

# Code of Good Practice for Planning

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## **1 Introduction**

- 1.1** This Code of Good Practice for Planning (the Planning Code) has been adopted by the Council to regulate the performance of its planning function.

The Planning Code has the following objectives:

- To guide members of the Council and officers in dealing with planning-related matters.
- To inform potential developers and members of the public generally of the standards and procedures adopted by the Council in the performance of its planning function.
- To preserve public confidence in the integrity of the planning system by ensuring that decision-making is open, transparent and fair to all parties and to ensure that there are no grounds for suggesting that a decision has been biased, partial or ill founded in any way.
- To minimise the prospect of legal or other challenge to planning decisions.

- 1.2** This Planning Code is not intended to form part of the Code of Conduct for Members (the Members' Code). It is a separate document and is intended to supplement the Members' Code by providing more detailed guidance on the standards applying to planning-related matters. The Members' Code must be applied before the Planning Code.

- 1.3** This Planning Code applies to the proceedings of the Council's Area Planning Committee meetings and the Strategic Planning Committee meetings (hereinafter referred to as Planning Committee) and to any other body of the Council making decisions on planning matters

- 1.4** Planning law requires Local Planning Authorities to determine all planning applications in accordance with the development plan unless material

considerations indicate otherwise. This responsibility must be performed without members being unduly influenced by any personal interest or other considerations irrelevant to planning.

- 1.5 Planning matters will be subject to close scrutiny both because large sums of money will be at stake for applicants for planning permission and because the quality of the built and natural environment in which local residents and the wider community live and work may be irrevocably affected.
- 1.6 It is essential that members of the Planning Committee do not give any commitment or impression of a commitment to any particular outcome for a planning matter prior to its consideration at Planning Committee. Planning decisions must be seen to be made impartially and without bias.
- 1.7 It is recognised that members will, from time to time, be approached by developers and objectors in relation to planning proposals. Part of this Planning Code is intended to assist members in dealing with such approaches and to ensure that the integrity of the decision-making process is preserved.
- 1.8 The Human Rights Act 1998 has implications for the planning system and has created enhanced requirements for procedural fairness, transparency and accountability in determining planning applications.

## **2. Probity in Planning**

- 2.1 Probity in planning is about ensuring that decisions on plan making and planning applications are undertaken, on behalf of communities, in a fair, impartial and transparent way.
- 2.2 In accordance with the Local Government Association guidance on Probity in Planning, Lead Members shall not also act as a Member of Planning Committee.
- 2.3 Serving Councillors and Officers (other than when they are acting for the Council) must not act as Agents for people pursuing planning matters within their authority, even if they are not involved in the decision making on them.

## **3. Declaring Interests**

- 3.1 Under the Members' Code, members must declare any personal interest in any matter being considered at a meeting, and must withdraw from the meeting if that personal interest is also prejudicial. The detailed rules on personal and prejudicial interests are set out in the Members Code, but the following paragraphs give a brief summary.
- 3.2 A personal interest is one that affects the well-being or financial position of a member more than the majority of other people in the relevant Council ward. Members will also have a personal interest in a matter if it affects their partner, relative, friend, close associate, or any organisation with which the member or any of these are connected, or relates to any interest which they must register under the Code of Conduct.
- 3.3 If a personal interest exists, then members must declare it and give brief details of its nature at the beginning of the meeting at which the issue is to be considered, or as soon as the interest becomes apparent.

- 3.4** Whether a personal interest is also a prejudicial interest is a matter of judgment for each member. The question they must ask themselves is: “Would a member of the public, aware of all the facts reasonably think that this interest was so important that my decision would be affected by it?” Members should remember that prejudicial interests can also arise when a matter affects their partners, relatives, friends or organisations with which the member or any of these are involved.
- 3.5** Members with a personal interest that is not prejudicial may remain in the meeting after declaring it, and take part in the debate and vote. If the personal interest is also prejudicial, members may **not** take part in the debate or vote. As permitted by the Members’ Code, they may make representations, give evidence or answer questions from the Planning Committee to the same extent as members of the public are permitted to do so (see Section 8 below), but must then leave the room before the debate begins. **Failure to do so could have serious consequences for the member and the Council: see Section 18 below**
- 3.6** The Localism Act 2011 places requirements on Members to notify the Monitoring Officer of or to disclose at the Planning Committee any Disclosable Pecuniary Interests (DPI) and prohibits participation in the business of the Council where a Member has such an interest. **The current list of DPIs is set out in the list attached to the Members Code.**
- 3.7** The requirement to notify the Monitoring officer of a DPI applies not only to a Member’s own interests but also to those of the member’s husband/wife or a person with whom the member is living as husband/wife or as if they were civil partners, if the member is aware that that person has an interest. In this Planning Code such a person is referred to as a ‘relevant person’.
- 3.8** Failure to so notify/disclose a DPI in the circumstances required by the Localism Act 2011 is a criminal offence. Therefore the requirements as to notification, disclosure and participation must be followed scrupulously and members should review their situation regularly. Whilst advice can be sought from the Monitoring Officer, ultimate responsibility for compliance rests with individual members.
- 3.9** A member may have a DPI in relation to a planning application in a number of circumstances affecting them or a relevant person. Examples include, but are not limited to;
- An application for development of a property owned or leased by the member or a relevant person
  - An application for development of land owned by the member’s employer or a relevant person’s employer
  - An application for development of a property which the member or a relevant person occupy by way of licence
- 3.10** Unless a member has received a dispensation he or she must not participate in a discussion or vote on any application in which he, she or a relevant person has a DPI.)
- 3.11** The Localism Act 2011 does not require the disclosure at a meeting of a DPI if the interest already appears on the Register. Members need to be cautious about pending notifications (where the Monitoring Officer has been notified but the register has not yet been updated). There is an ongoing legal obligation to disclose at meetings until the register has been updated and therefore, in cases of doubt the

member should disclose at the meeting. In any event members may voluntarily declare a DPI or other interest at a meeting, even when there is no obligation to do so.

- 3.12** Members must withdraw from the room at a meeting during a discussion or vote upon an issue in which they have a DPI. Failure to withdraw will not be a criminal offence but could potentially taint a planning decision and leave it susceptible to a challenge by way of judicial review.
- 3.13** Where a member of the Planning Committee has a DPI (either him/herself or through a relevant person) he or she may not participate in the debate or vote on the planning application. This applies where the member is wishing to speak as a member of the Planning Committee or ward member. However, as a private individual the member can speak and remain in the room but not take part in the debate.
- 3.14** Members with prejudicial interests and /or DPIs should not request that an application is referred to Committee.
- 3.15** Members may take part in decisions relating to land or premises in their wards, subject to complying with the rules in the Members' Code on personal and prejudicial interests. Members with DPIs must not take part in such decisions. If in doubt as to whether an interest should be declared in relation to any matter, members should take advice from the Council's Monitoring Officer or Head of Legal Services.

#### **4 The Integrity of the decision making process/Lobbying**

- 4.1** Lobbying is a normal and perfectly proper part of the planning process, and both applicants and objectors should have access to their representatives. However, to ensure that the integrity of the decision making process is not impaired, it is important that any representations made to members form part of the public information leading to any decision. If an approach is received by a member of the Planning Committee, from any interested party in relation to a current or proposed planning application, then the member shall:
- a) Inform that party that, in order to avoid accusations of partiality, he/she is only able to offer procedural advice and that they should either write to officers of the Council or write or speak to a member(s) who is not on the Planning Committee. However, members on the Planning Committee are quite free to listen to the views that the lobbyist wishes to express.
  - b) Where a member of the Planning Committee receives written representations directly in relation to a planning application, (or proposed planning application) the member should pass a copy of the correspondence to the application Case Officer and the email address in order that those representations can be included in the officer's report to the Planning Committee.
- 4.2** Lobbying is likely to involve ward members or other members of the Council who are perceived as being interested in or having an influence over the proposal, as well as members of the Planning Committee. Ward members (and other members) who are not members of the Planning Committee are in a different position to that of members of the Planning Committee. Ward Members have a very important function in representing the interests of their area or constituents who are affected by a planning proposal. If they are not on the Planning Committee, there is no reason why they should not have a view on planning proposals which are currently under consideration by the Council and make those views known, providing they do not

attempt to exert any improper influence over Planning Committee members or officers.

- 4.3** Ward members who are on the Planning Committee must remain impartial and keep an open mind about all applications coming before the Planning Committee until the meeting when the application is to be decided. Members of the Planning Committee have a legal duty in making planning decisions to take all the evidence and arguments into account, not to commit themselves to a fixed or final view before hearing these, and not to favour any particular person, group or locality (or appear to do so). The Local Government Association advises that “**councillors who do not feel that they can act in this way should consider whether they are best suited to serve on a planning committee**”. Failure to comply with this duty may result in planning decisions made by the Council being quashed by the courts on the grounds of predetermination or bias. It can also damage the public perception of the impartiality and integrity of the planning process.
- 4.4** Members of the Planning Committee who wish to take part in a planning decision should not therefore do anything that gives the impression that they have come to a final view before the Planning Committee meeting, such as making a firm view public, or organising support for or opposition to a planning application, or lobbying other members. It is perfectly proper for members to have a “predisposition” in favour of or against a particular proposal before it is discussed at Planning Committee. It would be unrealistic to expect them to be totally neutral in all cases, and the law does not require this. What is important is that members do not close their mind to further evidence or arguments which may be put forward. Members of the Planning Committee or ward members should also not put pressure on officers for a particular recommendation. This does not preclude members from seeking information or clarification from officers about a planning application.
- 4.5** Members of the Planning Committee who represent a ward affected by an application may be in a difficult position if it is a controversial matter attracting much lobbying, or on which they have strong personal views. In this situation, a member is perfectly free to choose to support one side or the other, to make their views known and to organise lobbying. **However, a member who makes this choice must not take part in the actual making of the decision.** When the matter comes before the Planning Committee, s/he will be entitled to make representations, but should not then take any part in the debate or vote
- 4.6** If a member leads, represents or is a member of a group whose primary purpose is to lobby to promote or oppose a particular development, he or she will be considered to have predetermined an application relating to that development. However the position is different for membership of general interest groups e. g. English Heritage, RSPB etc. In this case if that organisation has made representations on an application but the member has not been involved in preparing the representations he or she will not have predetermined merely due to that membership.
- 4.7** The Localism Act 2011 provided some further clarification in that a member will NOT be considered to be pre-determined;
- By just listening to viewpoints from residents or interested parties
  - By making comments which fall short of prejudging the issue
  - By seeking information through the appropriate channels

- By acting as a vehicle for the expression or views as a ward member providing he or she has not committed to vote in accordance with those views or that he or she is not acting as an advocate for a particular viewpoint.

**4.8** In the interests of public participation and involvement, it can be helpful if members involved in the determination of planning applications attend public meetings in relation to planning matters which are under consideration. It is, however, important to ensure that they make clear their position at the outset of the meeting so that there can be no question of misunderstanding or undue influence. Members should identify themselves as being members of the Planning Committee dealing with the application, and make it clear that they are happy to hear views expressed by the public, whether for or against the proposal, but are unable to reach or express any view on the merits or otherwise of the proposal at that stage. Members of the public attending meetings should be advised to contact the relevant officer with their views so that these can be included in the officer's report.

**4.9** As no decision on a planning application should be made before the Planning Committee meeting, when all available information is to hand and has been duly considered, any political group meeting prior to the Planning Committee meeting should not be used to decide how members should vote, whether this is for or against an officer's recommendation. Members must be free to take decisions based on relevant planning considerations only, and any use of a political whip to influence voting may amount to maladministration.

## **5. Discussions with developers**

**5.1** Discussion between developers or an applicant for planning permission and the Council, either prior to the submission of an application or during the consideration process of the application, can be of considerable benefit to both parties and is generally encouraged as assisting the planning process. However, it would be easy for such discussions to become or be seen (especially by objectors) to become part of a lobbying process. Any involvement of members in discussions with developers or applicants should therefore only take place as part of structured arrangements agreed with officers, and the advice given in Sections 3 and 5 should always be borne in mind.

**5.2** The following guidance given by the Local Government Association and the Planning Officers' Society should be followed in relation to such discussions:

- Presentations by applicants should be limited to the development proposal and a question and answer session on factual matters. Where appropriate, they may take place on site or incorporate a site visit.
- To promote transparency of the planning process, the public will be invited to attend developer presentations wherever practicable.
- Members must maintain an impartial listening role and avoid expressing an opinion or giving advice beyond outlining local policies, although questions may be asked to clarify aspects of a proposal and policy concerns may be raised. The chair or officer should explain this role at the outset of the meeting.
- The discussions should not develop into negotiations and it must be made clear that they are not part of the determination process.
- Officers of appropriate seniority (where resources permit) should attend the meeting, and written notes should be kept.

- For major or contentious applications, the involvement of members should be authorised by the Planning Committee and recorded in any subsequent committee report.
- Members should not seek to influence officers or pressure them to support a particular course of action.
- The Council should set out in advance how it will deal with any commercially sensitive or confidential information, bearing in mind the requirements of the Freedom of Information Act and the need for transparency.

**5.3** To minimise the risks of predetermination in championing their communities, members are encouraged to promote any community aspirations involving sites, land or community benefits from development, or other planning issues through the Local Plan or Neighbourhood Plan preparation at the earliest opportunity.

## **6. Predetermination and Bias**

**6.1** Members must also be aware of and act within the rules on predetermination and bias. Avoidance of bias or predetermination is a principle of natural justice which has evolved through the courts, although section 25 of the Localism Act 2011 is also relevant. Even if a member does not have a DPI or is not acting in breach of the Members' Code he or she may cause a decision to be invalid if he or she participates while predetermined or biased. The rules regarding predetermination or bias are likely to be more strictly applied where the Council is making 'quasi-judicial' decisions, such as the determination of a planning application, than in other decisions to be made by the Council.

**6.2** The basic legal position is that a member should not take part in making a decision on a planning matter if he or she is biased or has predetermined the matter. Members should bring an unbiased, properly directed mind to the consideration of any matters before them at the Planning Committee. This does not mean that members are not entitled to have and to express opinions about general planning matters, or planning cases. However they must approach, and must be seen to approach, matters before them with an open mind.

**6.3** In this respect a distinction is to be drawn between those members who are making the decision (speaking and voting as part of the Planning Committee) and those members seeking merely to influence the decision (i.e. making representations as a ward member). The prohibition in respect of predetermination or bias only affects those actually making the decision. A member who has predetermined or who is biased may still speak as a ward member (provided he or she does not also have a DPI).

## **7. Predetermination and Predisposition**

- 7.1** The law also makes a distinction between predetermination, which rules out participation in decision making and predisposition, which does not.
- 7.2** A member is entitled to have and express views on local matters, both general planning matters and more specific applications. These views may indicate that a member has a predisposition towards a particular policy or viewpoint. This is perfectly acceptable and a member with a predisposition may take part in the decision-making.
- 7.3** A predisposition will move on to become predetermination if, in relation to any matter before the Planning Committee, a member has taken a stance which indicates that he or she has finally closed his or her mind on the matter and that nothing he or she hears at the Planning Committee will alter his or her position.
- 7.4**
- 7.5** There is an acceptance that a member may legitimately consider matters in certain capacities as different factors may apply to different decisions. Where premises require planning permission and a license, members may be asked to sit on both planning and licensing Planning Committees. While the statutory regimes in such cases are different, often the factors to be taken into account can be similar. In these circumstances members should carefully consider whether anything they have done or said in making the earlier decision would demonstrate a predetermination of the second decision. If that is the case the member should not take part in the decision making at the second Planning Committee.

## **8 Bias**

- 8.1** A member should not be party to decisions in which he is actually biased or gives the appearance of being biased to the reasonable observer. The test for the appearance of bias is whether a fair minded and informed observer, having considered the facts, would conclude there was a possibility that the decision maker was biased. The common ground for this test, in deciding whether the decision of the Planning Committee is vitiated was stated by Lord Hope in *Porter v Magill* (2001) UKHL 68.
- 8.2** There is an earlier line of authorities which identify situations in which a Judge or other decision maker whose activities are governed by Public Law is automatically disqualified on grounds of apparent bias. This is so where a decision maker is party to a decision, the paradigm instance of *nemo iudex in causa sua* principle.
- 8.2** Bias may arise by virtue of a member being closely connected with a person who has a vested interest either the applicant or an objector. This may result from a personal connection, such as the applicant being a relative or friend, or result from the member espousing a particular viewpoint (e.g. being part of a lobby group). The role of the Planning Committee is to consider applications in accordance with the legislation and to balance the interests of persons with competing views and this may not be possible where a member is closely connected with a particular party.
- 8.3** In addition, circumstances which raise the possibility of bias may also lead to an accusation of a breach of the Members' Code, as the Members' Code states that members should act solely in the public interest and not do so in order to gain



financial or other material benefits for themselves, their family or friends. Where this might occur, members should not take part in the decision making.

## **9. Section 25 of the Localism Act 2011**

Section 25(2) of the Localism Act 2011 provides that a decision maker is not to be taken to have had, or to have appeared to have had, a closed mind when making a decision just because –

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

The section makes it clear that if a councillor has given a view on an issue, this, considered in isolation, does not show that the councillor has a closed mind on that issue. So, the mere fact that a councillor has campaigned on an issue or made public statements about their approach to an item of council business does not prevent that councillor from being able to participate in discussion of that issue and to vote on it.

Having said this, the use of the words 'just because' in section 25 suggest that other factors when combined with statements made etc. can still give rise to accusations of predetermination. This has also been the approach that the courts have taken to this issue. When considering whether predetermination has taken place they will consider all events leading to the decision, (and also, where appropriate, those following the decision) rather than looking at individual events in isolation.

The case law has also made it clear that the words used by particular members and the interpretation put on those words is of particular importance. So care still needs to be taken when making statements in advance of the determination of planning applications as there is a risk that they can be misinterpreted or taken out of context.

### **Guidance**

With this in mind;

- It is always advisable to avoid giving the impression that you have made up your mind prior to the decision making meeting and hearing the officer's presentation and any representations made on behalf of the applicant and any objectors.
- With this in mind, if you do comment on a development proposal in advance the decision, consider using a form of words that makes it clear that you have yet to make up your mind and will only do so at the appropriate time and in the light of the advice and material put before you and having regard to the discussion and debate in the Panel meeting.
- Particular care should be taken where there are chance encounters with objectors to development proposals or in the context of meetings which are not formally minuted. These are situations where the risk of what you say being misrepresented or taken out of context is particularly high.

## **10. Dual-hatted Members**

- 10.1** Where a Member is a member of the Planning Committee and is also a parish or town councillor, caution needs to be exercised in considering matters at the

parish/town council stage. This is because of the member's additional responsibility as a member of the Planning Committee charged with making a decision on the planning application. It is important to bear in mind that parish/town councils are consultees in the planning process and may be asked for their comments on an application at a time when not all the relevant material planning considerations have become known and the full implications of an application investigated. Members should therefore:

- at the parish/town level, make it clear that they will reconsider the matter at the district level, taking into account all relevant evidence and representations at the district tier; strong opposition to or support of an application at the parish or town council meeting would indicate that a dual hatted member had predetermined and therefore debar the member from voting at the Planning Committee
- At the district level, declare a personal interest arising from their membership of the parish/town council, and make it clear that the council's view does not bind them and that they are considering the matter afresh.
- Be mindful that if a planning application significantly affects the parish or town council (e.g. the parish or town council is the applicant or the application affects land owned outright by the parish or town council) it is likely that a fair minded observer might consider the Councillor to be biased as a result of his/her membership of the parish or town council and therefore in those circumstances a dual hatted member should not take part or vote on such an application.

**10.2** The same procedures should be followed by members of the Planning Committee who sit on any other body, which is considering an issue which may subsequently come before the Planning Committee. Members may decide that in some circumstances it would be inappropriate for them to participate in the vote that decides the consultative body's comments and views on an application. A member's expertise as a member of the Planning Committee can sometimes be put to best use in advising and guiding other bodies on which they sit on the planning issues that arise from the application. When the application comes to be decided by the Planning Committee, the views of the parish/town council or other consultative body will be one of the material considerations to be considered and taken into account.

**10.3** Ward members who make representations on a planning application and who also sit on the Planning Committee should ensure that any comments which they make do not give the impression that they have formed a final view on the application by that stage. Members should keep an open mind until the matter comes before the Planning Committee, and take all relevant considerations into account before making their decision.

**10.4** Subject to the guidance listed in [para 2.2](#) above there may be circumstances where a member of the Planning Committee who is also a member of the Council's executive is so closely involved with a proposal coming before the Planning Committee that s/he may not be seen as impartial in relation to the planning decision. This may occur, for example, if the member concerned is committed to the development as a result of his/her responsibilities for furthering the development of the area, and is effectively acting as an advocate for that development. In these circumstances, the member concerned may argue for the development, but should not take part in the debate or vote at the relevant Planning Committee meeting. If in doubt, advice should be taken from the Council's Monitoring Officer.

## **11. Applications by Members, Officers and the Council, Delegation to Officers and Exceptions to Delegated Powers**

**11.1** In the event that an application is brought to Planning Committee for probity reasons, members of the Planning Committee will need to consider whether they should declare any personal or prejudicial interest in applications in which other members of the Council or officers are involved. This will normally only be necessary if the member or officer concerned is a "close associate", as that term is used in the Members' Code of Conduct. If in doubt, advice should be taken from the Monitoring Officer or Head of Legal Services.

**11.2** Proposals where the Council is the applicant (or a development involving the Council and another party) should be treated in the same way as those by private developers, in accordance with the relevant Town and Country Planning Regulations and government guidance.

**11.3** The same procedures also apply to private applications in respect of Council owned land (e.g. prior to a land sale being agreed or negotiated). Decisions must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Council if the development is permitted. It is important that the Council is seen to be treating such applications on an equal footing with all other applications, as well as actually doing so.

## **12 Members and decision making**

**12.1** Members are required to arrive at a decision on granting or refusing permission, and in determining planning applications, members are required to have regard to the development plan and to any other relevant material considerations. To this end, the reports of officers to members must be accurate and cover all relevant points. These reports:

- a) Should contain a section on the relevance of the development plan, a description of the site and any related planning history with all other relevant material considerations outlined.
- b) Should deal with the substance of any objections or support received and the views of people who have been consulted or notified.
- c) Should incorporate a recommendation for the consideration of members; oral reporting (except to introduce a report or update it) should be extremely rare and carefully minuted when it does occur.
- d) Should contain a technical planning appraisal which clearly justifies the stated recommendation.
- e) If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify this must be clearly stated.

**12.2** Members of Planning Committee must also;

- Come to meetings with an open mind and demonstrate they are open minded.
- Have a duty to take into account any representations made to the Council as a result of the publicity and consultation process for the application. In doing so, it is necessary to decide which representations are material to the decision to

be made, and if so, what weight to attach to them. This conclusion should not be reached until all the facts have been presented in the officer's report to the Planning Committee.

- Request further information if it is felt there is insufficient information before the Planning Committee to reach a decision,
- When making a decision contrary to the officer recommendation, identify the planning reasons behind the decision before the vote is taken, which may need to be justified in the event of an appeal or other challenge. In the event of a proposal to grant planning permission contrary to officer recommendation, Members must propose and the Committee must approve relevant conditions and reasons for conditions to be attached to the planning permission. The detailed compilation and attachment of relevant conditions and reasons can be delegated to officers in consultation with the Chair. If members are unable to do this immediately, they should request an adjournment or a deferral in order to seek advice and/or formulate the reasons/conditions.

### **13 Training**

**13.1** To ensure that correct procedures are followed and proper planning considerations are employed in decision making, members of the Planning Committee will receive training on planning functions as soon as possible after appointment to the Planning Committee. The Council's Executive Lead Member responsible for planning will also receive the same training as soon as possible after appointment.

**13.2** Under the Council's Constitution, Members may not take part in planning decisions unless they have first received appropriate training on planning functions. Additional training as considered necessary from time to time by the Service Director – Economy, Employment and Planning or Monitoring Officer, should also be attended by all members of the Planning Committee.

**13.3** Refresher training, updates, and more detailed training on specific issues will also be provided, and should be taken up by all Planning Committee members.

### **14 Complaints and Record Keeping**

**14.1** Whatever procedures the Council operates, it is likely that complaints will be made. In order that any complaints can be fully investigated, record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. Every planning application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings or significant telephone conversations.

**14.2** The same principles of good record keeping will be observed in relation to all other planning matters. Monitoring of record keeping will be undertaken on a continuous basis by the Service Director Planning and Environment.

### **15 Role of Officers**

**15.1** An officer's function is to advise members on all matters of development management procedures and considerations, including planning policy, in their determination of planning and related applications by:

- a) Providing impartial and professional advice which is properly recorded.

- b) Making sure that all the necessary information is available for a decision to be made.
- c) Providing a clear and sufficient analysis of the issues including development plan policies and all other material considerations.
- d) Giving a clear recommendation.
- e) Carrying out the decisions made by members at meetings of the Planning Committee.

Officers who are members of the Royal Town Planning Institute are governed by the Royal Town Planning Institute Code of Professional Conduct which states that RTPI members shall not make or subscribe to any statements or reports which are contrary to their own professional opinions. Officers who are not members of the RTPI should aim to adhere to the same principles of conduct.

**15.2** Officers shall also comply with the following:

- a) Informal pre-application advice will be given (where appropriate for a reasonable fee as set out in the published schedule of charges) to prospective applicants prior to submitting an application. Advice will reflect adopted policies within the Development Plan.
- b) Where considered necessary a site visit will be carried out.
- c) Officers will endeavour to deal with, and determine applications in accordance with published service standards.
- d) All applications will be considered by at least two officers, i.e. the case officer plus a senior officer who will authorise the final decision unless internal procedures state otherwise.
- e) In all dealings with applicants, agents, and the public officers should maintain a courteous and professional relationship adhering to the Council's policies and officer codes ensuring that all parties are treated fairly and respecting people's rights.
- f) When an application is submitted by an officer involved in the planning process the officer shall highlight this on the application forms and make the Case Officer aware at the earliest opportunity. Such applications shall be determined in accordance with **Appendix K of the Constitution**.
- g) Where an officer involved in the planning process has a close personal relationship with any applicant, agent or organisation that could lead to a third party suggestion of bias, the officer will inform the Service Director Planning and Environment and Monitoring Officer in writing and take no part in processing or determining the application.
- h) Officers should not, under any circumstances, accept gifts or hospitality beyond simple basic refreshment where necessary or unavoidable. If, however, a degree of hospitality is unavoidable, it should be ensured that this is of the minimum. All gifts and hospitality beyond simple basic refreshment should be declared to the Monitoring Officer for entry in the Council Register of Gifts and Hospitality.

## **16 Planning Decisions Contrary to Officer Recommendation and/or Development Plan**

**16.1** The law requires that planning decisions should be made in accordance with the development plan unless material considerations indicate otherwise.

**16.2** In discussing and then determining a planning application, members should confine themselves to the planning merits of the case and the reasons for making a final decision should be clear and convincing and supported by planning evidence. All decisions must be founded on material planning reasons and there must be planning evidence to substantiate them.

**16.3** There is no reason in law why a Planning Committee may not make a decision contrary to the officer's recommendation, whether it is for approval or refusal. Nevertheless, the law does require that in the case of refusals of planning permission, detailed reasons are given, and it is important that where members have made a decision contrary to an officer's recommendations, the reasons for the decision should be made clear. In such a situation, therefore, whether the decision by members is to approve or refuse permission, the planning reasons should be clearly minuted, together with the evidence to substantiate them.

## **17 Consequences of Failure to Comply with the Planning Code**

**17.1** This Planning Code, together with the provisions of the Members' Code sets out the standards that the Council will operate in dealing with planning applications. Members and officers should be aware that failure to comply with this Planning Code or the Members' may have legal consequences.

**17.2** These include:

- a) A complaint to the Monitoring officer, and a subsequent investigation if informal resolution is not possible, which may result in a member being censured.
- b) An investigation by the Ombudsman if complaints are received about the manner in which a planning application is dealt with. In determining whether or not there has been maladministration the test that is currently used is that members must "at all times avoid any occasion for suspicion and any appearance of improper conduct" and must not allow "the impression to be created that (the Member) is or may be using his position to promote a private or personal interest". Individuals involved may be named, and the Council may be found guilty of maladministration and recommended to compensate the claimant.
- c). Appeal to the Secretary of State. As well as granting planning permission s/he can award costs against the Council if it has acted unreasonably – for example, bias has been present or the decision has been taken for non-planning reasons.
- d). Court action (judicial review) to quash a planning decision, which may succeed if bias or apparent bias was present, or if it is demonstrated that a decision was taken for non-planning reasons or material considerations were ignored. Procedural errors may also have this result if any party was prejudiced. Costs will be awarded against the Council which will have to re-determine the application correctly.

- e) A Human Rights challenge where the potential level of damages awarded for a breach is unlimited.