code of Good Practice.

**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 development control committee, 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 Service Director: Legal Services as 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 (DPI's):**

- **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. An example would be where a member has an interest in a property and uses his/her position as Councillor to discuss a planning application with officers or members when ordinary members of the public would not have the same opportunity to do so. You may need to identify another local member who is prepared to represent local interests
- **Do** note that there is no requirement to leave the room whilst the item is being discussed.

### **3.1 PRE-DETERMINATION IN THE PLANNING PROCESS**

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

- α) The role played by party politics in Local Government
- β) The need for Councillors to inform constituents of at least an initial view on a matter as part of their public role
- χ) 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.

The provisions in the Localism Act do not involve a change in the law. It puts the common law position of bias or pre-determination on a statutory basis.

The Act provides that a decision-maker is not to be taken to have had (or to have appeared to have had) a closed mind when making the decision just because

- (1) They had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter, and
- (1a) The matter was relevant to the decision

With this provision the Government expect councillors to be able to publicise their views on issues, indicate their voting intentions and to engage fully with their local communities without this affecting their participation in the council's formal decision making. In addition, councillors should be able to engage with planning applicants to educate themselves about their proposals.

Thus, if a councillor has campaigned on an issue or made public statements about their approach to an item of council business, he or she will be able to participate in discussion of that issue in the council and to vote on it if it arises in an item of council business requiring a decision.

However, councillors 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.

The difference is that the fact that councillors may have campaigned against a proposal will not be taken as proof that they are not open-minded.

### **Examples:**

In a situation where a member said something like "over my dead body" in respect of voting a particular way on an issue, the view must be that whilst the provision on predetermination in the Localism Act might be useful in giving councillors confidence about making their views on particular issues known, it has not changed the legal position that if a member could be shown to have approached a decision with a closed mind, that could affect the validity of the decision.

Equally, if a member had expressed views on a particular issue but could show that when taking the decision they had approached this with an open mind and taken account of all the relevant information, they could reasonably participate in a valid decision.

### **Important points to bear in mind:**

- If you give an indication of your own viewpoint, ensure that you indicate that you will take all relevant considerations into account and that the decision will be based firmly on planning grounds but that they will ensure views are fully heard and taken into account by the Council
- It is a good idea to record your involvement.

### **In Practice:**

1. A Councillor may campaign for or against a planning application, and still vote at planning committee, so long as they go into the meeting with an open mind to hear all the facts and evidence. This can be demonstrated by the Committee Chair asking the Councillor at the beginning of the meeting to confirm whether or not they still have an open mind on a proposal.
2. 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 pre-determined 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.

## **4. CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS**

Local Authorities are encouraged to enter into pre-application discussions with potential applicants.

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. Without this protocol member involvement may inadvertently open a decision to challenge on the ground of apparent pre-determination. Members **should** also be aware that presentations by developers are, in effect, a form of lobbying and that the principles set out in paragraph 5 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 Development Control 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 account 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
- **Do** otherwise:
  - Follow the rules on lobbying;
  - Report to the Development Services Manager 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.

## 5. LOBBYING OF MEMBERS

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 un-represented applicants/landowners and community action groups.

- **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.

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

- **Do** copy or pass on any lobbying correspondence you receive to the Development Services Manager or one of the planning team's area managers 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 Development Services Manager or one of the planning team's area managers 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.

## 6. LOBBYING BY DEVELOPMENT CONTROL COMMITTEE MEMBERS

The Local Government Association report recognises that a Development Control 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 Development Control 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.

## 7. SITE VISITS BY MEMBERS

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 Development Control Committee may request a site visit and the reasons for the request.

- **Do** try to attend site visits organised by the Council where the relevant development control committee has resolved that a visit is required. **If you do not attend a formally arranged site visit, you will be unable to participate in the debate or vote on the relevant item when it is formally considered for decisions by the Committee. However, please note that this does not apply to site visits arranged informally by officers with the agreement of the Chair**
- **Do not** request a site visit unless you feel it is strictly necessary and where:
  - Particular site factors are significant in the 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 site factors need to be carefully addressed.
- **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.
- **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. The only exception to this being:
  - That you feel it is essential for you to visit the site other than as part of an official site visit; and
  - You have spoken to the Development Services Manager or an Area Planning Manager of your intention to do so and why (which will be recorded on the file) and
  - You can ensure that you will comply with these good practice rules on site visits
- **Occasionally officers will arrange informal site visits prior to a matter being considered at a development control committee. Whilst members should make every effort to attend**



such informal site visits, a member's non attendance at such informal visits would not of itself prevent that member from taking part in the decision making process

## 8. THE DECISION MAKING PROCESS

The Local Government Association report on Probity in planning: the role of councillors and officers – revised guidance note on good planning practice for councillors and officers dealing with planning matters, advises that a decision on a planning application cannot be made at the committee meeting until all of the available information is to hand and has been duly considered, and any political group meeting prior to a Committee meeting should not be used to decide how Councillors should vote. Accordingly any pre-Committee meetings will solely be for the purpose of enabling an exchange of briefing material between Officers and Members on planning issues of concern in relation to particular applications, and will be open to Members of all political groups. All applications considered by Development Control 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.

### 8.1 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 Development Services Manager or the relevant area-planning manager, and such views may be incorporated into any committee report. If you wish to speak to an officer regarding any proposal then you should speak to the case officer as that officer would know the current position regarding a matter. Alternatively, you can contact the relevant Area Planning Manager.
- **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.

## 8.2 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.

## 8.3 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** comply with the Sections 38(1) and 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 and 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** have recorded the 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. See guidance at Appendix 1.
- **Do** remember that development control committees are important hearings. You should, therefore, act and dress accordingly. i.e. you give a matter due consideration and should not talk between yourselves or use mobile telephones or other mobile devices when a matter is being considered.

## 9. TRAINING OF MEMBERS

All Members serving on the Development Control Committee and/or who have any decision making role on planning matters including substitute members in accordance with the Council's Constitution shall be trained in planning procedures prior to serving on the Committee.

- **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.

## 10. THE ROLE OF OFFICERS IN PLANNING MATTERS

10.1 Officers **must** when making decisions on applications:

- Act fairly and openly at all times
- Consider each and every application with an open mind
- Consider all the material planning considerations attaching the appropriate weight to each one
- Avoid any inappropriate contact with applicants, members and any other interested parties
- Ensure that the reasons for any decision are clearly recorded

- Ensure that the reasons for any decision are sufficient and reasonable and that the recording of such reasons comply with the relevant legislation and guidance in accordance with Article 31 of the Town and Country Planning Development Management Procedure) (England) Order 2010 (SI 010/2184), regarding reasons for approval and refusal.

10.2 When reporting to a committee on a planning matter officers **will**:

- Provide professional and impartial advice at all times
- Ensure that all the information necessary for a decision by Members is made available to those members
- Ensure that a report includes the substance of all the objections and the views of the consultees
- Produce a clear, accurate and objective written analysis of the Issues
- Make a clear recommendation.

10.3 Every planning application file and other files relating to planning matters should contain an accurate assessment of that matter's history.

Particular care should be taken with files relating to delegated decisions, which should be as carefully maintained as those files relating to decisions taken by members.

10.4 Any material planning information received after the writing of the report and up to midday of the day of the committee meeting will be presented orally by officers or be included on an amendment sheet.

10.5 The Development Services Manager or relevant Area Planning Manager may, after consulting the Chair of the relevant development control committee, withdraw any item from the agenda of that committee before that item is discussed by that committee if the circumstances of an application have changed after the report has been prepared.

10.6 Officers have a duty to carry out the decisions of members even when Members decide a matter against officer recommendations.

## **11. DISCUSSIONS REGARDING PLANNING APPLICATIONS**

- 11.1 Officers should have regard to the relevant parts of this code regarding members' involvement in pre application or post submission discussions with applicants, supporters or objectors.
- 11.2 In particular all officers taking part in such discussions should inform all those present at such discussions that the decision on the particular application will either be taken by elected members in a committee or in specified circumstances by the Development Services Manager or by a duly authorised officer of his or her department.
- 11.3 An officer **must** always take a note of all such meetings. All meeting notes and follow-up correspondence **must** be placed on the relevant file.

## **12. OFFICERS' DISCLOSURES OF INTERESTS**

- 12.1 Officers **must not** play any part in the processing of any application where they have, or can be perceived to have, a conflict of an interest. Such interests would include financial or professional interests and the interests of family and friends.

## **13. HOSPITALITY – OFFICERS**

- 13.1 Officers **must not** accept any gift or hospitality from any person or group affected by a planning proposal. Whilst a degree of hospitality may be unavoidable, officers **must** ensure that such hospitality is minimal and its acceptance is declared as soon as is possible.

## **14. ACTION TO BE TAKEN BY OFFICERS REGARDING DECISIONS TAKEN CONTRARY TO PROFESSIONAL ADVICE**

- 14.1 In matters where members have refused an application against an Officer recommendation for approval:
- Officers will give their full support to members and any external witnesses in the preparation of the evidence for any planning inquiry
  - Officers will only give evidence themselves in the exceptional circumstances where their code of professional conduct has not been

breached or where a hearing is to be held, with no cross examination and in this later example the officer concerned has not been involved with formulating the original recommendation

- Officers will give their full support to Member decisions that are appealed under the written representations procedure

## **15. SANCTIONS**

The purpose of this Code is to provide guidance to Members in relation to the performance of the Councils planning function. The application of and adherence to the Code is intended to build public confidence in the Councils planning system and to produce a strong platform for planning decision-making. The Code does not remove the responsibility of Members to exercise their statutory discretion to determine the merits of individual applications or proposals.

A failure to adhere to the Code gives rise to potential consequences to the Council and individual Members. Councillors may make a reputation in their community not only for their beliefs but also for their general conduct. Consistency and fairness are important qualities in the public eye and they are vital to the conduct of the Planning Committee. Beyond the normal democratic process a number of specific consequences can be identified

- **The Local Government Ombudsman**

Although the Local Government Ombudsman will not investigate the balance of argument in any planning decisions she/he may agree to investigate a planning complaint if it concerns the manner in which a decision was taken. If it is found injustice has been caused by maladministration in the light of statutory or established Council procedures she/he will recommend redress, which may take the form of compensation.

- **Appeals to the Secretary of State**

An applicant who has been refused planning permission has a right of appeal to the Secretary of State. If an appeal is successful and it is shown that the Councils conduct in dealing with the matter was unreasonable the appellant's costs may be awarded against the Council. Examples of "unreasonable behaviour" are: failing to follow the Council's policies; no evidence of significant harm; and giving too much weight to local opposition to proposals.

- **Judicial review**

If objectors are convinced that the Council in determining to grant an application did not observe their statutory duties to carry out all necessary procedures, did not base their decision on the development plan and or did not take into account all relevant representations they may apply for Judicial Review of the decision which might result in the decision being quashed. In such circumstances it would be normal for the costs of the applicant to be awarded against the Council.

- **Powers of the Secretary of State**

The Secretary of State possesses a range of powers which could be exercised where a Local Planning Authority appears to make inconsistent decisions or decisions which are seriously in conflict with national and Development Plan Policies. This could involve the greater use of the power to call in applications whereby an application will be determined by the Secretary of State following a Public Inquiry. Where permission has already been granted by the Council powers exist to revoke or modify permissions or to require discontinuance of a land use which if exercised would give rise to a liability to compensate on the part of the Council

- **District Auditor**

Each of the above courses of action could result in significant extraordinary costs to the Council. The District Auditor will closely examine these costs. Where it appears to an Auditor that a loss has been incurred or a deficiency caused in the Councils accounts by the wilful misconduct of any person she/he is required to certify that the loss or deficiency is due to that person and it may therefore lead to a formal report to Council in accordance with the powers granted to District Auditors under the Local Government Act 2000.

These are in addition to possible sanctions against individual Members for breach of the Code of Conduct which could include

- **To Report on findings to Full Council i.e. “naming and shaming”.**
- **To Recommend to a Group Leader that the member concerned be removed from any committee or sub-committee.**
- **To recommend, In relation to any members of the executive that the member concerned be removed from the Executive.**
- **to recommend the Monitoring Officer to arrange appropriate training for the member concerned.**
- **to recommend removal of any member concerned from any outside body appointments.**
- **to require the withdrawal of Council facilities e.g. use of computer or internet.**
- **to exclude a member from the Council’s offices or other premises except for the purpose of attending formal meetings.**

## ADDENDUM

R (on the application of Kevin Paul Lewis) v Persimmon Homes Teesside Ltd [2008] EWCA Civ 746 (Court of Appeal) recognises *“that Councillors are not in a judicial or quasi-judicial position but are elected to provide and pursue policies. Members of a Planning Committee would be entitled and indeed expected to have and to have expressed views on planning issues”* Pill LJ at paragraph 69

*“...there is no escaping the fact that a decision-maker in the planning context is not acting in a judicial or quasi-judicial role but in a situation of democratic accountability. He or she will be subject to the full range of judicial review, but in terms of the concepts of independence and impartiality, which are at the root of the constitutional doctrine of bias, whether under the European Convention of Human Rights or at common law, there can be no pretence that such democratically accountable decision makers are intended to be independent and impartial just as if they were judges or quasi-judges. They will have political allegiances, and their politics will involve policies and these will be known.”* Rix LJ at paragraph 94.



## **OVERTURN FROM OFFICER RECOMMENDATION OF REFUSAL TO APPROVAL**

1. Members should clearly identify and understand the planning reasons leading to this conclusion and should specify the planning reasons for approval during the debate.
2. At the time the motion for approval is moved, Members should specify the planning reasons upon which the motion for approval is based to ensure that all members are clear as to the basis for their vote.
3. The decision by Members is an 'in principle' only decision at this time. For example, Members support the application subject to conditions.
  - a. That Delegated Authority is resolved to be given to officers to prepare conditions and (where necessary) section 106 obligations and issue the decision notice **OR**
  - b. Delegated authority is given to officers to draft conditions to be considered by the next available Development Control Committee **OR**
  - c. The Committee approves the delegation to draft conditions in consultation with the Chair of the Committee

## **OVERTURN FROM OFFICER RECOMMENDATION OF APPROVAL TO REFUSAL**

1. The Member moving the motion for refusal must clearly state the reasons for refusal as part of the debate. These reasons must be planning reasons.
2. The Planning Officer to advise on whether or not these are relevant planning refusal reasons prior to the vote.
3. The Planning Officer can (if required) summarise the reasons for refusal before the vote is taken to ensure that all members are clear as to the basis for their vote
4. On being put to the vote, the member moving the motion should re-state the reasons for refusal
5. If the vote is successful the reasons given by Committee shall form the basis of the refusal notice issued.