

## **CODE OF CONDUCT ON PLANNING MATTERS**

### **INTRODUCTION**

The planning system and the decisions which arise from it affect the lives of everyone in one way or another. Particularly through the process of land allocation and development control it has a direct impact on the private interests of individuals, landowners and developers. By its nature it can create winners and losers; the decisions are often controversial involving the balancing of many different factors and opinions, however, the key purpose of planning is to regulate the development and use of land in the public interest. Accordingly planning decisions are based on balancing competing interests and making an informed judgement against a local and national policy framework.

The code applies to all Members of the Planning Committees and officers at all times when they are involved in the planning process. This would include, for example, making decisions at Planning Committees, or if an officer, making delegated decisions on applications, or on less formal occasions such as meetings between Members and officers and/or members of the public on planning matters. The code applies equally to planning enforcement matters or site-specific policy issues and to planning applications.

In the discharge of their planning functions, local authorities are expected to make their decisions openly and impartially, based on sound planning arguments. Members and employees are quite rightly expected to maintain the highest standards of integrity at all times.

The planning system works best when Officers and Councillors involved in planning understand their roles and responsibilities, and the context and constraints in which they operate.

Planning decisions involve balancing many competing interests. In doing this, decision makers need to be aware of the interest of the whole community on what can be controversial proposals.

This local code of conduct provides guidance on the way in which planning matters should be handled. It seeks to reflect best practice as operated throughout the Country, set in the context of the particular local circumstances of Crawley. The code is intended to reinforce Councillors' community engagement roles whilst maintaining good standards of probity that minimizes the risk of legal challenges.

### **GENERAL PRINCIPLES**

Members of the local planning authority are elected to represent the interests of the whole community on planning matters. In performing their duties, Members must fulfil their role as representatives of public opinion without compromising their duty to determine planning issues having regard to planning criteria alone. They will often be subject to conflicting views from interested parties and, in reaching decisions, will have to balance a range of arguments. The processes by which decisions are reached will also have to stand up to scrutiny under the Human Rights Act.

- The actions of both employees and Members should leave no grounds for suggesting with any justification that a decision has been partial, biased or not well founded in any way.

- Members have a special duty to their ward constituents, including those who do not vote for them; however, their over-riding duty is to the whole community and they should not show bias in favour of any individual or group in their consideration of planning matters.
- Decisions on planning matters should be based on planning considerations alone and should exclude all non-planning matters
- Action and decisions on planning matters should be taken in a manner which is both accountable and open to public scrutiny

## **THE ROLE OF OFFICERS AND MEMBERS**

Members and employees have different but complementary roles. However, both roles should be consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Each serve the public but Members are responsible to the electorate while employees are responsible to the Council as a whole and through the Council to the public. A successful relationship depends on mutual trust and an understanding of the different roles.

- Members are responsible for the need to register and disclose interests
- Members are responsible to the electorate for the formulation and implementation of planning policy and their decisions on these matters should be based on planning issues alone
- Employees are responsible for the provision of advice to the Council on planning matters; this should be provided in an impartial way and, again, should be based on a consideration of planning issues alone
- Employees are responsible for a range of planning decisions delegated to them by the Council; in taking these decisions the Officers should act with the same propriety as is expected of a Committee of Members
- Employees and Members should work together, but instructions to officers should only be given through the Council or a Committee decision
- Employees and Members should be cautious about accepting gifts and hospitality and should exercise their discretion. Any Councillor or Officer receiving any such offers over and above an agreed nominal value should let the Monitoring Officer know, in writing, and seek advice as to whether they should be accepted or declined.

## **PREDISPOSITION, PREDETERMINATION OR BIAS**

Members attending the Planning Committee, Local Working Plan, Working Group (or full Council when the Local Plan is being considered) need to avoid any appearance of bias or of having predetermined their views being taking a decision on a planning application or on planning policies.

Members must distinguish between situations which involve predetermination or bias on the one hand and predisposition on the other. The former is indicative of a 'closed mind' approach and likely to leave the Committee's decision susceptible to challenge by Judicial Review.

Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a Member makes it clear they are willing to listen to all the considerations presented at the Committee before deciding on how to

vote (predisposition). The latter is acceptable; the former is not and may result in a Court quashing such planning decisions.

A Member should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter.

Nevertheless, a Member in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the Councillor was biased. The rule now is that the decision maker is not to be taken to have had a closed mind just because she or he had previously done or said anything that directly or indirectly indicated the view the Member took, or would, or might take.

If a Member has predetermined their position, they should withdraw from being a Member of the decision-making body for that matter.

This would apply to any Member of the Planning Committee who wanted to speak for or against a proposal or as a campaigner (for example on a proposal within their ward).

## **LOBBYING OF AND BY MEMBERS**

Lobbying is a common part of the political process. It is one of the ways by which Members become aware of public opinion and can ensure that it is properly considered. It is also a process through which landowners, developers or other interested parties can make their views known directly to elected Members. However, unless handled with great care and within clear guidelines, lobbying can be perceived as harming the integrity and impartiality of the planning process.

- Members may, at their discretion, meet and hear the views of their constituents or other members of the public on planning matters; however they should treat lobbying with extreme caution and should seek to ensure that any discussions are kept at a level which could not be perceived as prejudicing their ability to make fair judgements on behalf of the whole community; any meetings or discussions should relate solely to planning or procedural matters. Members of the Planning Committee may consider referring such matters to other Ward Members or, if appropriate, other Members of the Council.
- Given reasonable notice, employees will always be available to attend meetings with members of the public who wish to make representations to Members on planning matters and Members should, wherever possible, request the presence of an employee where meetings are to discuss specific proposals or planning applications; where meetings take place with an employee in attendance, a full record should be kept
- When hearing representations, and in order to protect rights to a fair hearing, Members of the Planning Committee, should take care not to express any opinion which could be seen as indicating that they have made up their mind before hearing all the relevant planning arguments; other Members should be cautious about expressing opinions and should only do so if they are fully satisfied that they are aware of the arguments for and against a proposal
- Members should not become involved in negotiations with applicants or other advocates of development proposals
- Members who have been lobbied or approached by an interested party with respect to any planning matter, should declare this at the Committee meeting which discusses that matter

- In order to preserve the impartiality of the Committee and respect the principle of a fair hearing, Members of the decision making Committee should not declare in advance of the meeting and before hearing all the relevant planning arguments how they intend to vote
- For the same reason, political group meetings should not be used prior to a Committee meeting to decide how Members will vote on planning applications
- Members should in general avoid organising support for or opposition to a particular planning proposal and avoid lobbying other Councillors
- Members should avoid putting pressure on officers for a particular recommendation or decision, and should not do anything which compromises, or is likely to compromise, the officers' impartiality or professional integrity
- Call-in procedures, whereby Members can require a proposal that would normally be determined under the delegated authority to be called in for determination by the Planning Committee, should require the reasons for call-in to be recorded in writing and to refer solely to matters of material planning concern.

## **PRE-APPLICATION DISCUSSIONS**

Pre-application discussions between a potential applicant and a Council can benefit both parties and are encouraged. However, it would be easy for such discussions to become, or be seen by objectors to become, part of a lobbying process on the part of the applicant.

The Localism Act has given Councillors much more freedom to engage in pre-application discussions. Nevertheless in order to avoid perceptions that Councillors might have fettered their discretion, such discussions should take place within clear, published guidelines.

Although the term 'pre-application' has been used, the same considerations should apply to any discussions which occur before a decision is taken:

- It should be made clear at the outset that discussions will not bind the Council to making a particular decision and that any views expressed are personal and provisional.
- Consistent advice should be given by officers based upon the development plan and other material planning considerations.
- Officers should be present with Councillors in pre-application meetings. Councillors should avoid giving separate advice on the development plan or material considerations as they may not be aware of all the issues at an early stage. Neither should they become drawn into any negotiations, which should be done by officers (keeping interested Councillors up to date) to ensure that the authority's position is co-ordinated.
- Confirmation that a written note should be made of all pre-application discussions. An officer should make the arrangements and attend and write notes. A note should also be taken of any phone conversations, and relevant emails recorded for the file. Notes should record issues raised and advice given. The note(s) should be placed on the file as a public record. If there is a legitimate reason for confidentiality regarding a proposal, a note of the non-confidential issues raised or advice given can still normally be placed on the file to reassure others not party to the discussion.

- A commitment that care will be taken to ensure that advice is impartial, otherwise the subsequent report or recommendation to Committee could appear to be advocacy.

Officers should also consider other mechanisms to involve Councillors in pre-application discussions including:

- Committee information reports by officers of discussions to enable Councillors to raise issues, identify items of interest and seek further information
- Developer presentations to Committees which have the advantage of transparency if held in public as a Committee would normally be (with notes taken)
- Ward Councillor briefing by officers on pre-application discussions.

## **HOSPITALITY**

During the course of their work, employees or Members may be offered hospitality from people with a possible interest in development proposals. Hospitality can be perceived as creating a potential bias in those who are involved in the planning process and offers of hospitality should therefore always be viewed in this light

- In line with the Councillors' Code of Conduct, Members should treat offers of hospitality with extreme caution and should follow the guidelines set out in the code and in the Protocol relating to Gifts and Hospitality
- Officers should also treat hospitality with extreme caution and follow the guidance given in the Employee Code of Conduct
- All hospitality received should be notified to the Monitoring Officer and recorded in the Register of Gifts and Hospitality
- Both Members and officers need to be aware of the provisions of the Bribery Act 2010. Under that Act it is an offence to give a bribe and to promise, offer or agree to receive a bribe. A person found guilty of an offence under this Act may be liable for a fine up to £5,000 or imprisonment for up to 12 months, and on indictment to an unlimited fine and/or imprisonment for up to 10 years.

## **PRE-COMMITTEE PROCEDURES**

The run up to Committee is an important time in the consideration of planning matters involving report preparation, public scrutiny of documents and briefing of the Chairperson. The procedures adopted at this stage help to ensure smooth operation of the Committee and contribute to a fair and open planning process.

- All planning applications and other planning matters brought to Committee for decision will be accompanied by an employees' report; the report will be impartial and contain, amongst other things, a description of the proposals, a resume of views expressed by third parties, an explanation of the main planning considerations and a recommendation.
- Reports should be accurate and should include the substance of any objections and other responses received to the consultation.
- Relevant information should include a clear assessment against the relevant development plan policies, relevant parts of the National Planning Policy Framework (NPPF), any local finance considerations, and any other material planning considerations.
- Reports should have a written recommendation for a decision to be made.

- Reports should contain reference to specialist advice and statutory consultees who may have been consulted to provide specific advice on any technical appraisals submitted with an application.
- If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated. This is not only good practice, but also failure to do so may constitute maladministration or give rise to a Judicial Review challenge on the grounds that the decision was not taken in accordance with the provisions of the development plan and the Council's statutory duty under s38A of the Planning and Compensation Act 2004 and s70 of the Town and Country Planning Act 1990.

Any oral updates or changes to the report should be recorded.

- Background documents relating to any report, including representations by third parties, will be available to Members and the public from the Development Control Team a minimum of five clear working days before the Committee and plans will be displayed in the Committee room for Members to inspect immediately before the Committee meeting should they wish. All documentation is available for inspection on the Council website.
- A 'call over' meeting may be held with the chairperson of the Committee; that meeting should take place after the agenda and recommendations have been finalised; it should be seen as a briefing session to assist the effective operation of the meeting.

## **COMMITTEE PRACTICE AND PROCEDURE**

The effective consideration of planning issues at the Committee stage is an essential element of the development control process. It is important that members of the public see that a fair, even handed and objective approach is being adopted and that decisions are being reached on the basis of planning considerations alone.

- Oral reporting by employees should be kept to the minimum necessary to ensure that material not contained in the report but for display at the meeting is brought to the Committee's attention and that written reports are if necessary updated; employees can and will respond to requests from Members for clarification, explanation and further information
- In the interests of equity, the time allowed for presentations for and against the development should be the same, and those speaking should be asked to direct their presentation to reinforcing or amplifying representations already made to the Council in writing.
- New documents should not be circulated to the Planning Committee; Members may not be able to give proper consideration to the new information and officers may not be able to check for accuracy or provide considered advice on any material considerations arising. This should be made clear to those who intend to speak.
- Messages should never be passed to individual Members, either from other Members or from the public. This could be seen as seeking to influence that Member improperly and will create a perception of bias that will be difficult to overcome.
- Members of the public are allowed to speak at Committee subject to specific procedures; Members should be aware of the expectation of the public that the issues which concern them will be properly considered

- Ward Members and other Members wishing to comment on planning applications or other items on the agenda are also allowed to speak at the Committee but not vote
- Committee consideration should be confined to planning issues relating to the matter being considered; in the event that Members are uncertain as to whether an issue is a material planning consideration clarification should be sought from the Planning Officer or the legal services representative
- Declarations that a Member has been lobbied on a planning matter by an interested party should be made before the Member speaks on the item and in any event before a vote is taken; such declarations do not prevent Members from speaking and voting on the item. The decision taken should be clear to all Members of the Committee and members of the public

## **REGISTRATION AND DISCLOSURE OF INTERESTS**

Chapter 7 of the Localism Act 2011 Act places requirements on Members regarding the registration and disclosure of their pecuniary interests and the consequences for a Councillor taking part in consideration of an issue in the light of those interests. The definitions of Disclosable Pecuniary Interests are set out in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. The Code of Conduct for Councillors is relevant in this regard and sets out what interests need to be registered and disclosed. A failure to register a disclosable pecuniary interest within 28 days of election or co-option or the provision of false or misleading information on registration, or participation in discussion or voting in a meeting on a matter in which a Councillor or co-opted Member has a disclosable pecuniary interest, are criminal offences.

Advice should always be sought from the Monitoring Officer. Ultimately, responsibility for fulfilling the requirements rests with each Councillor.

The provisions of the Act seek to separate interests arising from the personal and private interests of the Member from those arising from the Member's wider public life. Members should think about how a reasonable member of the public, with full knowledge of all the relevant facts, would view the matter when considering whether the Councillor's involvement would be appropriate.

A flow chart of Member's disclosures of interests is attached as an Appendix to this Code.

All disclosable interests should be registered and a register maintained by the Monitoring Officer and made available to the public. Members should also disclose that interest orally at the Committee meeting when it relates to an item under discussion.

A Member must provide the Monitoring Officer with written details of relevant interests within 28 days of their election or appointment to office. Any changes to those interests must similarly be notified within 28 days of the Member becoming aware of such changes.

A Disclosable Pecuniary Interest relating to an item under discussion requires the withdrawal of the Member from the Committee. The Member must not participate in any discussions on the matter or vote. In certain circumstances, a dispensation can be sought from the Monitoring Officer or the Governance Committee to take part in that particular item of business.

If a Member has a (non-pecuniary) personal interest, they should disclose that interest, but then may speak and vote on that particular item.

It is always best to identify a potential interest early on. If a Member thinks that they may have an interest in a particular matter to be discussed at Planning Committee they should raise this with the Monitoring Officer as soon as possible.

## **SITE VISITS**

Occasionally it may be appropriate in considering a planning application or another development issue, for Members to undertake a formal visit before reaching a decision.

- Site visits as advised by the Head of Legal, Democracy and HR will take place in the week prior to each Development Control meeting. They will only be carried out where there is substantial benefit to the decision making process and there are issues relating to a proposal which cannot be satisfactorily resolved from the material presented to the Committee at the meeting.
- Requests from Ward Members for a site visit should normally be accepted, subject to the test outlined above.
- Site visits will be arranged solely for the purposes of inspecting the site and its surroundings.
- An employee should always attend formal Committee site visits
- Site visits may be accompanied by interested parties or unaccompanied depending on the circumstances. Unaccompanied site visits should take place from public vantage points only.
- On accompanied visits, interested parties may point out features which they would wish Members to view; however no representations from interested parties about the proposals should be accepted.
- Employees will prepare a brief record of the site visit.
- Members visiting a site should not be delegated the power to make decisions but should report back to the Committee.
- A site visit is only likely to be necessary if the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers and/or the comments of the applicant and objectors cannot be expressed adequately in writing and/or the proposal is particularly contentious.
- Site visits are for observing the site and gaining a better understanding of the issues. Visits made by Committee Members, with officer assistance, are normally the most fair and equitable approach. They should not be used as a lobbying opportunity by objectors or supporters.
- Separate from any procedures for formal site visits, Members of the Planning Committee should consider whether there is advantage in them viewing particular application sites from public vantage points before the applications are considered by the Committee. They should not be used as a lobbying opportunity by objectors or supporters.

## **DECISIONS WHICH DIFFER FROM A RECOMMENDATION**

The law requires that decisions should be taken in accordance with the development plan, unless material considerations (which specifically include the NPPF) indicate otherwise (s38A Planning and Compensation Act 2004 and s70 of the Town and Country Planning Act 1990).

This applies to all planning decisions. Any reasons for refusal must be justified against the development plan and other material considerations.

- Members of the Planning Committee are advised to take the following steps before making a decision which differs from the officer recommendation:
- Adjourning for a few minutes for those reasons to be discussed and then agreed by the Committee (especially if the Members differ in their views of what their reasons should be).
- Where there is concern about the validity of reasons, considering deferring to another meeting to have the proposed reasons tested and discussed.

If the Planning Committee make a decision contrary to the officers' recommendation (whether for approval or refusal or changes to conditions or S106 obligations), a detailed minute of the Committee's reasons should be made and a copy placed on the application file.

- Councillors should be prepared to explain in full their planning reasons for not agreeing with the officer's recommendation and pressure should never be put on officers to fabricate reasons for refusal.
- The Officer should also be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome, and chances of a successful award of costs against the Council, should one be made.
- All applications that are clearly contrary to the development plan must be advertised as such, and are known as 'departure' applications. If it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and how these considerations justify overriding the development plan must be clearly demonstrated.
- Such an application may then have to be referred to the relevant Secretary of State, depending upon the type and scale of the development proposed (s77 of the Town and Country Planning Act 1990). If the officers' report recommends approval of such a departure, the justification for this should be included, in full, in that report.

## **ANNUAL REVIEW OF DECISIONS**

It is good practice for Councillors to visit a sample of implemented planning permissions to assess the quality of the decisions and the development. This should improve the quality and consistency of decision-making, strengthen public confidence in the planning system, and can help with reviews of planning policy.

Reviews could include visits to a range of developments such as major and minor schemes; upheld appeals; listed building works and enforcement cases. Briefing notes should be prepared on each case. The Planning Committee should formally consider the review and decide whether it gives rise to the need to reconsider any policies or practices

The Overview and Scrutiny Commission may be able to assist in this process but the essential purpose of these reviews is to assist Planning Members to refine their

understanding of the impact of their decisions. Planning Members should be fully engaged in such reviews.

## **TRAINING**

Employees can provide detailed professional advice on the various issues facing Members in the exercise of their planning powers. However the quality of decision making is also dependant on Members being well informed and up to date on planning matters.

- Employees should review on an annual basis the need for training sessions to keep Members informed on planning matters
- Employees should arrange for new Members of the Planning Committee in general and for new Members in particular to receive specific in-house training on planning matters. It should also be a requirement that substitute Members have received training before they sit on the Planning Committee.
- Members should make every effort to ensure that they attend training sessions.

## **COMPLAINTS AND RECORD KEEPING**

There is in existence a complaints procedure which applies to all Council activities. So that complaints may be fully investigated and as general good practice, record keeping should be complete and accurate. Every planning application file should contain an accurate account of events throughout its life. It should be possible for someone not involved in that application to understand what the decision was, and why and how it had been reached. This applies to decisions taken by Committee and under delegated powers, and to applications, enforcement and development plan matters.

## **DELEGATION**

Approximately 87% of all planning applications are handled under delegated powers by the Employees, although controversial items, including those where there are 4 or more third party objections and it is proposed to permit the application or an objection from a consultee are brought to Committee.

- In handling delegated decisions, Employees should maintain the same standards of probity as would be the case if the decision were to be taken by Committee
- All applications determined under delegated powers should be accompanied by an Employees report and recommendation

## **DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS AND OFFICERS, AND COUNCIL DEVELOPMENT**

Proposals submitted by serving and former Councillors, officers and their close associates and relatives can easily give rise to suspicions of impropriety. Proposals could be planning applications or local plan proposals.

Such proposals must be handled in a way that gives no grounds for accusations of favouritism.

- Applications made by the Council, Council Members or Employees should only be dealt with by a report and recommendation to Committee; Members or Employees making applications should notify the Head of Economy and Planning in writing.

- Members who make planning applications or act as agents on planning applications should take no part in the decision making process for that proposal.
- Employees should follow the procedures laid down in the staff handbook with respect to any development proposal with which they are or might be asked to become involved.
- If Members or Planning Officers submit their own proposal to the authority they should play no part in its consideration.
- The Monitoring Officer should be informed of such proposals.
- Such proposals should be reported to the Planning Committee and not dealt with by officers under delegated powers.
- Proposals for the Council's own development should be treated in the same way as those by private developers.

# APPENDIX TO THE CODE OF CONDUCT ON PLANNING MATTERS

## FLOWCHART OF COUNCILLORS' INTERESTS

