

CODE FOR MEMBERS AND OFFICERS IN RESPECT OF PLANNING MATTERS¹

1. Introduction

- 1.1. This Planning Code sets out the standards of conduct the City Council requires of all members and officers of the Council in dealing with planning matters, including applications, policy development, and enforcement.
- 1.2. Councillors and officers must make themselves aware of the Planning Code and put it into practice consistently.
- 1.3. Officers should be aware of the provisions of the Planning Code, and must also comply with any professional codes of conduct applicable to their own profession (regardless of whether they are members of the relevant professional body).

2. Relationship to the Members Code of Conduct

- 2.1. If you are a member of the Council, the rules in the Members' Code of Conduct apply as a priority, in particular the rules relating to declarations of personal and disclosable pecuniary interests².
- 2.2. The rules in this Planning Code supplement the Members' Code of Conduct for the purposes of planning matters. Where members or officers fail to abide by the requirements of the Codes the Council will be at risk of legal challenge and sanctions may be applied to the individual member by the Governance and Audit and Standards Committee.

3. General Role and Conduct of Councillors and Officers

- 3.1 Whilst this Planning Code deals primarily with development proposals at both the pre application /planning applications and post decisions, its principles also apply to consideration of planning policy, enforcement cases, and all other planning matters.
- 3.2 You should comply with the Planning Code equally in formal decision making, in Council meetings, and in less formal circumstances, such as member/officer meetings, meetings with the public, and consultative meetings.
- 3.3 Decisions by the Council in its role as local planning authority must be made in accordance with the Development Plan unless material considerations indicate otherwise.³ There are additional statutory obligations in respect of decisions affecting a listed building or its setting, or development within a

¹ For ease referred to as "the Planning Code"

² See the Council's Constitution, Part 4A

³ See Section 38(6), Planning and Compulsory Purchase Act 2004

Conservation Area, which require impacts to be given special consideration as a priority before other material considerations.⁴

4 Member Declaration and Registration of Interests

4.1 Councillors who have substantial property interests, or other interests which would prevent them from voting on a regular basis, should avoid serving on the Planning Committee.

4.2 Under the Code of Conduct members are obliged to register disclosable pecuniary interests and personal interests. Advice on when to disclose such interests is available from the Monitoring Officer.

4.3 **It is each Councillor's personal responsibility to seek such advice and to decide how to act in respect of the advice received. This should be sought in advance of the Committee meeting (or before any other planning related meeting).** The Members' Code requires Councillors to declare all personal interests. Councillors must not seek to participate if they have a disclosable pecuniary interest in a matter being considered.

4.4 Whether or not you are a member of the Planning Committee and may be called upon to make decisions in respect of planning matters, when dealing with any planning matter you are required to disclose your interest at any relevant meeting, or in any dealings with planning officers.

4.5 The need to secure transparent conformity to the highest standards of public service necessitates compliance with the Members' Code and the Planning Code, and declaration of relevant interests not only in formal situations but also in all informal meetings and discussions with developers, applicants or officers.

4.6 In the same way as your declaration of interest must be recorded for formal meetings, you should ensure that such declarations are recorded on the application file as soon as possible. It is best practice to disclose your interest at the beginning of the meeting or as soon as it becomes apparent to you.

4.7 Effect of having a personal interest in a matter at a Planning Committee Meeting;

Once such an interest has been declared and specified, you may stay and take part in the debate and decision on that item. However, if you have an interest that might lead to a perception of bias on your part, either in favour of or opposed to a particular decision, then you should withdraw from the meeting to enable the decision to be made without risk of legal challenge.

4.8 Effect of having a pecuniary interest in a matter;

During a Planning Committee meeting you must leave the meeting room/ chamber

⁴ See Sections 66 and 72, Planning (Listed Buildings and Conservation Areas) Act 1990

for the duration of consideration and decision on the item and not seek to influence the debate or decision. You are required to leave in these circumstances to avoid inhibiting the freedom of expression of members who remain and who have to discuss and decide the matter before them.

4.9 Where you have a pecuniary interest;

- Make sure that the Register of Member Interests has been properly completed.
- Do not participate, or give the appearance of trying to participate, in the making of any decision on the matter, including any decision whether the matter should be dealt with by officers or referred to the Planning Committee.
- Do not get involved in the processing of the relevant application.
- Do not seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor.
- Your normal rights as councillor to have information about any matter of Council business as required to fulfil the duties of your role and serve those whom you represent are suspended. In a matter where you have a prejudicial interest your role as councillor is also suspended, and you have only the rights of any other private citizen (except that you may not make personal representations at Committee meetings or in writing as a representation to a planning application). You should not seek information about the matter that would not be available to a member of the general public.
- If members of the public, other councillors or officers attempt to refer to you about a matter where you have a disclosable pecuniary interest, you should recommend to them another councillor with whom they might discuss their concerns.

4.11 When you are not a member of the Planning Committee or standing deputy and you attend a meeting of the Committee to observe proceedings generally, or in respect of a particular application, you must also disclose any relevant interests you have in a matter to be considered by the Committee. In these circumstances you must conform to the same rules, including retiring from the room.

5. Development Proposal Submitted by Councillors and Officers

5.1 The following requirements apply to city council members making or opposing any planning application or any other application under the Town and Country Planning Acts in respect of land or premises in the city of Portsmouth. The code will apply:

- (a) whether the application is made, or opposition expressed by the member, or by his/her agent or other person acting on their behalf;
- (b) to applications made or expressions of opposition or approval where the councillor has a pecuniary interest in the relevant matter;
- (c) to applications made or opposition expressed by members of the immediate family of the member where the member knows of the application or objection.

5.2 On or before the date when any application or objection as set out in 5.1 is made, the Councillor concerned shall inform the Monitoring Officer by a letter marked "personal and confidential" and giving:

- (a) the address of the site of the relevant application;
- (b) a description of the nature of the proposed development, or the other matters referred to by the application or objection; and
- (c) full details of the councillor's interest in the site and / or the application or the objection.

The Monitoring Officer shall acknowledge receipt of this letter and will inform the Chief Executive personally that such an application has been made and also advise the City Development Manager.

5.3. Should the Councillor or his/her agent wish to obtain further information concerning the application, or objection, or to carry out any discussions on it, these should be undertaken directly with either the City Development Manager or the Officers appointed to act in her absence and not with any other member of the respective staffs of the departments. A record shall be kept of any verbal or telephone conversation with the relevant application file. The normal rules of information disclosure in regard to planning applications shall apply to such records.

5.4. Any application will be processed in the normal way. Any statutory or other advertisements shall not disclose the applicants' name or status, unless required by statute to do so.

5.5 In the circumstances of such an application, all the other controls and guidance in the Member Code and this Planning Code shall apply.

5.6 Where a member has any personal or pecuniary interest in a planning application made to the Council it must be made known to the Monitoring Officer. Members must comply with the requirement to enter any relevant interests in the Register.

5.7 In having regard to the aim of assuring public confidence in open, ethical and effective decision-making in respect of planning matters, any member or officer seeking planning permission should take steps to avoid any

appearance that they may receive preferential treatment. In such circumstances, to maintain the best appearance of propriety it is preferable to appoint agents to act in their name, rather than dealing directly with planning officers. This necessitates an additional expense, but it protects both the applicant and the Council from allegations of maladministration which may be based on confusion or malice, but nevertheless is time-consuming and expensive to rebut.

- 5.8 Where an officer, his or her relatives or friends make an application for permission, the officer should make appropriate reference to the interest in the application in the Register of Officer Interests.
- 5.9 Best practice requires that serving councillors, or officers other than planning officers, should not act as agents for private individuals or companies pursuing or objecting to a planning application made to the City Council.
- 5.10 Where there appears to be no alternative to submitting an application on your own behalf, or on behalf of a friend or professional client, in addition to being recorded in the Register of Member/Officer interests, the matter should be brought to the attention of the Monitoring Officer. In such a case, all communications about the proposal should be solely through the Council's Planning Service. There should be no reason to contact other officers or Councillors, which would be a form of lobbying prevented by the Member Code and or this Planning Code.
- 5.11 Proposals submitted by Councillors and those Council staff who work in the Planning Department, or by agents acting on their behalf, should be reported to the Planning Committee as written agenda items and not dealt with by officers under delegated powers. As part of the committee report, the Monitoring Officer must confirm that, as far as he/she is aware, the application has been processed normally. This requirement applies to contractors working for the Council who, although not part of the Council's established staff, are normally located within the Council's principal office at the Civic Offices, Portsmouth.

6 Development proposed by the Council

- 6.1 Parliament has decided that local planning authorities are, in the majority of circumstances, the appropriate body for determining planning applications affecting the area, including where the application is submitted by the Council itself. There are separate statutory requirements for the Council in determining applications to develop its own land, or to develop it jointly with another body.
- 6.2 Proposals for the Council's own development (or development involving the Council and another party) should be treated by members and officers involved in reaching a determination of the application in the same way as those by private developers. The planning decisions must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Council if the development is permitted. It is important that the

Council is seen to be treating such applications on an equal footing with all other applications, as well as actually doing so.

7. Making decisions transparently, and fairly

- 7.1 Members who have to make decisions on planning matters and applications will begin to form a view as more information and options become available. When approached by applicants, developers or objectors, members must make it clear that the decision on any planning matter must be taken in accordance with the law, and can only be taken at the Planning Committee when all available information is to hand and has been considered.
- 7.2 Individual Councillors should reach their own conclusions on an application or other planning matter after considering all the information, advice and material available to them and relevant to the decision. Rather than follow any previously expressed opinion, the lead of another Councillor, or of any political group, each councillor must weigh up the factors that are relevant, ignore matters that are not relevant, and make a reasonable decision that could be justified if challenged.
- 7.3 Officers who are wholly or partly involved in the processing or determination of planning matters should not attend public meetings in connection with pre-application development proposals or submitted planning applications unless their attendance has been agreed by their manager. To do so could lead to allegations of prejudice or bias to a particular point of view. If it occurs accidentally that officers are put in such a position, officers should limit remarks and comments to provide information and give no view on the merits or otherwise of the proposal.
- 7.4 When attending public meetings, Councillors should take great care to maintain their impartial role as a Councillor, listen to all the points of view expressed by the speakers and public and not state a conclusive decision on any pre-application proposals and submitted planning applications.
- 7.5 If Councillors consider that they have been exposed to undue or excessive lobbying or approaches, these should be reported to the Monitoring Officer, who will advise the Councillor.

8. Pre-application discussions

- 8.1 A comprehensive written note of pre-application discussions in meetings and telephone calls must be made to be kept on subsequent related application files. This is best practice: it helps to protect the reputation of the Council, its members and officers, and gives transparency to the planning process. Having a record of discussions may also prevent any misrepresentation by members of the public, whether caused by confusion or malice.
- 8.2 Pre-application discussions between applicants, officers and, on occasions Councillors, can be of great benefit in addressing key issues at an early stage

in the application process. It may be of particular relevance to involve Councillors when dealing with major or sensitive development schemes. The exchange of views and information can allow Councillors to understand the proposal and bring to the applicant's attention possible local concerns. Officers may gain some understanding of particular sensitivities and concerns expressed by Councillors on behalf of local residents and businesses. It is now recognised that this interaction can help achieve positive outcomes for all involved in the process.

- 8.3 It is preferable if this form of engagement takes place before the application has been submitted. Before the application is submitted, it may be appropriate for Members of the Planning Committee to be involved in the same way as Ward Councillors. At any such meeting it must be made explicit that these discussions cannot bind in any way the decision of the Council or control the voting intentions of the Councillor.
- 8.4 Planning officers should always be in attendance at pre-application discussions with applicants and agents involving Councillors. A comprehensive note of the meeting should be placed on file and sent to the Member concerned. **If an application is made following such discussions, a copy of the note must be put on that application file.**
- 8.5 Where planning officers are involved in pre-application discussions, it should always be made clear at the outset of discussions that by law they cannot commit the Council to make a particular decision. Officers should also make it known that any views expressed are their provisional professional opinions, based on their knowledge of development plan policies and of locally relevant material considerations. **A note that these statements were made should be kept on file.**
- 8.6 Every effort will be made to ensure that the advice of planning officers is consistent and that there are no significant differences of interpretation of planning policies between planning officers. **A note of the advice given should be kept on file.**
- 8.7 Planning officers will ensure that their advice does not favour the interests of particular individuals or groups, to reduce any risk that their subsequent advice could be seen as advocacy for a particular point of view. Two or more officers will attend potentially contentious meetings and a follow-up letter should be sent, particularly when material has been left with the Council by the applicant or agent.
- 8.8 If a Councillor is approached by a potential applicant the first course of action should be a clear written note from the Councillor to the City Development Manager recording what has been discussed and any specific comments or advice that has been given by the Councillor.

9. Predisposition, Predetermination and Bias

- 9.1 Members of the Planning Committee must avoid giving any appearance that

an application or other matter referred to the Committee has already been determined before the Committee has the opportunity to consider the merits and demerits of a matter in accordance with the law, in public, and in accordance with the normal conduct of the Committee business. Every person making application to the Council or objecting to an application must be encouraged to believe that in considering the matter before it, the Committee will give consideration to all views that are expressed, that such views will be openly heard, and fairly considered in a balanced way before the Committee's decision is made.

- 9.2 It is particularly important that members of the Planning Committee do not give the impression that they have already made up their mind about a matter that will come before the Committee, or that their minds are closed to any alternative, and that no additional or different information or advice will persuade them to change that fixed view. Such "pre-determination" has been held to amount to the "surrender by a decision-maker of its judgment by having a closed mind and failing to apply it to the task".
- 9.3 The Localism Act 2011 has clarified the position of members of the Council who have expressed a preference for a particular outcome of an application as it proceeds to determination. Such a "pre-disposition" is acceptable and the Councillor concerned will not be taken to have had a closed mind when making the decision just because they have previously done or said anything to indicate the view that had been or might be taken in respect of a matter.
- 9.4 Members and officers should also be concerned to avoid the appearance of bias, that is, appearing to give undue weight to particular matters on the basis of personal attributes, or social acquaintance, that may influence their conduct generally. Whilst it may remain possible for a member to apply an open mind to the matter to be determined in such circumstances, Councillors must avoid giving the impression or appearance that particular personal interests or attributes would lead them to consider aspects of an application more carefully or with more regard than other aspects unaffected by their own character and experience. It should be understood that the perception of justice *"is rooted in confidence, and that confidence is destroyed when right-minded people go away thinking that the judge was biased"*.⁵
- 9.5 From time to time, members are invited by prospective developers or objectors to attend meetings to discuss proposed development schemes and questions have been asked about the propriety of such attendance. Members and the Council have been challenged in the past where they have expressed their opinion of proposals during or after such meetings, or in advance of Committee consideration.
- 9.6 The administrative system by which planning applications are determined in accordance with the law, and as necessary in a democratic society, would be brought into disrepute if it became evident that decisions favourable to an applicant or an objector could be obtained by lobbying members outside the

⁵ Lord Denning

procedural framework. On the other hand, members may be said to have a duty, particularly as Ward Councillors, to inform themselves of proposals which affect their wards and to be alive to public opinion. Members can play a constructive role in listening to and objectively gathering and reporting such views to the Councillors who will determine the application.

9.7 With these points in mind, it is suggested that the following guidelines may be helpful to members when considering whether to accept an invitation to a meeting.

1. Where members accept invitations to meetings from prospective developers or objectors when an application for planning permission has been received, even if the invitation is made to them ostensibly as a Ward Councillor, they should avoid expressing any fixed view of the matter.
2. Councillors must not make any commitment to determine a matter in a particular way, for any reason
3. Ward Councillors (subject to paragraphs 1 and 2 above) should not accept invitations to meetings from prospective developers or objectors unless it is clear to them that the meeting is either a public meeting or one to which residents or other persons with an interest in the potential development have also been invited. If a Ward Councillor attends such a meeting in the belief that others have been invited but finds that no other persons are present apart from the developer and Councillor(s), s/he should decline to take part in any discussion of the scheme. There is no reason to distinguish between meetings in neutral premises and meetings in the prospective developer's or objector's own premises.
4. There is nothing to stop members inspecting a site if they choose to do so in order to better acquaint themselves with the details, but members should be aware of the risk of contact with the applicant or objector and inferences which might be made.
5. There is nothing to stop members responding to invitations to a meeting if properly convened through the Chief Executive or by officers in the planning service to which all relevant members have been invited, provided that if the merits and problems of the application are discussed Councillors make it clear that they have no fixed view of the matter at that stage.

It will, of course, remain open for the Governance and Audit and Standards Committee of the Council to sanction a departure from these guidelines in special circumstances.

10. The Decision Making Process and Decisions Contrary to Officer Recommendations and/or the City Plan

- 10.1 All Committee decisions are made by a simple majority.
- 10.2 In discussing, and determining a planning application or other planning matter, Councillors should try to confine their discussion to the policies of the Development Plan, and to those material considerations which should influence their decision. The reasons for making a final decision should be clear, convincing and supported by material considerations and the planning merits.
- 10.3 However, it is acknowledged that deputations by applicants or members of the public may refer to matters which should not properly be part of the reasoning of the members' decision. On such occasions it may be difficult for members of the Planning Committee to confine their comments to the appropriate planning issues without appearing to disregard expressed concerns. Where it appears that the clarity of the decision-making process may be undermined, the Committee Chairman and officers may give guidance on any elements of the discussions which refer to irrelevant or immaterial considerations, and any elements which should be disregarded by the Committee in formulating its decision. Officers will clarify the weight to be given to the details of reports, or information which comes forward during deputations or in the course of debate.
- 10.4 If Councillors wish to refuse an application against officer advice, to impose additional conditions on a planning permission, or to approve an application contrary to officer recommendation, an officer should explain the implications of such action.
- 10.5 Where they do not accord with the officer's recommendation, the Committee's reasons to grant an application or to refuse it or any additional conditions to be applied must be clearly stated by the member making the proposal to grant the application.
- 10.6 If members cannot give sound and clear-cut reasons for a decision which may override the recommendations of the officers, it is not appropriate to require or expect that the officers can explain such decisions to applicants, objectors or a planning inspector.

When the Committee has made such a decision, the Chairman will allow brief discussion to ensure that officers have understood the intentions and reasons of the Committee. All conditions, including ones which the Committee may wish to impose on a planning permission, must be⁶ necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

- 10.7 If the report of the City Development Manager recommends approval of a departure from the City Plan, the full justification for that recommended departure will be included in the report.

⁶ See National Planning Practice Guidance, Paragraph: 003 Reference ID: 21a-003-20140306

11 Member/Officer relations and Planning decisions

- 11.1 The City Development Manager or someone deputising will always attend meetings of the Planning Committee to ensure that procedures have been properly followed and planning issues properly addressed.
- 11.2 Other senior officers with appropriate professional and technical experience will also be present when an application has aspects relating to their professional expertise. Where the Council's professional experts, such as environmental protection officers or highway engineers, attend Committee to ensure that appropriate advice can be given and discussed with their assistance, members must give due weight to such advice. It is the obligation of such officers to give considered and independent advice for the benefit of the Council.

12. Site Visits by Councillors

- 12.1 The other guidance in the Member Code and this Code applies equally to considering whether to conduct a site visit, and to the conduct of officers and members during the site visit.
- 12.2 Members and officers must remember, in conducting a site visit, that their presence is permitted in circumstances where anything said or done by them should be restricted to the purposes and interest of the Council as local planning authority.
- 12.3 The purpose of an organised Council site visit is for Councillors to gain knowledge of the development proposal, the application site and its relationship to adjacent sites. The potential benefit of attending the site should be sufficient to justify the administrative expense and any consequential delay to determining the application.
- 12.4 The decision to hold a site visit prior to the Committee meeting is to be made by the most senior planning officer responsible for preparing the agenda in consultation with the Chairman.
- 12.5 The purposes of a formal site visit prior to the Committee meeting are:
- to view the setting of the application,
 - to consider any other matters seen on site which may be material to consideration of the application, and
 - to find facts, especially when the application site is not visible from public land.

During a site visit members and officers should avoid any appearance of impropriety, and must not accept gifts or hospitality. Comments should be restricted to planning matters, and questions should be put through the planning officers attending the site visit. Officers and members must refrain

from making comments that might be construed as supporting or opposing a particular view, and from making any personal comments.

- 12.6 The purpose of a formal site visit is not to receive or allow representations to be made outside the formal Committee meeting. Where members and officers attending site during a formal visit are approached by persons wishing to speak about the application, officers will explain that any representations may be made by deputation to the Committee at the meeting, and give the website reference to the explanation of how deputations may be made.
- 12.7 Site visits should be requested by Councillors, prior to the application being reported to Committee. Councillors should only request a site visit when the application has reached the determination stage if they consider it essential to clarify an issue that cannot be understood without such a visit, and which could not have been considered earlier. The Committee may decide to visit a site because particular factors to be seen on site are significant in terms of the weight to be afforded to them in determining the application and because, following discussion in Committee, members have reduced confidence that such factors can be fairly considered in the absence of a site visit to assess such details. In proposing a site visit, the member who wishes the Committee to have additional opportunity to do so should specify the factors to be noted if the site visit is agreed.
- 12.8 Councillors with a pecuniary interest in a planning application should not make representations seeking a site visit in respect of an application. Councillors with a pecuniary interest in a particular application or agenda item must not attend any related site visit

13. Review of planning decisions

- 13.1 From time to time arrangements will be made for Councillors to visit a sample of implemented planning permissions, so that a regular review of the quality of planning decisions can be undertaken.
- 13.2 The outcome of this review will be considered by the Planning Committee, and may lead to identification of possible amendments to existing policies or practice.

14. Complaints and record keeping

- 14.1 In order that planning procedures are undertaken properly and that any complaints can be fully investigated, record keeping will be complete and accurate. Every planning application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings, significant telephone conversations and any declarations of interest by Councillors.
- 14.2 The same principles of good record keeping will be observed in relation to all enforcement and planning policy matters. The monitoring of record keeping will be undertaken regularly by the City Development Manager.