

DRAFT

MEMBERS` PLANNING CODE OF GOOD PRACTICE

1 Introduction

- 1.1 This Code of Good Practice (the Planning Code) gives advice to members who:
- Are members of a Development Control Committee (the committee)
 - Sit in on a meeting of the committee as a substitute Member.
 - Take part in a debate in the committee on a planning application or other development control matter.
 - Are involved outside the committee on a planning application or other development control matter – including informal occasions such as meetings with officers or public and consultative meetings.
- 1.2 The aim of the planning code is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or is not well founded in any way. Members must make planning decisions openly, impartially with sound judgement and for justifiable reasons.
- 1.3 This is particularly important, as 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.
- 1.4 The introduction of the Human Rights Act 1998 has had implications for the planning system and has created enhanced requirements for procedural fairness, transparency and accountability in determining planning applications.
- 1.5 The planning code is intended to minimise the prospect of legal or other challenge to planning decisions. However, non-compliance without good reason could be taken into account in investigations into possible maladministration or may have implications for the standing of Councillors and the council as a whole.

2 Relationship with the Members` Code of Conduct

- 2.1 The Members` Code of Conduct must always be complied with and the rules in that Code must be applied before considering the Planning Code.

2.2 The Planning Code is not intended to form a part of the adopted Members` Code of Conduct but is a separate document, which is both supportive of the Members` Code and the source of expanded guidance in the particular area of planning.

2.3 To distinguish it from the Members` Code, this document is referred to as the Planning Code.

3 Declaration of interests

3.1 The Members` Code places requirements on Councillors on the registration and declaration of their interests and participation in the business of the council in light of those interests. These requirements must be followed scrupulously and councillors should review their situation regularly. Whilst the Standards Board and Medway's Standards Committee produces guidance and advice can be sought from the Monitoring Officer, ultimate responsibility for compliance rests with individual councillors.

3.2 A councillor can have a personal prejudicial interest in a planning application, which affects them, their friends, relatives or employer. Examples include but not be limited to

- applications for minor developments relating to a property in close proximity to one owned/occupied by the councillor, a friend, relative or employer.
- applications for major developments a more substantial distance from properties owned or occupied by one of those persons.
- applications made by a member or a friend, relative or employer of the member.

3.3 If a councillor has a personal and prejudicial interest in an application then they

- must declare it as soon as you become aware of this. Wherever possible this should be done at the start of the meeting.
- must leave the room when that item is being discussed and must not participate in or give the appearance of trying to participate in the making of a decision.
- must not represent ward or local views – you will need to get another member to do so instead.
- must not get involved in processing the planning application.
- must not seek any preferential treatment. This includes using your position to discuss a proposal with officers when other members of the public would not have the same opportunity to do so.

3.4 A personal prejudicial interest should also be declared at informal meetings or discussions including those held with officers and other Councillors.

3.5 Whilst having a personal prejudicial interest does not prevent a councillor from seeking to explain a proposal in which they have such an interest to an appropriate officer, the Members` code does mean there are greater limitations on councillors than on a member of the public.

3.6 The Members` Code provides that the following are not automatically personal prejudicial interests

- matters relating to another relevant authority of which they are a member or another public authority where they hold a position of management or control.
- matters relating to a body the Councillor has been nominated as a representative of Medway.

However the above are personal interests and a Councillor who has taken a leading role in the submission or negotiation of a planning proposal for one of the above organisations would still have a personal prejudicial interest. Regard should also be had to Section 4 of the Planning Code in deciding whether or not to participate.

3.7 A personal interest must be declared as soon as a councillor becomes aware of it. This should wherever possible be at the start of a meeting. A personal interest in itself does not prevent a member from speaking and voting.

4. **Fettering discretion**

4.1 If a councillor has taken a firm view on the planning matter, or appears to have made up their mind before the formal consideration of a planning application, that councillor is said to have fettered their discretion. [It might be appropriate to include a general example of fettering]

4.2 If a member who has fettered their discretion takes part in the decision that will put the Council at risk of a finding of maladministration. It could also lead to legal proceedings on grounds of there being a danger of bias or predetermination or a failure to take into account all factors enabling the proposal to be considered on its merits.

4.3 As long as a Councillor does not have a personal prejudicial interest, they can still make use of separate speaking rights granted to ward councillors to address the committee.

4.4 Areas, which need particular attention, are set out below.

4.5 Membership of a Parish Council

A Councillor who is also a member of a parish council which has been consulted on a planning application is not automatically debarred from participating in a planning decision at Medway even when they may have sat on the relevant parish planning committee. However the following key principles must be observed if a councillor is to participate in the planning decision at Medway:

- the planning application must not substantially effect the well being or financial standing of the parish council.
- careful consideration must be given to what a councillor says at the parish meeting so that a reasonable and informed member of the public would feel you were coming to the decision at Medway without a fixed view. Strong opposition or support to an application at the Parish meeting will debar participation at the planning decision at Medway.
- If speaking at the parish meeting the councillor must make it clear that what is said is based on the limited information available and will be reviewed at the Medway meeting.
- Medway Councillors who are members of a parish council should avoid voting when consulted on an application at parish level.

4.6 Even where a parish councillor who is also a Medway Councillor has fettered their discretion they will have the same right as any other ward councillor to address the development control committee in that capacity.

4.7 Membership of a parish council constitutes a personal interest where the development control committee considers an application where that parish has been consulted and this must be declared in the usual way.

4.8 Lobbying by Councillors

If you lead, represent or are a member of a group whose primary purpose is to lobby to promote or oppose a planning application you will have fettered your discretion. Depending on your involvement you will probably also have a personal prejudicial interest.

4.9 The position in 4.8 is distinct from membership of general interest groups, which reflect a Councillor's area of interest e.g. the RSPB, the Ramblers Association or a local historical society. However a personal interest should be disclosed where that body has made representations on an application. If a Councillor at the time of declaring that interest is able to say that they were not involved in preparing that representation and have reserved their judgement, then the Councillor will not have fettered their discretion. If they can not they will have fettered that discretion and may also depending on the level of involvement have a personal prejudicial interest.

- 4.10 Councillors should not excessively lobby other Councillors regarding their views on planning applications. Nor should they outside of the development control meeting try to persuade other Councillors how to vote.
- 4.11 Councillors should not decide or discuss how to vote on planning applications at Political Group meetings or lobby other members to do so. Political Group meetings should never dictate how members should vote on planning applications. ~~Any group meeting held in advance of a committee meeting should therefore only be used to discuss the detail rather than the merits of the application proposals. Decisions on planning applications should always be made on a political basis.~~

4.12 Lobbying of Councillors

Lobbying is a normal and perfectly proper part of the political process. Those who may be promoting or affected by a planning decision will often seek to influence it through an approach to their elected ward Councillor, another Councillor or a member of a Development Control Committee. However such lobbying can where a member is a member of a Development Control Committee, which will determine the application lead to the integrity, and impartiality of a councillor being called into question, which can in turn affect the validity of a planning decision.

- 4.13 A Councillor who wishes to participate in the determination of a planning application should explain to persons lobbying or attempting to lobby that whilst they can listen to what is said it would prejudice their impartiality and ability to participate in the decision if they give a firm statement of how they intend to vote or express strong sympathies with a point of view in advance of the meeting. For the avoidance of doubt a Councillor will not have fettered their discretion

- by just listening to viewpoints from residents or interested parties.
- making comments which fall short of prejudging the issue
- seeking information through appropriate channels
- acting as a vehicle for the expression of views as a ward councillor providing you have not committed yourself to vote in accordance with those views or that you are not acting as an advocate for a particular viewpoint.

- 4.14 When a Councillor participates in a planning decision, their overriding duty is to the community as a whole and not just people in their ward. As decisions need to be taken impartially a Councillor should not improperly favour or appear to improperly favour any person, company, group or locality.

- 4.15 Councillors should not accept gifts or hospitality from any person involved in or affected by a planning application. It is advisable to let the Monitoring officer know if you feel you have been exposed to

excessive lobbying or offers of gifts or hospitality linked to a planning application.

4.16 It is good practice for Councillors to

- forward copies of lobbying correspondence to the Director of Development and Environment.
- advise the Director of Development and Environment of any offers of planning gain or constraint on development made to you.
- comply with guidance on lobbying or attending presentations or discussions set out in Section 5 of the Planning Code.

5. Contact with Applicants, Developers and Objectors

5.1 Councillors should refer those who approach for assistance on planning, procedural or technical matters to relevant officers.

5.2 Councillors should avoid agreeing to formal meetings with applicants, developers or groups of objectors. If in exceptional circumstances a formal meeting is considered necessary it should be organised by the relevant officers. All parties will be advised the meeting is not a decision making meeting.

5.3 The following rules should be applied in respect of presentations by applicants developers

- Councillors should not attend planning presentations unless organised by an officer.
- questions should be limited to those necessary to clarify a councillor's understanding of proposals.
- it must be remembered that the presentation is not a part of the formal planning process
- the presentation is a form of lobbying and Councillors who will be determining the application should not express views on how they will vote.

6 Site Visits

6.1 Site visits can be a valuable part of the planning process. However they should normally only be requested where there are definite benefits, for example:

- particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection
- there are significant policy or precedent implications and specific site factors need to be carefully addressed.

6.2 No hospitality should be accepted at site visits.

- 6.3 Councillors should endeavour to keep together as a group and not engage individually in discussions with any applicants, objectors or third parties who may be present.
- 6.4 Councillors who wish to take part in the planning decision should not express views to anyone present.
- 6.5 It is acceptable to ask officers at the site visit questions or to seek clarification on matters relevant to the site inspection.
- 6.6 The site visit should be properly recorded and report back to the Committee.
- 6.7 Councillors who wish to determine an application should not enter a site subject to a planning proposal other than as part of an official site visit even in response to an invitation.

7 Contact With Officers

- 7.1 General guidance is given in the Protocol on Member/Employee in the Constitution and that is not repeated here.
- 7.2 Councillors should not put pressure on officers to put forward a particular recommendation. However this does not prevent a Councillor asking questions or submitting views to a relevant officer.
- 7.3 Officers must act in accordance with the Employee Code of Conduct and any relevant professional codes of conduct e.g. The Royal Town Planning Institute's Code of Professional Conduct. As a result planning officers views will be presented on the basis of their overriding professional obligation of professional independence which may on occasion be at odds with the views, opinions or decisions of the committee or its members.

8 Planning Applications By Councillors and Officers; and Council Development

- 8.1 Proposals to the council by serving and former Councillors and officers and their close friends and relatives can easily give rise to suspicions of impropriety. So indeed can proposals for a Council's own development. Proposals can take the form of either planning applications or development plan proposals.
- 8.2 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in such a way that gives no grounds for accusations of favouritism.
- 8.3 Serving Councillors and officers should avoid acting as agents for people pursuing a planning matter and where they do should play no part in the decision making process for that proposal.

- 8.4 Councillors and officers who submit their own proposal should notify the Director of Planning and Environment of the proposal and play no part in its processing or determination and avoid contact, whether direct or indirect with Members of the committee concerning the application.
- 8.5 All such proposals shall be decided by the relevant Area Development Control Committee and not dealt with by officers under delegated powers. Members considering an application must of course consider whether the nature of any relationship with the Member submitting the planning application requires the declaration of a personal or a prejudicial interest.

9 Decision Making

- 9.1 Councillors making planning decisions must
- come to meetings with an open mind and demonstrate they are open minded.
 - comply with section 54A Town and Country Planning Act 1990 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
 - not vote or take part in the meeting's discussions on a proposal unless present to hear the entire debate including any officer introduction/presentation.
 - come to a decision only after due consideration of all information reasonably required upon which to base such a decision.
 - request further information if it is felt there is insufficient information before the committee to reach a decision
 - where proposing, seconding or supporting a decision contrary to officer recommendations or the development plan identify the planning reasons behind the decision before the ~~vote~~ vote is taken which may have to be justified in the event of an appeal or other challenge.

10 Training

- 10.1 Councillors should not participate in decision making meetings dealing with planning matters unless they have attended any prescribed training.