

## **PLANNING CODE**

### **Introduction**

1. The purpose of this Code is to give clear guidance to all councillors about how they should carry out their duties in relation to planning and development proposals to ensure openness, impartiality, transparency and consistency in planning decisions.
2. This Planning Code should be read in conjunction with the Members Code of Conduct and the Planning in Probity Guidance issued by the LGA.

### **General Role of Councillors**

3. Councillors have a special duty to their ward constituents, including those who did not vote for them, but their overriding duty is to the whole community.
4. Whilst representing their constituents on planning issues and taking account of their views, councillors must make their decision within the statutory planning framework and base these on material planning considerations and what they believe is best for the Borough as a whole. A councillor is not under any obligation to represent a resident on a specific planning application if, in the opinion of the councillor, there are no issues which have wider significance for the neighbourhood, ward or Borough as a whole.
5. Planning decisions cannot be made on a party-political basis in response to any lobbying.

### **General Role of Staff**

6. Staff are responsible to the Council as a whole. They must always act openly and impartially and provide consistent professional advice based on the statutory planning framework, planning policies and procedures, ensuring councillors are aware of all relevant material planning considerations before decisions are made.

### **Codes of Conduct**

7. Both councillors and staff are required to observe codes of conduct and statutory provisions the aim of which is to ensure the integrity of the Council and individual councillors. These codes and procedures require the open disclosure of any pecuniary, non-pecuniary and conflict of interests in matters being considered by the Council or its committees. Councillors and staff are also advised not to accept any gifts or hospitality, which might reasonably be considered to influence their judgement and to record any they do accept in the registers maintained for the purpose. Planning decisions in particular can affect the daily lives of everyone and it is important to ensure there can be no justifiable grounds for suggesting a decision has been biased or influenced in any way.
8. Training and guidance on the Code of Conduct for Members on the declaration of interests, is provided to all councillors by the Council's Monitoring Officer. Members of the Planning Committee must be particularly careful to ensure that they are familiar with this. It is the personal responsibility of individual

councillors to ensure they comply with the code and make all appropriate declarations at Planning Committee. If in any doubt they should seek advice from the Monitoring Officer or the solicitor to the Planning Committee, before the commencement of any meeting, or as soon as possible if it arises during the course of a meeting. Staff with an interest in property in the vicinity of an application or any relationship to an applicant, should disclose this to the Planning Development Manager, who will record the interest and make appropriate arrangements for the handling and supervision of the application to avoid any perception of a conflict of interest.

### **Lobbying of and by Councillors**

9. Lobbying of councillors for or against proposals is a normal part of the planning process. The rules of natural justice mean that planning applications should be determined in an open and fair manner and taking account of relevant information and arguments. It is only at Planning Committee meetings that councillors will have, and be able to consider, all the relevant information and arguments about an application before making a decision.
10. Councillors should feel free to engage in free and frank discussion about all aspects of planning applications in advance of the Committee. Councillors may have strong views on a proposed decision, and may have expressed those views in public, and still participate in a decision. However, it is important to maintain the integrity of individual councillors and the Council as a whole that Members of the Planning Committee should:-
  - a) if lobbied, explain that, whilst they can listen to what is said, they cannot indicate before the relevant Committee meeting which way they intend to vote as it would prejudice their impartiality;
  - b) preface any discussion on a planning application to make it clear from the outset that discussions are not binding and they will only be able to make a final decision at the Committee after hearing all relevant information and arguments;
  - c) declare at the Committee meeting, any contact they have had with applicants or objectors;
  - d) advise Planning Officers of letters/personal lobbying in relation to applications so the issues raised can be taken into account in the professional advice given to the Planning Committee.
  - e) abide by the guidance in this Code with relation to site visits;
  - f) not organise support or opposition to any planning application, lobby other councillors or put pressure on staff for a particular recommendation because this might remove them from the decision-making process.
11. Councillors are encouraged to be responsive to all residents about planning matters. Frequently, applications are daunting for residents who need advice and support about the issues which they raise. All councillors are able to have discussions with residents about planning applications even if that councillor is on Planning Committee.

### **Declarations of interest**

12. If a councillor has received advice from the Monitoring Officer with regard to a declaration: a Disclosable pecuniary interest, non-pecuniary or conflict of interest, then they may disclose the fact that such advice has been given at the time when the declaration or interest is disclosed.

### **Predetermination and Predisposition**

#### **Predisposition**

13. Predisposition is lawful. Councillors may have strong views on a proposed decision, and may have expressed those views in public, and still participate in a decision. The key issue is that the councillor ensures that their predisposition does not prevent them from consideration of all the other factors that are relevant to a decision, such as committee reports, supporting documents and the views of objectors. In other words, the councillor retains an “open mind”.
14. Section 25 of the Localism Act 2011 confirms this position by providing that a decision will not be unlawful because of an allegation of bias or predetermination “just because” a councillor has done anything that would indicate what view they may take in relation to a matter relevant to a decision. However, if a councillor has done something more than indicate a view on a decision, this may be unlawful bias or predetermination so it is important that advice is sought from the Monitoring Officer where this may be the case.

#### **Pre-determination / Bias**

15. Predetermination and bias are unlawful and can make a decision unlawful. Predetermination means having a “closed mind”. In other words, a councillor has made his/her mind up on a decision before considering or hearing all the relevant evidence.
16. Bias can also arise from a councillor’s relationships or interests, as well as their state of mind. The Code of Conduct’s requirement to declare interests and withdraw from meetings prevents most obvious forms of bias, e.g. not deciding your own planning application.
17. However, councillors may also consider that a “non-pecuniary interest” or Conflict of Interest under the Code of Conduct also gives rise to a risk of what is called apparent bias. The legal test is: “whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Committee was biased”. A fair-minded observer takes an objective and balanced view of the situation but councillors who think that they have a relationship or interest that may raise a possibility of bias, should seek advice.
18. In the case of applications for development of land in which the Council has an interest, it is particularly important for councillors to avoid the appearance of bias. A councillor who has participated in any decision-making for Council owned developments at either Corporate Policy and Resources Committee, Commercial Assets Sub-Committee or Development Sub Committee, should not participate in any decision making on those developments at Planning Committee, whether attending as a member or substitute member of the

Committee. Likewise, a councillor appointed as a Director to Knowle Green Estates Ltd should not participate in any decision making on Council owned developments at Planning Committee. This does not prohibit a ward councillor from representing the views of their constituents at a Planning Committee meeting, in accordance with paragraph 31. below.

19. Members of the Planning Committee should bear in mind that it would not be appropriate to call-in an application, for consideration by the whole committee if they have already predetermined the matter themselves.

### **Meetings and pre-application discussions**

20. Planning staff frequently hold meetings or have correspondence with applicants to give pre-application advice on their development ideas. Such advice will cover general planning policy applicable to a site, technical design and other requirements and the likelihood of a development being acceptable. Such pre-application advice is given on a confidential basis so as to encourage early contact with the Council which can assist in better planning proposals coming forward or ideas which have no prospect of being acceptable being abandoned at an early stage.
21. These meetings or exchanges of correspondence are part of the normal planning process but are, and must be clearly stated to be, without prejudice to the professional recommendation of Planning officers to the Committee and the decision of the Committee when all information is before it.
22. All applicants are encouraged to carry out pre-application consultation with neighbours to try and resolve issues at an early stage. For larger schemes this may be a more formal public consultation. Where councillors attend such pre-application consultation meetings run by the applicant they should abide by the guidance in this Code. The expectation is that where councillors are invited to attend that the applicant invites all ward councillors.
23. It is important that councillors do not give views to potential applicants either through pre-application consultations or other meetings that could be interpreted by them as giving planning advice and in turn taken as implied support for a proposal if those views are then followed.
24. If a councillor wishes to arrange a meeting with planning staff for themselves and a small number of constituents about a planning application this will be arranged at the Council Offices. If requested to do so staff will try to attend meetings arranged by councillors with their constituents away from Knowle Green provided all ward councillors are invited to attend.
25. If attending public meetings arranged by local groups about a planning proposal the principles outlined above should be followed and, councillors of the Planning Committee should try to maintain an impartial role, listening to what is said but not expressing any opinion which could be construed as a final or fixed position. Planning Officers will not normally attend public meetings unless their attendance has been agreed by the Planning Development Manager and representatives of both the applicant and objector are given the opportunity to be present. Ward Councillors and the Chairman of the Planning Committee will be advised of any public meeting in relation to a planning issue or which Planning Officers have agreed to attend.

### **Presentations on Likely Major Development Proposals**

26. For large or complex schemes the Council may arrange appropriate presentations to councillors by the applicant. This is seen as beneficial to inform councillors at an early stage and to encourage pre-application discussion and free flow of information on what are often complex or controversial issues. The Council itself will also organise presentations to keep councillors informed generally on matters which appear to have or are likely to have strategic importance for the Borough. The Planning Development Manager may also organise technical briefings on major developments at which developers may be present. At any such presentations councillors should abide by the guidance in this Code, listening to presentations, raising concerns and questions, debating the issues but not coming to fixed or final positions in advance of the full debate at Planning Committee.

### **Site Visits**

27. Formal site visits by the Planning Committee are rare because of the amount of material, including plans and photographs submitted with planning applications included in the Planning Committee agenda and presented at Planning Committee. Where they do occur, they must be undertaken in accordance with the guidelines attached at **Appendix 'A'**. The necessity for such a visit will be agreed between the Chairman of the Committee and the Planning Development Manager in advance. Ward Councillors who are not members of the Committee will be advised of any site visit and invited to attend. Members of the Planning Committee will often wish to make informal visits to an application site prior to Planning Committee to familiarise themselves with the context of the proposal. Such visits are encouraged. Please note that councillors have no right of entry to the application site. Provided that no other persons are present then councillors do not need to declare such a visit at Planning Committee. If other people are present at the site visit (e.g. applicant or objector) then councillors should have regard to the advice in paragraph 7 (lobbying) and are advised to declare such a visit at Committee before consideration of the item.

### **Planning Officer Reports to Committee**

28. All matters requiring a decision by the Planning Committee must be the subject of a written report from Planning Officers which will give an accurate summary of all relevant planning issues. In particular it should include a clear outline of the site history, the relevant development plan policies, the response of consultees and the substance of objections. The report will include a clear recommendation with a technical appraisal justifying it. Any objections or other relevant issues arising after the report is printed will be reported verbally to the Committee at its meeting.

### **Procedure at Committee Meetings**

29. Applicants and objectors will be able to address the Planning Committee in accordance with the protocol attached at **Appendix 'B'**. Further information on how to ask to speak at the Committee and the issues that can be covered are set out in the Planning pages of the Council's website.

30. Where there are major applications which require special consideration because of the large number of people wishing to speak, then the Chairman may, in their discretion, make provision for public speaking rights in excess of the usual procedure. The Chairman will be guided by the need to ensure overall fairness in the proceedings within the constraints of the time allowed in the meeting.
31. Where councillors who are not members of the Planning Committee have indicated to the Chairman, prior to a Committee meeting, their wish to speak on a matter in their ward being considered at the Committee, they will be entitled to speak immediately after representatives of the applicant and/or objectors have addressed the Committee. Non-members of the Committee should comply with the procedure for declaration of interests and contact with the applicant or objectors if they attend and speak at a Committee meeting in the same way as members of the Committee.

Ward councillors may wish to address Planning Committee on:

- Applications which have caused interest amongst large numbers of residents of the Ward
- Applications which have significance for the character, facilities or environment of the Ward.

Ward Councillors should not usually seek to address Planning Committee on:

- Matters which are the subject of a dispute between two residents of the Ward
- Matters which reflect the concerns of one resident only, unless there is some reason why the resident is not able to speak for himself at the Planning Committee.

### **Call-in procedure**

32. Councillors must take the following into account before 'calling-in' a planning application for consideration by the Planning Committee:
- a) Subject to the terms of reference of the Planning Committee and these rules a planning application other than those identified in the weekly Planning Publicity Schedule can be called in by a Councillor for determination by the Committee;
  - b) A councillor may only call-in an application which is in their ward. If the councillor considers that there is a matter of public interest arising in an application situated in another ward, then early contact should be made with the relevant ward councillors;
  - c) The guiding principle of 'Call-In' is that there is a material planning concern, in the application being considered by the Committee. The decision to refer an application to the Planning Committee rests with the Planning Development Manager.
  - d) Prior to a councillor calling in an application, he/she must inspect the submitted plans and is advised to discuss the application with the relevant case/planning officer.

- e) The 'call-in' will be activated by an email to the Planning Development Manager **and** the case officer which must give a material planning reason why it should be determined by the Committee;
- f) The email must be received by Planning Officers no later than one day after the end of the public consultation period for that application. The date of which is set out on the weekly Publicity Schedule in which it was publicised;
- g) The Committee report will identify the councillor who called in the application along with the reason given;
- h) Councillors who 'call-in' an application are expected to attend and speak at the Planning Committee setting out their concerns and issues. This will inform the general debate of the committee;
- i) If a councillor is unable to attend for any reason, they should send a statement to the Chairman setting out their issues and concerns so that they can be read out at the committee meeting.
- j) Where the councillor who 'Called-in' an application is a member of the Planning Committee, that councillor will be given three- minutes to speak following the public speakers and may then speak again as a member of the Committee during its debate on the item.

### **Decision Making**

- 33. A decision on a planning application cannot occur before the Committee meeting when all available information is to hand. All councillors should bear in mind the need to keep an open mind about all the available evidence on a planning application.
- 34. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. If the Planning Officer's report recommends a departure from the development plan the justification for this must be included in the report.
- 35. Decisions must be made on planning merits and the reasons for making a decision should be clear and supported by material planning considerations. The reasons for refusing an application should always be minuted as should any conditions attached to an approval.
- 36. Members are reminded that the Planning Committee meeting is held in public and should therefore ensure that the seven principles of public life are observed.
- 37. Members of the Planning Committee who require information which is not contained within the Planning Committee report should submit a request in writing to the Planning Development Manager at least one working day before the Planning Committee meeting.
- 38. The purpose of the Planning Committee meeting is to fully explore all relevant matters and concerns of councillors pertaining to an application before a decision is made. Councillors should prepare in advance of the meeting.
- 39. Where a councillor decides to vote against a recommendation, this should only arise once:

- (a) The concerns have been articulated by the councillor to allow other members of the Committee to comment on them and officers to advise on them; or
  - (b) Where another member has spoken in the debate and articulated those concerns and the councillor concerned has indicated that they are of the same mind as that councillor.
40. If the Committee wishes to make a decision contrary to the Planning Officers' advice, a member of Planning staff present at the meeting should be given the opportunity to explain the implications of such a decision. If the Committee wish to refuse an application the reasons for doing so must be clear, cogent and comprehensive. They must also be based on planning policies and provide a clear account of members' rationale for not accepting the Officer recommendation. Similarly, any additional planning conditions must be properly justified and expressed. The decision and reasons for it as agreed by the Committee must be minuted.
41. Members of the Planning Committee who are minded to propose an outcome against Planning Officer advice should first seek advice from the Planning Development Manager prior to the application being determined at a Planning Committee, at least one working day before the Planning Committee meeting. Any motion contrary to Planning Officer advice must be formulated in writing with material planning reasons. Councillors should be prepared to explain in full their material planning reasons for not agreeing with the Planning Officer's recommendation prior to making any decision. Councillors should not rely on staff to produce the material planning reasons for their motion at the meeting.

### **Applications Submitted by Councillors, Staff or the Council**

#### **Determination of applications**

42. Subject to paragraph 43, any planning application made by a councillor, member of staff or the Council itself should be determined by the Planning Committee and not by the Planning Development Manager under delegated powers.
43. In the case of applications made by a councillor, a member of staff or the Council itself which do not relate to planning merits but are:
- 1. a legal determination as to whether permission is required, or
  - 2. forms of notification to the Council including that 'permitted development' is proposed under 'prior approval' procedures.

The Planning Development Manager will determine the application after discussion with the Chairman of the Planning Committee or, if unavailable, the Vice Chairman.

#### **Applications submitted by the Council**

44. Proposals for a Council's own development can give rise to suspicions of impropriety. It is perfectly legitimate for such proposals to be submitted to and determined by the Planning Committee. Proposals for a Council's own development will be treated no differently from any other application.
45. Certain councillors may, through their other roles outside of a Planning Committee (e.g. a member of Corporate Policy and Resources Committee, Development Sub-Committee or Commercial Assets Sub-Committee), have

been heavily committed to or involved in a Council's own development proposal. In such circumstances, when an item comes to be considered at the Planning Committee, the councillor concerned, if they sit on the Committee, must consider whether they have an interest or degree of involvement with the proposals that could give the impression of bias. If in doubt, they are encouraged to seek advice from the Monitoring Officer. The most appropriate course of action, if that is the case, is that the councillor concerned may address the Committee in the applicant's speaking slot (see the Public Speaking Rules for Planning Committees) but does not take part in its consideration and determination. It is important that the councillor should restrict their address to the Committee to relevant planning considerations rather than wider non-planning issues that are not material to the determination of the application.

#### Applications submitted by councillors or staff

46. If a councillor or a member of staff submits their own proposal to the Council which they serve, they should take no part in its processing. A councillor who acts as an agent or representative for someone pursuing a planning matter with the Authority should also take no part in its processing.
47. Councillors and Planning Officers must inform the Monitoring Officer of any proposals to submit an application, prior to their submission.
48. Members of the Planning Committee and staff should not act as agents for another person or body pursuing a planning matter with the Council and, if they do, any planning decision must be made by the Planning Committee and not under delegated powers.
49. Whenever possible a councillor making a planning application should appoint an agent to act on their behalf. The councillor must take no part in making a decision on the application and should leave the room for that item if in attendance.

#### Involvement of Councillors in Appeals

50. Where a councillor wishes to play a part in any appeal, he/she should seek first the advice of the Planning Development Manager and as a courtesy, inform the relevant Ward Councillors.

#### Training of Councillors in Planning Issues and Procedures

51. No councillor should be appointed to the Planning Committee without having agreed to undertake suitable induction training and familiarisation in planning procedures and the Code of Conduct. The Planning Development Manager, with the support of the Monitoring Officer, and after consultation with the Chair of the Planning Committee, will arrange suitable ongoing opportunities as required and will supplement this with written guidance. It is expected that such induction should take place within three months of appointment to the Committee.
52. It is also envisaged that all members of the Council will engage in induction and familiarisation about planning matters and this Planning Code so that as Ward Councillors, they can effectively represent residents and promote the interests of the Borough as a whole.

**Substitutions to Planning Committee**

53. Substitutions to Planning Committee will be permitted in accordance the Council's Scheme for Substitutions as set out in the Constitution.