

Section 4 – Protocol for Members in Relation to Development Control Matters

Contents

Clause	Topic	Page
	Purpose of the Protocol	39
1	Application of the Protocol	40
2	Relationship with Other Guidance	40
3	Interests of the Whole Community	40
4	Personal Interests	41
5	Prejudicial Interests	41
6	Pre-determination and Bias	42
7	Planning Considerations and Officers' Advice	43
8	Contact between Members and Officers	44
9	Meetings with Developers	44
10	Lobbying	45
11	Ward Interests	46
12	Gifts and Hospitality	46
13	Applications by Members	47
14	Site Visits	47
15	Public Meetings	48
16	Contact with the Media	49
17	Members' Training	49
18	Breaches of the Protocol	49

Part 5 – Codes and Protocols

Appendix A	References	50
Appendix B	Planning Considerations	51
Appendix C	Decisions Contrary to Officers' Advice	53

Purpose of the Protocol

- i. The purpose of the Protocol is to advise Members of the City Council of appropriate practices and procedures to adopt in dealing with development control matters.
- ii. The successful operation of the planning system relies on mutual trust and an understanding of the differing roles of members and their professional advisors. It also relies on each ensuring that they act in a way, which is, not only fair and impartial but is clearly seen to be so. Members and officers have different but complementary roles. Both serve the public but while members are responsible to the electorate, employees are responsible to the Council as a whole. The Code of Conduct for Members and Co-opted Members provides guidance and standards for members. Employees are guided by the Council's Code of Conduct for Employees.
- iii. Planning is not an exact science; rather it relies on informed judgement within a firm policy context. It is also highly contentious as its decisions affect the daily lives of many people and the private interests of individuals, neighbours, landowners and developers. This is heightened by the open nature of the system, which actively invites public opinion before coming to decisions, and the legal nature of development plans and decisions notices. It is this quasi-judicial role which distinguishes planning from most other local authority business. It is important therefore that the process is characterised by open and transparent procedures and decision making.
- iv. Planning affects land and property interests, particularly the financial value of land holdings and the quality of their settings. The planning process therefore should leave no grounds for suggesting with any justification, that a decision has been partial, biased or not well founded in any way.
- v. The Protocol is based on guidance prepared by the Local Government Association and the National Planning Forum and takes into account specific local practice. It is intended that while advisory it should apply to the decision making process of all applications.
- vi. The effective operation of the Protocol is fundamental to the proper operation of the development control process. It is therefore intended that the Protocol will be reviewed periodically in the light of experience and where necessary amended to reflect changing practices and procedures.
- vii. If a member is uncertain about the application of the Protocol they should seek guidance from the Monitoring Officer or the Deputy Chief Executive.

Part 5 – Codes and Protocols

- viii. The effective operation of the Protocol is fundamental to the proper operation of the development control process. It is therefore intended that the Protocol will be reviewed periodically in the light of experience and where necessary amended to reflect changing practices and procedures.
- ix. If a member is uncertain about the application of the Protocol they should seek guidance from the Monitoring Officer or the Deputy Chief Executive.

Format of the Protocol

The clauses of the Protocol are laid out in bold text. Commentary or any necessary supplementary guidance is shown in italics.

1.0 Application of the Protocol

- 1.1 All Members of the Council should have regard to the principles contained in this Protocol when involved in planning matters.
- 1.2 The Code particularly relates to the process of determination of planning and other planning related applications through either the Planning and Highways Committee or the Development Control Sub Committees and the reporting thereto by the Deputy Chief Executive or appropriate officers. (Most applications, other than those of city wide significance or of a strategic nature are determined by the Development Sub Committees, but in this document reference to those Sub Committees shall where applicable also apply to the Planning and Highways Committee).

2.0 Relationship with Other Guidance

- 2.1 The provisions of this Protocol supplement but do not replace the provisions of other guidance.
- 2.2 All members must ensure that they comply with the law relating to the declaration interests under the Code of Conduct for Members and Co-opted Members.

3.0 Interests of the Whole Community

- 3.1 All planning matters should be determined in the interests of the whole community of the City, having regard to all material considerations as described in Appendix B.

- 3.2 Members of Development Control Sub-Committees should not prejudge a planning application nor do anything that may reasonably be taken as indicating that they have prejudged a planning application before considering the report of the Deputy Chief Executive, attending the meeting of the appropriate Sub-Committee and listening to the presentation and debate at the meeting.
- 3.3 All members should have regard to these principles when dealing with planning matters and must avoid giving an impression that the Council may have prejudged a matter.

The Ombudsman takes the view that the use of political 'whips' at group meetings prior to a meeting to decide how members should vote on a Development Control matter can amount to maladministration.

4.0 Personal Interests

- 4.1 To comply with the Code of Conduct for Members of Co-opted Members a member must declare a personal interest in an item on the agenda of a meeting which he/she attends.
- 4.2 A member must disclose a personal interest at the commencement of the consideration of the matter or when the interest becomes apparent.
- 4.3 A member must regard himself/herself as having a personal interest in any matter which falls within the meaning of paragraph 8 of the Code of Conduct for Members and Co-opted Members.

5. Prejudicial Interests

- 5.1 A member with a personal interest in a matter which also amounts to a prejudicial interest must ordinarily withdraw from the room where a meeting is being held when the matter is being considered unless he/she has obtained a dispensation from the Council's Standards Committee.
- 5.2 A prejudicial interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest.

The Code of Conduct for Members and Co-opted Members is set out in full elsewhere in the Constitution.

- 5.3 Members should not sit when the Committee/Sub-Committee decides applications from an Authority or body on which they also serve.

- 5.4 Paragraph 12(2) of the Code of Conduct provides that a member with a prejudicial interest in a matter may attend a meeting for the purposes of making representations, answering questions or giving evidence relating to the matter, provided the public are also allowed to attend the meeting for the same purpose and that after making representations, answering questions or giving evidence, the member must withdraw from the room where the meeting is being held. The member must also not seek to improperly influence a decision about the business.
- 5.5 Accordingly, as members of the public are entitled to speak in respect of planning applications for a period not exceeding five minutes, a member may also exercise such rights under paragraph 12(2) of the Code notwithstanding that they have a prejudicial interest in the application.

6.0 Pre-determination and Bias

- 6.1 Bias has been defined as an attitude of mind which prevents a Member from making an objective determination of the issues that he/she has to resolve. Procedural impropriety does not require actual bias, it is sufficient that there is an appearance of bias. The test is “whether a fair-minded and informed observer having considered the facts would conclude that there was a real possibility of bias”.

Members should not sit as a member of Committee or Sub-Committee where previous voting or statements of belief may alter the impression of objectivity.

Bias also includes the situation where it is felt the Member has pre-determined the case, i.e. where that impression is clearly given to members of the public or a lobbyist beyond conveying a mere pre-disposition, that the Member will approach the matter with a closed mind and without impartial consideration of all relevant issues.

In relation to applications within their ward, Members will need to be vigilant to ensure that their response to any lobbying is not seen as to give reasonable grounds to indicate pre-determination or bias.

6.2 ‘Structural’ Bias

A potential issue concerning bias or predetermination in relation to development control matters is where a Member sitting on the Committee is a Member for another authority function such as economic development/ regeneration, where that function’s policy/decisions either impliedly or explicitly support (or indeed, opposes) the application. It has been stated that “...there is a degree of permissible structural bias built into the statutory framework for local authority decisionmaking”. If in such circumstances the Member concerned is in doubt they should make a disclosure of his/her

position, in advance, to the Committees which will consult its legal advisory to decide if the Member can take part in the decision-making.

6.3 Differences between the Personal/Prejudicial Interests provisions of the Code of Conduct, and Bias at Common Law

Bias at common law and personal and prejudicial interests under the Code of Conduct are related but do differ as concepts and in their effect. Bias at common law includes those areas where the Committee Member has created a real danger of a perception that s/he has prevented him or herself from being able to make an impartial determination of the issues. This is also known as fettering one's discretion. Interests under the Code of Conduct only concern themselves with the definition of a personal interest and only then is the test as to whether or not that personal interest may be prejudicial then applied.

Members should not sit as a member of a Committee or Sub-Committee where previous voting or statements of believe may alter the impression of objectivity.

A Member who has a personal and prejudicial interest may take part in the Committee/Sub Committees or attend the hearing solely for the purposes of making representations, answering questions or giving evidence relating to the matter as set out in paragraphs 5.4 and 5.5 above. However, a Member who has fettered his/her discretion through common-law bias may not sit as part of a Committee/Sub Committee determining an application.

7. Planning Consideration and Officers' Advice

7.1 Planning decisions should only be made on planning considerations. Decisions taken on immaterial considerations are unlawful.

7.2 All members should pay particular attention to the professional advice and recommendations from officers. Should members propose not to accept the officers' advice, they should do so only with good reasons, based on land use planning grounds.

7.3 It is the responsibility of officers in preparing reports and recommendations to members to act impartially, to identify the material planning considerations, and to advise members those matters which are immaterial.

Guidance on material planning considerations is set out in Appendix B and a procedure to be adopted where members do not agree with the recommendations is set out in Appendix C.

8. Contact between Members and Officers

- 8.1 All members and officers must ensure that contact between them in connection with development control matters accords with the requirement of mutual respect and should not undermine the good working relationships, which are critical to the success of the City Council and good local government.
- 8.2 Members should never put pressure on officers in respect of planning matters to make a particular recommendation.

Officers are available to discuss the issues relating to planning applications with members and to inform them of all the facts and circumstances relating to the application.

9.0 Meetings with Developers

- 9.1 Members should not meet with any current or prospective developer unless either accompanied by, or after obtaining advice from an appropriate officer.
- 9.2 Any member approached should inform both the Deputy Chief Executive and the appropriate Sub-Committee Chairman.

The expression 'developer' should be interpreted widely and includes applicants, landowners and their agents. Approaches may occur at various stages, sometimes before the Council is officially involved and on other occasions not until an application has been made. Care must be taken at all times and the principles set out apply to discussion at all stages. Special attention however is necessary once the Council is officially involved.

Members should ensure;

- *That they are not nor that they appear to be prejudiced by any discussions;*
- *That all parties are treated equally;*
- *That the Council's procedures are seen to be fair and not open to criticism.*

and

- *That decisions are made on the basis of proper information and full advice.*

The relevant Chairman and Chief Officer should always be informed of any approach. Before agreeing to meet developers, members should consider whether it may affect their ability subsequently to consider the matter when it formally comes before the appropriate Sub-Committee and should consult and be advised by the appropriate Chief Officer.

The appropriate Chief Officer should make arrangements for meetings (whoever initiates them), and his representatives should be invited to attend. Full notes of the discussions should be agreed and copies placed on the application file.

Where discussions have taken place in accordance with this Code, members ought to declare this at any meetings of the Council, Committees or Sub-Committees at which the matter is discussed even though the matter may not amount to a personal or prejudicial interest as such.

10.0 Lobbying

- 10.1 It recognised that lobbying has an important role in the local democratic process. Members, however should ensure that their response to lobbyists is not such as to give reasonable grounds for their impartiality to be questioned or to indicate that they have made their minds up on the issue before they have heard all the evidence and argument.

Persons interested in a particular proposal may attempt to influence a decision through lobbying. 'Interested parties' should be interpreted widely and could include applicants, landowners, objectors, persons affected, potential competitors and rivals, persons acting on behalf of such persons and other members of the Council.

There is no problem about listening to a point of view, however if members, especially those involved in the consideration of the proposal, express an opinion without hearing the alternative view, it may create the impression that they have pre-judged the matter. If a member is lobbied before the meeting when a particular proposal is to be discussed they:-

- *Can listen to what is being said,*
- *Give procedural advice (e.g. where and when any meeting is to be held, which case officer to approach and how to make representations etc),*
- *Refer the lobbyist to a colleague who does not sit on the Sub-Committees,*

- *Refer the lobbyist to the relevant case officer so that their views can be recorded and included in the report to the meeting,*
- *Should not give details of voting intentions or otherwise enter into commitment to oppose or support the application and*
- *Should report all instances of significant, substantial or persistent lobbying to the Monitoring Officer and the Deputy Chief Executive, who will make a note on file.*

11.0 Ward interests

11.1 The principles of this Code apply equally to members who are acting in respect of matters arising in their wards. Members must ensure that the integrity of the planning process is not affected by ward interests.

A member of a Development Control Sub-Committee who represents a ward affected by an application can be in a difficult position if it is a controversial matter around which lobbying takes place.

It should however be possible for a member to represent a particular body of opinion at the Sub-Committee meeting provided that he/she hears all the evidence presented before making a final decision. Members who find themselves in this situation should consider referring the matter to another member who is not a member of the relevant Development Control Sub-Committee.

Alternatively they could forward the concerns which have been expressed to them to officers so that they can be fully investigated as part of the consideration of the application. In most cases this can be achieved without the member actually committing him/herself to objecting to or supporting an application. If the member responds to lobbying by deciding to go public in support or opposition it will be difficult for the member to argue that he/she has approached the actual decision impartially. In these circumstances the member should not vote.

12.0 Gifts and Hospitality

12.1 Members should avoid knowingly accepting gifts or hospitality from persons who are currently or likely to be promoting or opposing planning applications or from others connected with such persons.

12.2 Members should be guided by the Code of Conduct for Members and Co-opted Members and if in any doubt should seek guidance from the Monitoring Officer.

12.3 The receipt of any gift or hospitality over the value of £25 must be disclosed to the Monitoring Officer within 28 days of receipt.

The offer or receipt of gifts and hospitality can easily cause damage to public confidence in local government and affect the perceived integrity of the planning system. Any offer of a gift, favour or hospitality should be treated with extreme caution, especially where it is from a current or potential applicant/objector to a development proposal.

13.0 Applications by Members

- 13.1 Members should never take part in the processing of planning applications submitted on their own behalf or on behalf of their relatives, friends or close associates nor should members who deal with planning applications act as professional agents for persons pursuing a planning application.
- 13.2 Members should notify the Deputy Chief Executive of applications involving their relatives, friends or close associates, of which they are aware. In such circumstances, members should not otherwise attempt to use their position to influence the processing of the application.
- 13.3 Members who have submitted planning applications may submit written representations in their private capacity, use a professional representative to act on their behalf, or avail themselves of their rights under paragraphs 5.4 and 5.5 above.

It is inevitable that, from time to time, members will need to make a planning application. It is imperative that they take no part in processing the application. In such a situation, members should notify the Deputy Chief Executive of their involvement. The planning file will be marked accordingly to identify their interest.

14.0 Site Visits

- 14.1 Site visits should only take place when they are necessary to assist in the considerations of planning applications through familiarising members with the site. The Chairman or Vice Chairman or her/his representative should be responsible for the conduct of the site visit so as not to favour applicant, objector or interested party.
- 14.2 A site visit should only be arranged with the prior agreement of the relevant Committee or in exceptional circumstances the Deputy Chief Executive in consultation with the relevant Chairman and where it is agreed that it will assist in considering the application.
- 14.3 Members should confine any remarks they make to matters of fact and avoid expressing any views or opinions, which suggest that they have prejudged the application. *This guidance applies to all members of the Council who attend a site visit whether or not they are members of the determining Sub Committee.*

A site visit is only likely to be necessary in the following cases:-

- *Where the impact of the proposed development is difficult to visualise from plans and supporting material or*
- *Where there is a good reason why the comments of the applicant or objector cannot be expressed adequately in writing.*

No applicant or objector or their agents should attend site visits or participate in any discussion about the application. Where it is not possible to visit the site without contact with either the applicant or objector, they will be advised that no representations can be made at the site visit. Any representation made, verbally or otherwise, should be ignored by members.

Decisions will not be made on site visits but will be made at a subsequent meeting of the appropriate Committee.

15.0 Public Meetings

- 15.1 Public meetings to discuss planning and other applications should only be arranged when likely to assist in the explanation or consideration of an application.
- 15.2 Requests for public meetings should be approved by the relevant Development Control Sub-Committee or, in cases of urgency, by the Deputy Chief Executive following consultation with the relevant Development Control Sub-Committee Chairman.
- 15.3 The role of Development Control Sub-Committee Members at such meetings is to listen to views and not to promote or oppose an application.

The purpose of a public meeting as part of the consultation exercise is:-

- *to provide an opportunity for the public to make their views known to the Council so that they can be taken into account so far as they are material,*

and

- *to provide information about the planning process and the role of Members in that process.*

The meeting must be conducted to ensure that all persons attending feel that they are being treated fairly and equally. The impression must not be created that the Council has already decided how the

application will be determined. Developers and objectors should usually be invited to the meeting.

On occasion public meetings are arranged by others (such as individual Members, applicants or objectors) and the organisers may invite Members and officers to attend and, to facilitate this, 7 days prior notice of such meeting should be given whenever possible. Members who attend such meetings should have regard to the principles detailed in this Code. Attendance by officers at such meetings will be determined by the Deputy Chief Executive.

16.0 Contact with the Media

- 16.1 All members should ensure that any contact, which they may have with the media, should accord with the principles of this Protocol and should not affect the integrity of the planning system.

17.0 Members' Training

- 17.1 Members of Development Control Sub-Committees should attend training sessions, which may be organised from time to time. All other Members are encouraged to attend also.

Members of Development Control Sub-Committee should be strongly urged to attend training sessions and the assistance of Political Groups should be sought in ensuring that such training is undertaken by their Members.

18.0 Breaches of the Protocol

- 18.1 If any person is concerned that the provision of this Protocol are not being followed, they should in the first instance bring the relevant matter to the attention of the Monitoring Officer in writing.

Appendix A: References

- Planning Policy Guidance Note No. 1
General Principles (PPG1) DETR
- Probity in Planning – The Role of
Councillors and Officers Local Government
Association
- Code of Conduct for Members and
Co-opted Members Constitution
- Code of Conduct for Employees Constitution
- City Council Rules of Procedure Constitution
- Code of Professional Conduct Royal Town Planning
Institute

Appendix B: Planning Considerations

The Town and Country Planning Act 1990 as elaborated by Government Guidance and case law defines matters which are material to the determination of planning decisions.

In summary applications should be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise. However, any consideration, which relates to the use and development of land, is capable of being a material planning consideration. There is extensive case law on what are material planning considerations. A consideration to be material must relate to the use and development of land. Examples of material considerations include:-

- The Unitary Development Plan, other plans and strategies comprising the Development Plan, and the Local Development Framework.
- Government Guidance contained in Strategic Planning Guidance, Circulars, Planning Policy Guidance Notes, Mineral Policy Guidance Notes, Regional Policy Guidance Notes, Circulars and Ministerial announcements.
- Representations made by statutory consultees and other persons making representations in response to the publicity given to applications, to the extent that they relate to planning matters.
- Non-statutory planning policies determined by the Council.
- The so-called presumption in favour of granting planning permission where an application conforms with the UDP or other Development Plan.
- The statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.
- The statutory duty to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses.
- Personal considerations and purely financial considerations are not normally material factors, but they may be material in exceptional situations but only in so far as they relate to the use and development of land. The planning system does not exist to protect private interests of one person against the activities of another. Local opposition or support for a proposal is not in itself a ground for refusal or grant of planning permission, unless that opposition or support is founded upon valid planning reasons, which can be substantiated.

Part 5 – Codes and Protocols

- The basic question is not whether owners and occupiers or neighbouring properties or trade competitors would experience financial or other loss from a particular development, but whether the proposal would unacceptably affect the amenities of both existing and proposed use of land and buildings which ought to be protected in the public interest.

Appendix C: Decisions Contrary to Officers' Advice

Planning decisions are a matter of balancing material considerations in the public interest. It will be inevitable that on occasions all the considerations will not point clearly to either a grant or a refusal of planning permission. The report on an application should identify all material planning considerations, give advice on their relevance, put to one side all immaterial considerations and provide clear guidance to members to allow them to come to a carefully balanced decision which can be substantiated, if challenged on appeal.

Although applicants can make an issue on appeal about the fact that members have not followed officers' advice, it has never been the case that members must rigidly follow such advice. Difficulties can arise only if members do not follow officer's advice in the absence of good planning reasons, which can be substantiated by relevant evidence.

Amended or alternative recommendations

Where it is clear that some members do not agree with the officer's recommendation it is suggested that the following procedure be adopted.

1. The officer should be asked to explain the implications of any proposed contrary decision.
2. The chairman should then ask if any member wishes to propose an alternative recommendation or to propose an amendment to the officer's recommendation.
3. Any alternative or amended motion should then be discussed and put.
 - a. *if the motion is to refuse, it must indicate clearly that reasons for refusal.*
 - b. *if the motion is to grant, it should indicate appropriate conditions or the need for a planning agreement.*
4. If the alternative or amended motion is rejected the officers' recommendation should be put.

A detailed minute of the committee's reasons for an amended or altered decision must be made and a copy placed on the application file. Members should also be aware that in an appeal it might be necessary to call members to give evidence.

Where Members disagree with the recommendations of Officers a decision may be deferred to the next meeting to allow Members time to draw up

reasons for refusal or conditions, which they would wish to attaché to any planning consent.

Reasons for Refusal and Conditions of Approval

The careful formulation of reasons for refusal or conditions to be attached to an approval is crucial to the chance of success on appeal. It should not be treated lightly.

Reasons given for refusal must be:-

- *clear*
- *concise*
- *based on material planning considerations and*
- *able to substantiated by evidence.*

Conditions should comply with the advice in Circular 11/95 The Use of Conditions in Planning Permissions. They should only be imposed when they satisfy all of the following characteristics and be;

- *necessary*
- *relevant to planning*
- *relevant to the development being permitted*
- *enforceable*
- *precise; and*
- *reasonable in all other respects.*