

# ***PLANNING CODE OF GOOD PRACTICE***

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## 1. Need for a Local Planning Code of Good Practice

1.1 The Planning system involves taking decisions about the use and development of land in the wider public interest having regard, in particular, to the Development Plan. In doing so such decisions have to balance the requirements of the individual, whether the applicant or a neighbour, against the broader public interest. It is fundamentally important that the planning system should not only be fair, but should be seen to be fair. Accordingly the Local Government Association has recommended that Planning Authorities should agree a local Code of Practice to guide elected members and officers in the way they go about the business of dealing with planning matters.

- ***The aim of this Planning 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 control development in the public interest.
- ***The role of a Member of the Planning Authority is:*** to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.
- ***When the Planning Code of Good Practice applies:*** this Code applies to Members at all times when involving themselves in the planning process. (This includes, where applicable, when taking part in decision making meetings of the Council, in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications. The Code is therefore of particular importance to those Members who sit on the Planning Committee, however, it also applies to other Members when making representations to the Planning Committee.

1.2 **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.**

## 2. Relationship to Members' Code of Conduct

2.1 **Do** apply the rules in the Members' Code of Conduct first, which must always be complied with.

2.2 **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 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 the subject of a complaint to the 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.

### 3. **Role of Elected Members and Officers**

- 3.1 Councillors and Officers have different but complementary, roles, both serve the public. Councillors are responsible to the electorate, and are elected to represent all people of the Borough. Officers are responsible to the Council as a whole. They advise the Council and its committees, and carry out the Council's work. They are employed by the Council, not by individual Councillors, and it follows that instructions may be given to Officers only through a Council or Committee decision. A successful relationship between Councillors and Officers can only be based upon mutual trust and understanding of each others positions. This relationship, and the trust which underpins it, must never be abused or compromised.
- 3.2 Whilst Councillors have a special duty to their ward constituents, including those who did not vote for them, their over-riding duty is to the whole community. Councillors should not favour any individuals or groups and, although they may be influenced by the opinions of others, they alone have the responsibility to decide what view to take. Councillors should, therefore, represent their constituents as a body and vote in the interests of the whole Borough.
- 3.3 The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process and opposing views are often strongly held by those involved. Whilst Councillors should take account of those views, they should not favour or cause a disadvantage to any person, company, group or locality, nor put themselves in a position where they appear to do so.
- 3.4 Elected Members set the Council's planning policy and determine planning applications and planning enforcement issues within the context of that planning policy. To reduce the risk of planning decisions being legally challenged, Members must not only avoid impropriety, but must at all times avoid any occasion for any appearance of improper conduct. When elected Members come to make a decision on a planning matter, they must therefore:
- **Act** fairly and openly
  - **Approach** each application with an open mind
  - **Carefully** weight up all relevant planning issues
  - **Determine** each application on its own planning merits

- **Avoid** contact with interested parties which might be taken to indicate that they were unduly influenced by one party or another
- **Ensure** that there are clear and substantial planning reasons for their decisions, and that those reasons are clearly stated.

3.5 The ten principles of Local Government Conduct selflessness, honesty and integrity, objectivity, accountability, openness, personal judgement, respect for others, duty to uphold the law, stewardship and leadership, should guide all conduct of Councillors and Officers. In summary:

***The actions and conduct of Councillors and Officers should be such as would seem appropriate and above suspicion to an impartial outside observer. Decisions should be taken in the interests of the Borough as a whole, and should not be improperly influenced by any person, company or group. The key is to demonstrate that each decision was taken on the facts alone, without any political or outside pressure.***

3.6 The Officers' function is to advise and assist Members in matters of planning policy and in their determination of planning applications and enforcement issues by:-

- **Providing** impartial and professional advice
- **Making sure** that all the information necessary for the decision to be taken is made available
- **Providing** a clear and accurate analysis of the planning issues
- **Setting** applications and enforcement issues against the broader Development Plan policies and all other material planning considerations
- **Giving** a clear recommendation
- **Carrying out** the decisions of Councillors in Committee meetings

3.7. In addition, the RTPI Code of Conduct also sets out clear guidelines for the conduct of Planning Officers. More detailed guidance and requirements are in the Council's own Code of Conduct for Employees. Through the Local Government and Housing Act 1989, restrictions are set on the outside activities of senior staff, such as being an officer of a political party and serving on another Council.

#### 4. **What Planning Decisions are based on**

4.1 Planning decisions are based on planning considerations and cannot be based on immaterial considerations. The Town and Country Planning Act 1990, together with Government guidance and cases decided by the Courts, define what matters are material to planning decisions.

4.2 **It is the responsibility of Officers** in preparing reports and recommendations to Members, and in advising Committees, **to identify the material planning considerations and to advise Members about those matters which are immaterial to planning decisions.**

4.3 The starting point for decisions on planning applications is the development plan. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 says that planning decisions must be taken in accordance with the Development Plan, unless material considerations indicate otherwise. The Development Plan consists of:-

- the Stockton-on-Tees Borough Local Plan, and
- 
- the Tees Valley Structure Plan (Feb 2004)

These plans will shortly be superseded by:-

- The Regional Spatial Strategy (RSS)
- Development Plan Documents

The local planning authority will be required to produce a Local Development Framework (LDF) consisting of the Local Development Documents (LDD's) which set out the authority's planning policies. LDD's can be either Development Plan Documents (DPD's) or Supplementary Planning Documents (SPD's)

4.4 Other material planning considerations include:-

- Government guidance contained, for example, in Planning Policy Guidance/Statements (PPGs/PPS's), Regional Planning Guidance, Circulars and Ministerial announcements;
- planning briefs and other "supplementary planning guidance" approved by the Council following public consultation;
- Environmental Impact Assessment where applicable
- the "presumption in favour of granting planning permission";
- statutory duties in relation to conservation areas and listed buildings;
- representations made by statutory consultees and other people making comments, to the extent that they relate to planning matters.

4.5 There is much case law on what are, and are not material planning matters. Planning matters must relate to the **use and development of land**. For example, the following are **not** planning matters and **cannot be taken into account in planning decisions** :-

- personal and financial considerations
- private property rights and boundary disputes
- covenants
- effects on property or land values
- developers' motives
- issues to do with morals
- competition between businesses
- loss of view from a house or private place
- public support or opposition, unless it is founded on valid planning matters
- matters regulated by other statutory codes

## 5. **Lobbying of Councillors**

5.1 Lobbying is a normal and perfectly proper part of the political process consequently it is quite common for applicants or other interests parties to wish to discuss a proposed development with elected Members before a Planning Application is determined. **However, lobbying can, unless care and common sense are exercised by all parties, lead to the impartiality and integrity of a Councillor being called into question.**

5.2 Members are under an obligation to determine matters on their merits. That means that if they wish to continue to be properly involved in the determination of a particular planning matter, they must not make up their minds before receiving and reading any officer's report and before hearing any debate on the matter, because new information might come to light.

5.3 Offering a particular view in public before a matter is determined should not preclude a Member from taking part in the Committee and the vote providing that Member is not expressing a decided view and the guidance listed below is adhered to. However, in practical terms expressing a view may lead to a Member's impartiality being questioned.

5.4 In summary:-

- ***Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it may prejudice your impartiality and therefore your ability to participate in the Committee's decision making to express a decided view to vote one way or another.*
- ***Do** remember that your overriding duty is to the whole community not just to the people in your Ward and, taking account of the need to make decisions impartially, that you should not improperly favour or disfavour , or appear to do so, any person, company, group or locality,*
- ***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, its acceptance is declared as soon as possible and remember to register the gift or hospitality where its value is over £25 in accordance with the Authority's rule on gifts and hospitality.*
- ***Do** copy or pass on any lobbying correspondence you receive to the Head of Planning at the earliest opportunity.*
- ***Do** promptly refer to the Head of Planning any offers made to you of planning gain or constraint of development, through a proposed s. 106 Planning Obligation or otherwise.*
- ***Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will consider what action, if any, should be taken.*

- **Do note that, unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this Planning Code of Good Practice through:**
  - *listening or reviewing viewpoints from residents or other interested parties and giving procedural advice*
  - *making comments to residents, interested parties, other Members or appropriate Officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind*
  - *seeking information through appropriate channels or*
  - *replying to and taking action to resolve complaints*
  - *being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, 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 Councillors**

- 6.1 Members need to exercise care where they are involved in a lobbying group . Member of a lobbying group will have to give particular regard to declarations of interest as well as issues of bias.
- 6.2 Members of a lobbying group will have a personal interest where matters directly affect the organisation and regarding matters on which the group has publicly expressed a view.
- 6.3 If the matter under consideration has a direct impact on the organisation to which the Member belongs, there is a possibility that a prejudicial interest will arise.
- 6.4 In addition, if it is a matter on which the organisation has expressed an opinion, the question arises as to whether the Member may be biased.
- 6.5 In further assessing the issue of bias a number of factors are considered relevant:
- 6.5.1 the role of the Member in formulating the publicly expressed view of the group.
  - 6.5.2 the importance of the position of the Member on the Planning Committee
  - 6.5.3 importance of the lobbying group in matter to be decided



- 6.5.4 relationship of matter on which the group lobbies and the matter for decision.
- 6.6 Mere membership of a particular group is unlikely to give rise to any inference or bias, but the risk significantly increases where the group are active on a particular issue before the Planning Committee.
- 6.7 Test in respect of bias is:-
- “whether these circumstances would lead a fair minded and informed observer to conclude that there was a real possibility that [the person] was biased”*
- and it is considered unlikely that a member of the public will distinguish between
- a. position of a Councillor who is a member of a body with a publicly expressed view
  - and
  - b. a Councillor involved in the formulation of the view of the group.
- 6.8 So unless there is clear evidence that a Member does not share the view of the group, the Member is likely to be regarded as having a prejudicial interest and/or biased as a Member of the Planning Committee.

*In summary:-*

- ***Don’t*** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you are likely to have fettered your discretion and are likely to have a personal and prejudicial interest/predetermined view and have to withdraw.
- ***Do*** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society. But (1) disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal and (2) consider carefully the tests for a prejudicial interest and bias in light of issues in para. 6.5.
- ***Don’t*** excessively lobby fellow Councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- ***Don’t*** decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political

*Group meetings should never dictate how Members should vote on a planning issue.*

- *Do listen to constituents' views, but if you express a decided view in support of your constituents, you will be likely to be regarded as having a predetermined view.*

## 6.9 Members Representing the view of Constituents

### (a) Members with a personal and prejudicial interest

A Member with a personal and prejudicial interest in a planning application is required to withdraw from the meeting during the consideration of the item in which they have such an interest and must not seek to improperly influence a decision about that matter. Therefore, **all** Members (whether they are members of the planning Committee or Ward Councillors) may not attend the Planning Committee Meeting in order to represent the views of their constituents, or to make representations in a personal and private capacity. The proper way to pass on the views of Constituents in this situation is to forward representations to the Planning Case Officer and/or to ask another Member to represent the constituents.

6.10 Members with a personal and prejudicial interest who wish to make representations in a personal or private capacity are recommended by the Standards Board to make written representations. When making written representations, Members are advised to refer to the nature of their interest and state expressly that their representations are made in a purely private capacity. A Member who makes written representations about a matter in which he/she has a prejudicial interest must do so on non Councillor or non Council letter headed paper. The Member should also send the written representations to the relevant Planning Case Officer and not to any fellow Members, or the Chair and/or Members of the Planning Committee.

6.11 A Planning Case Officer when presenting his/her report to the Planning Committee will refer to the written representations received from a Member with a prejudicial interest in the matter by indicating that the Member concerned has a prejudicial interest, explaining the nature of that interest and that the representations have been made purely in the Members private capacity. The Standards Board has stressed that there should be no suggestion that the Members status as a Councillor should give their views particular weight.

### 6.12 (b) Members with no interest to declare and/or Members who have declared a personal interest

In situations where a Member decides that he/she wishes to act as a representative of their Ward, taking an active role in advocating the views of their constituents and giving a decided view on the matter, or attempting to persuade a particular point of view, it follows that they will no longer be acting

impartially. In those circumstances (and if they sit on the Planning Committee) they should not seek to participate in any vote on the matter, but should declare their commitment to represent the views of their constituents and seek the Committee's consent to represent those views to the meeting. When giving their views in this situation, they should sit separately to the rest of the Committee. Immediately after providing their views it is advisable for the Member to leave the meeting before any wider debate or discussions and prior to the vote being taken. Such a course of action does not prevent the Member from submitting written representations to the relevant Planning Case Officer who will then refer to them in his/her report.

6.13 Similarly Members who do not sit on the Planning Committee (and Ward Councillors) who have taken an active role in advocating the views of their constituents and/or have provided their own view on the matter prior to the meeting, are likely to be regarded as not acting impartially. Where such views have been made during lobbying or as a result of a campaign group, Members may have a personal or prejudicial interest in the matter. Members should therefore consider:-

- *the nature of the matter to be discussed;*
- *the nature of their involvement with the lobbying or campaign group;*
- *the publicly expressed views of the lobby or campaign group;*
- *what you have said or done in relation to the particular issue*

The Standards Board Guidance states that Members should weigh up all these factors in relation to the specific matter being discussed and consider whether a reasonable member of the public who knows the relevant facts would think it is likely that the Members judgement of the public interest would be prejudiced.

The more focused the campaign or Lobby Group is on a particular issue, the more involved and active you have been, and the more committed you appear to a particular outcome, the more likely it is that your interest will be prejudicial. The test is not what you reasonably believe, the test is whether a member of the public with knowledge of the relevant facts would reasonably regard the interest as so significant that it is likely to prejudice your judgement of the public interest. Therefore it is not the Members belief that counts, it is what a member of the public may reasonably believe.

6.14 Guidance issued by the Local Government Association states that where Members are not being lobbied directly, but are attending separate public meetings where applications are being commented upon, eg a community group reviewing a proposal for development in their area, then they should follow the guidance on lobbying as if they were being lobbied

6.15 Where a Member is unable to attend a meeting and arranges for a substitute Member to attend, the substitute Member must have regard to the above

guidance and must determine the matter on the merits as he/she sees them, and may not be mandated by the absent Member to support or oppose a particular proposal.

#### Participating in a decision twice

- 6.16 Membership of a Parish Council which has expressed a view on an application does not by itself give rise to a conflict provided that the Member retains an impartial viewpoint. Members who sit on both a parish or town council and District Authority can also sit on the Planning Committee of the latter authority, provided that they considered all issues coming before the Committee on their planning merits without regard to the parish or town council's discussions on those matters. They would also be able to speak on planning matters at parish or town council meetings, provided that they made it clear that their views were only preliminary ones. The Member must also be genuinely willing to listen to the later debate and weigh the considerations material to the later Planning Committee Decision. If a Member does not have an open mind at the later Committee and simply wishes to retain their original voting disposition they should not take part.
- 6.17 Where a Member receives relevant information in respect of an application which is not contained in the Planning Officer's report on the application, the means by which the Member should ensure that such information is made available to other Members of the Committee are that the Members should advise the Head of Planning directly, so that the information can then be confirmed, rather than run the risk that the Committee might take a decision on the basis of information which subsequently proves to be incorrect.

#### 7. **Engaging with Applicants - Pre Application and Pre Decision Discussions**

- 7.1 The Council encourages pre-application discussions between Members, Planning Officers and potential applicants. These bring advantages to all parties; they can avoid applications being made which are clearly contrary to policy and so avoid unnecessary worries for those who could be affected; they can avoid abortive work for the Council and applicants by giving clear information about Local Plan policies etc, before proposals are designed; and so they can improve the quality of applications and development.
- 7.2 However, if a balance is to be struck between impartiality and the wish to be seen as engaged, positive, open and transparent Members need to exercise caution in engaging with applicants. Any discussions with developers or applicants ***should therefore be part of structured arrangements agreed with Officers. Members should not engage in negotiations in their discussions with applicants or their agents regarding planning applications, agreements or any other planning matter. Accordingly, pre application and pre decision discussions must take place with regard to the following guidelines:-***

- When arranging meetings and presentations officers should emphasise in writing the informative nature of the meeting and explain that no decisions will be made.
- Presentations by applications should be limited to the development proposed and a question and answer session on factual matters. The understanding must be that the discussions are being held in order to improve understanding. Where appropriate such meetings may take place on site and incorporate a site visit.
- Members must maintain an impartial listening role and avoid expressing an opinion or giving advice beyond outlining the adopted local policies. Questions to clarify aspects of a proposal, or the expressions of policy concerns are legitimate as long as they do not develop into negotiations. It should be made clear at the outset of the meeting that discussions are not binding, and that the views expressed are not part of the determination process. It should be made clear in prefatory remarks that any statements should be categorised as 'without prejudice'.
- To reinforce the above, at the start of the meeting officers will explain that it is taking place at the request of the applicant or Council and that the merits of the case will not be discussed. Members and officers will, of course, be free to ask questions about the proposal at the presentation. If the applicant requests the views of the authority, these will be communicated subsequently and in writing. In such communication, officers will make it clear that any views expressed prior to formal determination of an application are preliminary.
- Advice and observations should be based on the adopted plan and material considerations
- A written note of the proceedings should be kept- to include a record of officer attendance and follow up
- Officers of appropriate seniority should attend and for major or contentious applications members' involvement should be authorised by the main committee. As soon as it becomes apparent that a member ought to become involved the case officer should submit a report to committee in the interests of transparency but it may be necessary in the interests of urgency for this to be done verbally. Their involvement should be recorded in any subsequent committee report.
- In discussions touching on issues of a commercially sensitive or confidential nature, councils will need to set out in advance how they intend to deal with these cases and how they sit with the drive for increased openness and transparency and for the provisions of the Freedom of Information Act.

- Members should not seek to influence officers or pressure their officers to support a particular course of action.

7.3 Informal discussions between Members, Applicants and/or their agents are to be discouraged. Members who wish to make applicants aware of constituents views or complaints should do so by informing the Planning Case Officer/Planning Enforcement Officer, or by writing to the applicant and sending a copy of their letter/email to the Planning Case Officer/Planning Enforcement Officer for the planning case file.

7.4 Applicants and potential applicants sometimes ask for advice on whether planning permission will be granted in particular circumstances. For clarity, and to avoid a future decision on a planning application being compromised:-

- Officers should normally ask someone requesting advice on whether planning permission is likely to be granted to put the request in writing – so that it is clear on what proposal advice is being given.
- Written replies to such requests will contain a caveat that advice cannot bind a future decision of the Council on any subsequent application.
- Officer will be unable to say what their recommendation is on a particular planning matter until all issues have been considered and the papers published for the relevant Committee.
- Where the Officer is exercising delegated decision making powers, they should not meet the applicant, agent or objectors to discuss a case without another officer being present wherever possible, however it must be recognised that staff resources will often preclude this and will happen only where felt absolutely necessary. A full file note of the meeting should also be placed on the planning case file.

## 8. **Political Groups**

8.1 Members should not accept an instruction from anyone to determine an application in a particular manner, but must determine the issue on its merits. Accordingly, while they may accord appropriate weight to the views of other Members, whether expressed in the Committee Meeting or in prior discussions, they must determine the application on its merits and should not take into account any factor which they are not prepared to state in open Committee. As a result, it is inappropriate for any party group to instruct its Members to vote in a particular manner on an application or to apply or threaten to apply any sanction to any Member who voted contrary to the Group's collective view.

8.2 It is accepted that Councillors could be "politically predisposed" to a particular view without being disqualified from considering a matter. This is a practical recognition of the role played by party politics in local government. If however a Member is actively involved in a campaign relevant to a planning decision this may lead to an appearance of a predisposed view which may warrant withdrawal from any discussion or decision on the issue.

9. **Declaration of Interests by Members at Committee**

9.1 The law and the Model Code of Conduct adopted by the Council set out requirements and guidance for Councillors, on declaring personal and prejudicial interests and the consequences of having such interests. These must be followed scrupulously and Councillors should review their situation regularly. Impropriety must be avoided and also any appearance, or grounds for suspicion, of improper conduct. The responsibility for this rests individually with each Councillor.

9.2 The code defines a personal interest in any matter under discussion as:-

9.2.1 any matter that relates to an interest in respect of which the member has given notice in the statutory register of members' interests; and

9.2.2 where a decision upon it might reasonably be regarded as affecting to **a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area**, the well-being or financial position of themselves, a relative or a friend, or

- any employment or business carried on by such persons
- any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
- any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
- any body which the member is required to register in the statutory register of interests, in which such persons hold a position of general control or management.

9.3 Where a Member considers that they have a **personal interest** in a matter, they must always declare it but they are not necessarily debarred from participation in subsequent discussion and debate. This would only be the case if the personal interest was also a **prejudicial interest**.

9.4 The Code of Conduct provides that a personal interest becomes a prejudicial one if:-

**the interest is one which a member of public with knowledge of the relevant facts would reasonably regard as so significant as to prejudice the members judgements of the public interest.**

9.5 If a Member decides that an interest is both personal and prejudicial, they should not participate in any discussion and should leave the room. It is for Councillors to interpret this using the guiding rule that one should not use one's position to further a private, or personal, interest, rather than the general public interest, or give grounds for such suspicion. Such private interests could arise through family, friends, clubs, secret societies, trade unions and voluntary bodies.

9.6 The responsibility for declaring an interest lies with the individual Member. However, the following are examples of when it is likely to be necessary for a Member to declare an interest on a planning matter:-

- close acquaintance, personal friendship, close working or family connections with an applicant, agent, objector or other person with an interest in a planning application, enforcement case or Local Plan proposal;
- regular business dealings with a person with an interest in a planning matter;
- living, or running a business, in proximity to a particular site, such that you might be affected by the proposals under discussion;
- personal enmity against a person or organisation with an interest in the planning proposal;
- being a Member, representative or employee of an organisation which has applied for planning permission or is involved in a planning matter – unless the Member’s involvement is no different from that of an ordinary member of the public (eg membership of a large national organisation like the Friends of the Earth, Greenpeace, RSPC or the AA);
- where the Member has made his/her views known on the matter – see Section 6 above;
- the Member’s spouse or partner has any of the above interests.

9.7 The code also includes some exceptions to this. For example, if the matter under discussion relates to:-

- another authority of which the Member is also a member;
- another public authority in which the Member has a position of general management or control;
- a body to which the Member has been appointed or nominated as a representative of the authority.

Then, in these circumstances, the interest **may not be regarded as prejudicial**. In practice, therefore, the Member would need to declare the interest, but may be able to participate. It is important to note that even where one of the exceptions is relevant, a Member must still consider whether there is a prejudicial interest.

9.8 It can be seen that these provisions of the Code are an attempt to separate out interests arising from the personal and private interests of the Member and those arising from the Councillor’s wider public life. The emphasis is on a consideration of the status of the interest in each case by the Councillor personally, and included in the judgement is a consideration of the perception of the public, acting reasonably and with knowledge of the facts.

9.9 Translated to a Member’s involvement in planning issues, the two stage tests of personal and prejudicial interests will, require a Member to abstain from involvement in any issue the outcome of which might advantage, or



disadvantage the personal interests of the Member, his family, friends or employer.

9.10 In summary, **where your interest is personal and prejudicial:-**

- **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 ward/local views, get another Ward/Local 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 Member. 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. (For example, 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/any public speaking scheme to address the meeting on the proposal and observe the meeting's consideration of it from the public gallery).

10. **Officer Reports to Committee**

10.1 To ensure that Committees give due consideration to the development plan and other material considerations, all Committee decisions on planning applications, enforcement cases and the Local Development Framework proposals will be taken only after the Committee has received a written Officer report. Written Officer reports will be agreed by the Head of Planning/Development Control Officer/Area Team Leaders, as the Council's senior chartered town planners, and will reflect the collective view of the Service – not the view of the individual author.

10.2 Reports should be accurate and:

- cover, among other things, the substance of objections and the views of people who have been consulted (but see Section 22 on racist comments);
- include reference to relevant Development Plan policies and their implications for the case, site or related history (where relevant, and any other material considerations);
- should have a written recommendation of action; oral reporting (to update a written report) should be rare and be carefully minuted when it does occur;

- should contain an appraisal of the planning considerations which clearly justifies the recommendation and broadly indicates the weight which can be given to any opposing considerations;
- if the recommendation is contrary to the provisions of the development plan, clearly state the material considerations which justify this;
- describe the purpose and content of any planning agreement or obligation proposed in association with a planning permission.

## 11. **Committee Procedures**

- 11.1 Many decisions on planning applications are taken by the Council's Planning Committee (which meets on a 3 weekly cycle) in the following way:-
- 11.2 The Agenda is available to the public five working days before the date of the Committee on request. Reports may be viewed on the Council's website [www.stockton.gov.uk](http://www.stockton.gov.uk) through the "E-genda system". The planning application details and comments from interested parties are also available on the website under "online planning services". All planning committee meetings are open to the public.
- 11.3 The Public are permitted to speak at the Planning Committee meeting provided they have supported or objected to the application in writing. Where there is more than one person wishing to speak either for or against an application, the Chairman will ask if a Spokesperson can be nominated (to avoid the same points being raised several times by each supporter or objector). Each person may speak for a maximum of three minutes. A guidance leaflet has been prepared which sets out the process to be followed. In essence, the Officer will explain what is proposed and highlight the key planning issues. Any objectors wishing to speak can then address the Committee for up to 3 minutes. Members may then ask questions of an objector if they wish. If the applicant (or agent) wish to speak or respond to points raised by any previous speaker they can then do so. Again, members may ask questions of any speaker. Members will then debate the merits of the case and arrive at a decision.
- 11.4 It is important that Members are present throughout the debate on an item in the meeting room. If any Member has to leave the Members room for any reason, thereby missing any part of the proceedings, he/she should take no further part in the voting arrangements for the item(s) considered during their absence.
- 11.5 The Committee may agree or disagree with the report and recommendation (but see Sections 13 and 14 below). Having considered all the relevant planning matters, the Committee may:-
- grant planning permission, with or without planning conditions
  - refuse planning permission, with justified planning reason(s);
  - defer the application for further consideration and/or site visit.

- 11.7 Planning enforcement decisions are normally taken by the case officers except those where it is considered that it is not expedient to enforce, such decisions being referred to Planning Committee. A written Officer report will always be prepared in advance of the Committee.
- 11.8 Decisions on the form and content of the Local Development Framework are taken by Full Council following consideration of a written report. Reports for the comment and approval of members will be considered by Planning Committee and Cabinet before being submitted to Council for approval.
- 11.9 The Council may prepare Supplementary Planning documents (SPD's) on a number of key sites to provide a more detailed framework for developers. The approval of SPD's follows the same procedure as above.
- 11.10 The procedures governing the conduct of meetings are set out in the Council's Standing Orders. However, the general public who attend these meetings will usually not be familiar with Standing Orders, nor this Code. It is therefore important that decisions are made on relevant grounds and that this is the impression left with those who watch. Responsibility for this rests primarily with the Chair of the meeting, assisted where appropriate by Officers. To facilitate this:-

- **a briefing for the Chair and Vice-Chair of the Committee will be held after the Officer reports and recommendations have been published. The purposes of these briefings are to inform the Chair of the issues, to ensure that the rationale for the Officer recommendation is explained, and to identify any potentially problematic or controversial items;**
- **one or more chartered town planners will be present at all Committee meetings at which planning matters are considered;**
- **a Legal advisor will also be present, where appropriate.**

## 12. Committee Site Visits

- 12.1 A Planning Committee may sometimes visit a site prior to agreeing a recommendation on an application, particularly an enforcement case. The need for a Site Visit will initially be determined by Officers but sometimes result from a request by a Ward Councillor. It is acknowledged that this is a proper part of the representational role and should normally be acceded to, so long as the Ward Councillor can justify his/her request in relation to material planning considerations on grounds of principal or precedent. Such requests must be made in writing to the Head of Planning on the appropriate form within 4 weeks from receipt of the application.
- 12.2 However, site visits can cause delay and add costs, and should only be used where there are substantial benefits. Therefore: -
- **A site visit is likely to be necessary only if the impact of the proposed development is difficult to understand from the plans and any**

supporting material including photographs taken by Officers, or if the proposal is particularly contentious.

- The reasons for a site visit should be stated and minuted.
- All Members of the Planning Committee should make every effort to attend.

12.3 Site visit meetings will be conducted in a formal manner: -  
(Need to consider current procedures)

- Officers will highlight the issues relevant to the site inspection and other planning considerations.
- On site the Officer will be asked to point out relevant features, which can be observed. Members may also wish to point out features, which can be observed, or to ask factual questions of the Officer.
- To avoid giving an impression of being lobbied, Members should not listen or talk to any individuals whilst on site, unless being addressed as a group in accordance with arrangements agreed beforehand. Any comments should be made to the whole Committee through the Chair.
- The public, applicant and objectors may attend the meeting but will not normally be allowed to participate (exceptionally, the Chair may wish to clarify a factual point). If any are present, the Chair will explain this to them prior to commencing the inspection of the site.
- To avoid Members being spoken to individually, the Committee should attempt to keep together as a group.
- At the Planning Committee meeting, the Chair will give the Officer, after presenting the report on the proposal, the opportunity to comment on any planning matters raised by the site visit, and to clarify any other planning matters, before the normal Committee debate and decision takes place.
- No discussion or decision-making will take place on site, to ensure that decisions are clearly reached and understood – and are seen to be so.
- No hospitality will be accepted on site visits.

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### 13. Decisions Delegated to Officers

13.1 The Council has agreed the category of applications which must be referred to Committee for determination, which include applications for the development of more than 30 dwelling houses or sites of more than 5 hectares, industrial or storage buildings with more than 50,000 square meters of floorspace, applications which require an Environmental Assessment,

Traffic or Retail Impact Assessment, applications not in accordance with the Development Plan or those which generate more than 5 letters of response contrary to the Officers recommendation. All other applications are delegated to the Head of Planning. The system allows quicker decisions to be taken.

- 13.2 New national best practice Targets (require 90%) of applications should be delegated to Officers, allowing Members to get involved in contentious issues whilst allowing speedy progression of more straightforward matters.
- 13.3 The scheme of delegation is set out in the report to Cabinet on 18 December 2003.

#### 14. **Decisions Contrary to the Development Plan**

- 14.1 Planning decisions must normally be taken in accordance with the Development Plan (see paragraph 5.3).
- 14.2 If Officers are recommending granting planning permission contrary to the Development Plan:-
- The decision will always be taken by a committee, and not taken as a delegated decision.
  - The Officers' report to the Committee must clearly identify the material planning considerations and how they justify overriding the Development Plan.
  - The application will have been advertised by a site notice, and a local newspaper advertisement, in accordance with the Town and Country Planning (General Development Procedure) Order 1995 Article 8.
- 14.3 If the decision would be a significant (as defined by Government Direction) departure from the Development Plan, the application will be referred – normally after the Planning Committee has agreed a recommendation – to the Secretary of State for the Communities and Local Government, to enable him/her to decide whether to “call in” the application to be decided centrally.

#### 15. **Decisions Contrary to Officer Advice**

- 15.1 If the Planning Committee makes a decision contrary to the Officers' recommendation on a planning application or enforcement case then:

- the proposer of the motion to go against the Officers' recommendation, or the Chairman of the meeting, should state the planning reasons for proposed decision before a vote is taken;
- the courts have said that the reasons should be clear and convincing, and be material planning considerations;
- the planning or legal Officer present at the meeting should be given the opportunity to comment upon whether the proposed reasons for the decision are planning matters, and if an approval is proposed, to recommend appropriate planning conditions;
- in the case of non-standard conditions being considered, these should be drafted by Officers and confirmed with the Chair and Vice-Chair of the Planning Committee prior to the issuing of a decision notice;
- if the decision would be contrary to the Development Plan, then the Officer should comment on the extent to which the other planning considerations could be seen to override the Development Plan and on whether the decision would be a significant departure from the plan requiring reference to the Secretary of State (see Section 14 above).
- a detailed minute of the Committee's reasons should be taken and a copy placed on the application file;
- if the decision is contrary to the Development Plan, the minute should clearly set out those planning considerations which override the Development Plan.

15.2 If a Committee wishes to amend or add conditions to an approval, Officers should be delegated the task of drafting the detailed wording of the conditions in line with the Committee's wishes. Under the terms of regulations currently in force, both reasons for refusal and recommendations for approval with supporting conditions need to have regard to the relevant policies and proposals and clearly refer to those policies in the decision. In any cases of uncertainty, Officers will seek confirmation from the Chair and Vice-Chair of the Planning Committee, before issue of the final decision notice.

15.3 Planning Officers will not normally be able to defend at an appeal, decisions made contrary to their professional recommendations. In such circumstances, members will need to consider how the Council should be represented. This could include employing external consultants and/or members representing the Council.

## 16. **Development Proposals Submitted by, or Affecting Councillors and Officers**

16.1 Proposals to their own authority by serving and former Councillors and Officers and their close friends and relatives can easily give rise to suspicions of impropriety. Proposals can take the form of either planning applications or development plan proposals, or may involve planning enforcement. It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism.

16.2 For planning purposes from Officers within the Council and Councillors:

- Serving Councillors and Officers within the above criteria who submit their own proposal to the authority should play no part in the decision-making process for that proposal
- Such proposals will be reported to Committee and not dealt with by Officers under delegated powers.
- The Council's Monitoring Officer should be informed of such proposals by serving Councillors and the Officers' report to the Committee will show that the applicant is a Councillor.
- Councillors and Officers should never act as agents for people pursuing a planning matter with their own authority.

16.3 For proposals submitted by relatives and friends of officers involved with the development control process:

- The Officer concerned will have no involvement with the application.
- The Officer concerned should alert the Head of Planning to the proposal, in writing.

16.4 Where a planning proposal directly affects the property or personal interests of a Councillor she/he should play no part in the decision-making process. This would apply, for example, if a Councillor submitted comments, as a neighbour, on a planning application.

16.5 Similarly, an Officer should have no involvement in processing a planning proposal which directly affects her/his property or personal interests.

## 17. **The Council's Own Developments**

17.1 Proposals for the Council's own development have to be treated in the same way as those by private developers.

- All applications for the Council's own development on which there has been third party objections will be reported to Committee and not dealt with by Officers under delegated powers.
- All applications for the Council's own development will be the subject of a written Officer report, as with other applications.

## 18. **The Media**

18.1 The principles of this Code also apply to press contact. Councillors and Officers when commenting to the media on planning matters should:-

- have regard to the points made in the section on Lobbying (Section 6);
- ensure that they do not give the impression that they have pre-judged the planning application;
- make clear that Councillors will retain an open mind until such time as the full facts are available and these are debated by the appropriate Committee;

- for delegated applications, make clear that the Head of Planning will retain an open mind until such time as the full facts are available and presented for decision.
- have regard to the Council's guidance on publicity and elections

18.2 The Council's Press Officer should be the initial contact person for all press enquiries.

18.3 Any Officers can provide facts about a planning matter which are in the public domain available to the media (see guidance note on the Access to Information Act). However, the media should be referred to the Press Officer or to the Head of Planning for attributable comments.

## 19. **Record Keeping and Complaints**

19.1 The Council has its own Corporate Complaints Procedure; a separate leaflet is available. Complaints are first investigated within the Department by an Officer more senior than the Case Officer.

19.2 So that complaints may be fully investigated and, in any case, as a matter of general good practice, record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. It is not possible to keep a full note of every meeting and conversation. However, the guiding rule is that every case file should contain an account of the main events throughout its life. It should be possible for someone not involved with that application to understand what the decision was and how and why it was reached.

- The main source of this documentation will be the Officer's report to committee and, if the committee does not agree the recommendation, the committee minutes.
- For delegated applications, a formal note of the main planning considerations is written and kept on file.
- These principles apply equally to enforcement and Local Development Framework matters.
- All committee reports and delegated decision reports will be checked and agreed by the Development Control Manager.
- A written note should be kept of all potentially contentious meetings and telephone conversations; this may be in the form of a follow-up letter. Whilst it will be impossible to keep a full note of every meeting, conversation and site visit, a record should be kept of significant events and a record kept of when site visits have taken place. The extent of the note should be in proportion to the significance of the event.
- Complaints alleging a breach of the statutory local code may be made directly to the Standards Board.

## 20. **Hospitality**

20.1 Councillors and Officers are advised to treat with extreme caution any offer or gift, favour or hospitality which is made to them personally. The general presumption should be that hospitality is declined politely but firmly. Where to



do so would cause offence and the hospitality involved is minimal, it should be recorded as soon as practically possible in a Hospitality Book maintained by the Monitoring Officer.

- 20.2 Members are also obliged, under the Model Code to register any gifts or hospitality received over the value of £25 within 28 days of receipt.
- 20.3 The high standard of conduct and impartiality expected of Officers is contained in the Council's Code of Conduct for Employees.