

# **PART 5 - CODES AND PROTOCOLS**

## **SECTION F**

### **PLANNING CODE OF PRACTICE FOR COUNCILLORS AND OFFICERS**

#### **1.0 PURPOSE OF THE CODE OF PRACTICE**

- 1.1 This Code of Practice is intended to provide clear guidance to Councillors about how they should carry out their duties in relating to planning matters so as to ensure openness, transparency and consistency in decision-making and to set standards of probity and conduct which the residents of Surrey Heath can expect.

#### **2.0 CONTEXT**

- 2.1 The town and country planning system involves the Council taking decisions about the development and use of land in the public interest. Planning law requires that all planning applications are determined in accordance with the Development Plan unless material planning considerations indicate otherwise.
- 2.2 Planning is often highly contentious because its decisions affect the lives of everyone, be they applicant, objector, supporter or local resident. This is heightened by the system actively inviting public opinion on applications before decisions are taken. It is essential, therefore, that the planning process is characterised by transparent, consistent and open decision-making.

#### **3.0 GENERAL ROLES AND RESPONSIBILITIES**

- 3.1 Councillors and Officers have different, but complementary, roles in the planning process. Likewise members of the Planning Applications Committee have different roles to other Councillors. All Councillors are, however, bound by the terms of the Council's Code of Conduct.

##### **Members of the Planning Applications Committee**

- 3.2 Councillors who sit on the Council's Planning Applications Committee determine the more significant and contentious planning applications received by the Council. In doing so, these Councillors perform a quasi-judicial role and are required to consider all planning proposals against the wider public interest. Thus whilst Councillors can represent their constituents on planning issues and taking account of their views, they must base their decisions on material planning considerations and what they believe is best for the Borough as a whole. Given the nature of decisions made at Committee meetings, Councillors should avoid voting in relation to an application unless they have been present in the meeting throughout the consideration of the application in question.
- 3.3 Councillors who sit on the Planning Applications Committee shall, in addition to complying with the Council's Code of Conduct: -

- (a) act fairly and openly and avoid any actions which would give rise to an impression of bias
- (b) avoid inappropriate social contact with applicants and their agents, objectors and other interested parties
- (c) approach each planning application with an open mind, avoiding pre-conceived ideas
- (d) not organise support or opposition to any planning application
- (e) not publicly\* express an opinion in advance of deciding an application which may be taken to indicate that they have made up their minds without hearing all the evidence and arguments which will be presented at the Committee meeting
- (f) carefully weigh up all relevant planning issues before making a decision
- (g) make decisions purely on planning grounds in the public interest and not favour, or appear to favour, any person, company, group or locality
- (h) not decide how to vote on each application on the basis of any political “whip”, but solely on the planning merits
- (i) ensure that the reasons for their decisions are clearly stated

\* “publicly” in this context means any situation where the view expressed either does, or might reasonably be expected to, gain wider public circulation including any statements to the press, statements contained in letters or statements made at any public meeting

### **Other Councillors**

- 3.4 Councillors who do not sit on the Planning Applications Committee represent their wards and the Borough as a whole and may exercise their right to attend meetings of the Planning Applications Committee to speak, although not vote, on any planning matter (subject to the consent of the Chairman of the Committee).
- 3.5 Councillors should particularly note that they have the same duty as members of the Committee in respect of compliance with the Code of Conduct when they attend any meeting (even if they are simply sitting in the public gallery) and should always declare any personal or personal and prejudicial interests at the appropriate stage in the proceedings.
- 3.6 In order to avoid confusion for the public attending meetings of the Planning Applications Committee, Councillors who are not members of the Committee should not sit with those who are; they should also indicate at the start of any speech that they are not a member of the Committee.
- 3.7 Councillors who are not members of the Committee do not act in any quasi-judicial role, but shall nonetheless act fairly and openly and avoid any actions which would give rise to an impression of bias and avoid inappropriate social contact with applicants and their agents, objectors and other interested parties.

- 3.8 In certain circumstances, the full Council carries out the functions of the Planning Applications Committee and Councillors should be aware that in those circumstances they should comply with paragraphs 3.2 and 3.3 above.

### **Officers**

- 3.9 Officers are responsible to the Council as a whole. They must always act openly and impartially and provide consistent professional advice based on planning policies and procedures and planning law, ensuring that members of the Committee are aware of all relevant material planning considerations before decisions are made. Officers must comply with any professional codes of conduct that may be applicable; for Planning Officers this is the Royal Town Planning Institute's (RTPI) Code of Professional Conduct\*. Officers must also conscientiously carry out the decisions of the Committee.

\* The RTPI Code of Professional Conduct requires that Planning Officers who are members of that institute do not make statements purporting to be their own, but which are contrary to their own professional opinion.

## **4.0 CODE OF CONDUCT**

- 4.1 The Council has adopted a Code of Conduct for Councillors (Chapter 8.1 of the Council's Constitution). All Councillors have read the Code and have signed a declaration to be guided by it. The Code of Conduct requires the open disclosure of any prejudicial or personal interest in issues being considered by the Council or its Committees.
- 4.2 Training and guidance on the Code has been provided to all Councillors and will be regularly updated. Members of the Planning Applications Committee must be particularly careful to ensure that they are familiar with the requirements of the Code. **It is the personal responsibility of individual Councillors to ensure they comply with the Code and make all appropriate declarations.** If in any doubt, Councillors should seek advice in advance of the meeting either from the Monitoring Officer or from the legal adviser to the Committee.
- 4.3 Although "Declaration of Interests" appears as a separate item on the Agenda for every meeting of the Planning Applications Committee, the Chairman normally asks whether any Councillor wishes to make a declaration of interest prior to the consideration of each individual planning application so that it is clear for which application interests are being declared. This does not, however, preclude a Councillor declaring any interest under the specific item on the Agenda.

## **5.0 LOBBYING OF COUNCILLORS**

- 5.1 It is a legitimate part of the planning application process for applicants, neighbours and other interested parties to approach members of the Planning Applications Committee. However, the rules of natural justice mean that planning applications should be determined in an open and fair manner and taking account of all relevant information and arguments. It is only at the meeting of the Committee that Members will have, and be able to consider, all the relevant information and considerations pertaining to the application.
- 5.2 It is therefore important that to maintain the integrity both of individual Councillors and of the Council as a whole that Members of the Planning Applications Committee should: -

- (a) if lobbied, explain the potentially conflicting position they are in if they express an opinion on an application before it is considered by the Committee and therefore that whilst they can listen to what is said, they cannot give any indication of an opinion on the application. If it is impossible to avoid expressing an opinion, make clear that this opinion is only provisional and they will only be able to come to a final view at the Committee meeting after hearing all the relevant information and arguments
- (b) avoid giving constituents planning advice, save in relation to general planning procedures, for example, how the constituent can make a representation on the application, how the decision will be made (delegated or Committee) etc.
- (c) not normally enter planning application sites except on formal Site Visits. If a Councillor considers that a personal site visit is essential, they should contact the Planning Officer dealing with the application for a factual briefing. However, Councillors should at all times remember that to enter any land without the consent of the landowner is a trespass. This does not preclude the Councillor from viewing the application site from any public vantage point.

5.3 Members of the Planning Applications Committee often receive correspondence from constituents, applicants and developers asking them to support or oppose a particular proposal. Councillors should forward a copy of the correspondence to the Head of the Built Environment. Merely forwarding the correspondence in this way does not preclude the Councillor from being involved in the determination of the application. However, condoning a point of view in advance of the application being considered at Committee would prevent the Councillor from taking part in the determination of that application.

5.4 Should a member of the Planning Applications Committee be approached by any third party, they should notify the Monitoring Officer of the approach by completing the form appearing at **APPENDIX A**. They should also indicate that the appropriate stage of the Committee proceedings that they have been lobbied.

## **6.0 LOBBYING BY COUNCILLORS**

6.1 A Councillor should not become a member of, lead or represent an organisation whose primary purpose is to lobby the promotion or opposition to planning proposals. If the Councillor does so, he will likely be regarded as having a personal and prejudicial interest and will have to withdraw from the meeting during consideration of that proposal.

6.2 A Councillor should not lobby fellow Councillors excessively regarding their concerns or views nor attempt to persuade them that they should decide how to vote in advance of a meeting at which any planning decision is to be taken.

6.3 Councillors may join general interest groups which reflect their area of interest and which concentrate on issues beyond particular planning proposals (for example The Ramblers Association), but must at the very least disclose a personal interest where that organisation has made representations on a particular proposal. Occasionally, the interest may be both personal and prejudicial dependent upon nature of the Councillor's involvement with the group, the publicly expressed views of that group and whether the Councillor has done or said anything in relation to the particular issue.

## **7.0 MEETINGS**

- 7.1 Officers frequently hold meetings with applicants and objectors to discuss applications. These are part of the normal planning process but are, and must be clearly stated to be, without prejudice to the professional recommendation that may be made to the Committee and the decision of the Committee. Councillors will not normally attend such meetings.
- 7.2 If a Councillor wishes to arrange a meeting with Planning Officers for themselves and/or a small number of constituents about a planning application, this will be arranged at the Council Offices.
- 7.3 If attending public meetings, members of the Planning Applications Committee should maintain an impartial role, listening to what is said but not expressing an opinion. Officers will not normally attend public meetings unless their attendance has been agreed with the Head of Built Environment and representatives of both the applicant and objector are given the opportunity to be present. Members of the Committee will be advised of any public meeting either organised by Officers or which Officers have agreed to attend.

## **8.0 PRESENTATIONS ON LIKELY DEVELOPMENT PROPOSALS**

- 8.1 The Council will itself organise presentations to keep Councillors informed generally on matters which appear to have or are likely to have strategic importance for the Borough, but will not do so in relation to any matter which is subject to a current planning application to the Council. At such presentations, Councillors should maintain an impartial role, listening to what is being said and asking questions but not expressing an opinion.
- 8.2 Councillors may sometimes be invited to attend presentations/open days etc on likely development proposals by developers. Councillors should be circumspect in accepting such invitations and give consideration to how their attendance might be perceived. Councillors should notify the Monitoring Officer of the receipt of such invitations by completing the form appearing at **APPENDIX A**.

## **9.0 OFFICER REPORTS TO COMMITTEE**

- 9.1 All applications requiring a decision by the Planning Applications Committee will be the subject of full written reports from the Head of Built Environment. The report will provide 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 Agenda has been published will be the subject of an oral report to the Committee at the meeting.

## **10.0 COMMITTEE SITE VISITS**

- 10.1 Committee site visits are fact-finding exercises which allow the Planning Applications Committee to make a more informed decision than would otherwise be possible from reading the Officer's report and considering the views expressed at the Committee meeting. They are not part of the formal consideration of any application and therefore public rights of attendance and speaking do not apply.

- 10.2 The Committee has adopted a procedure for site visits and this is set out at **APPENDIX B**. Only in exceptional circumstances will a request for a site visit made outside of this procedure be entertained by the Committee.

## **11.0 PUBLIC PARTICIPATION AT THE PLANNING APPLICATIONS COMMITTEE**

- 11.1 Members of the Planning Applications Committee must not allow members of the public to communicate with them during the Committee meeting either orally or in writing, other than under the adopted public participation scheme, as this may give the appearance of bias to other observers.
- 11.2 Standing Order 31 of the Council's Standing Orders for Meetings and General Purposes provides the framework for public participation at the Planning Applications Committee.
- 11.3 Public speakers may not circulate material at the meeting unless the Chairman of the Committee determines at his absolute discretion that exceptional circumstances apply.

## **12.0 PLANNING COMMITTEE DECISIONS CONTRARY TO OFFICER RECOMMENDATION**

- 12.1 From time to time, members of the Committee will disagree with the professional advice given by Officers and may determine an application contrary to that advice. When this happens Councillors must clearly express the planning reasons for their decision, such that a person observing the meeting would understand why the recommendation has not been followed. Officers will be given an opportunity to explain to the Committee any planning and / or legal implications arising from their intended decision before the decision is confirmed.
- 12.2 The reasons given by the Committee for the decision will be recorded in the minutes of the meeting and the Head of Built Environment will be asked to formulate the wording of the decision notice, which will then be reported to the next available meeting of the Committee for ratification.

## **13.0 APPEALS AGAINST COUNCIL DECISIONS**

- 13.1 Generally, Officers will organise and appear as witnesses at planning appeals on behalf of the Council. In giving evidence, Officers will present the best possible case on behalf of the Council, whilst complying with the RTPI Code of Professional Conduct\*. In some circumstances it may be necessary to appoint consultants to appear on behalf of the Council; for example, where the Committee has decided an application contrary to the Officer recommendation.
- 13.2 If a Councillor intends to make representations to the Planning Inspectorate on any appeal either in writing or in person at any hearing / public inquiry, they should advise the Assistant Chief Planner (Appeals) and indicate whether these representations will be in support of the Council's case.
- 13.3 When making representations, a Councillor should be very clear whether these are made as a private individual or as a member of the Council. If the representations are in a private capacity, the Councillor should carefully consider whether there could be any suggestion of a conflict of interest as outline in the Code of Conduct. If a Councillor feels the need to support the case of the appellant, consideration should

be given as to how this might affect the reputation of the Council as a whole and how this fits with the overriding duty owed by Councillors to the community as a whole.

#### **14.0 THE COUNCILLOR AS APPLICANT**

- 14.1 Where a Councillor is the (prospective) applicant for planning permission, it is strongly recommended that a professional agent is appointed to act on their behalf in dealing with Planning Officers. Whilst this might appear to place an undue financial burden on the Councillor, regard should be had to paragraph 5.3 of the Code of Conduct.
- 14.2 Any application submitted by a serving Councillor, or persons who were Councillors within the previous 4 years, will not be dealt with by Officers under delegated powers but will be the subject of a decision by the Planning Applications Committee. The Committee will be advised that that the application has been submitted by a Councillor, or former Councillor, and will also be advised whether the application is one that would normally have been dealt with under the Scheme of Delegation.
- 14.3 In the case of serving Councillors, the Monitoring Officer should be notified by the Councillor concerned in writing of the application no later than the date of its submission.
- 14.4 The same rules apply in respect of Development Control Case Officers and senior officers (Director or Service Head) considered to be connected with the planning process and who are currently employed by the Council or who have been employed by the Council within the previous 4 years.

#### **15.0 TRAINING**

- 15.1 Councillors may not sit on the Planning Applications Committee unless they have attended the mandatory planning training prescribed by the Council.
- 15.2 Suitable additional training opportunities will be arranged at regular intervals by the Head of Built Environment and/or the Monitoring Officer.

#### **16.0 REVIEW**

- 16.1 It is important that decisions, and the decision-making process, are regularly reviewed to improve the quality and consistency of decision making, thereby strengthening public confidence. Arrangements will normally be made for Councillors to visit, on an annual basis, a sample of implemented planning permissions to assess the quality of the decision. These visits will include a range of developments (major, minor, departures, upheld appeals, listed building works etc). The Committee will also receive an annual review of appeal decisions from the Assistant Chief Planner (Appeals).

#### **17.0 SUMMARY**

- Apply the rules in the Code of Conduct for Councillors;
- Don't fetter your discretion and therefore your ability to participate in planning decision-making by making up your mind, or clearly appearing to have made up your mind, prior to any matter being formally considered by the Committee;
- Notify the Monitoring Officer of any lobbying by a third party;

- For non-members of the Committee, ensure that the public can easily identify that this is the case
- Don't allow members of the public to communicate with you during the Committee meeting, other than through the public participation scheme;
- If you are proposing, seconding or supporting a decision contrary to officer recommendations ensure that you clearly identify the planning reasons; and
- Do endeavour to attend any training sessions provided and participate in the annual review of planning decisions

## NOTIFICATION OF AN APPROACH

<b>Councillor Name</b>	
<b>Site address</b>	
<b>Name of person / organisation making approach</b>	
<b>Date approach made</b>	
<b>Method of approach</b>	Telephone / Fax / Email / In person / Letter / Invitation <i>* delete and attach copy as appropriate</i>
<b>Purpose of the approach</b>	
<b>Comments</b>	
<b>Signature</b>	
<b>Date</b>	

PLEASE SEND COMPLETED FORM TO THE MONITORING OFFICER WITHIN SEVEN DAYS OF THE APPROACH

## APPENDIX B

### COMMITTEE SITE VISITS

1. Members of the Planning Applications Committee may make a request for a site visit upon receipt of the agenda. Requests must be made in writing, explaining the reason for the request, to the Development Control Manager with a copy forwarded to the Head of Built Environment and the Committee Administrator by 4 pm on the Monday preceding the Planning Applications Committee meeting.
2. Site visits normally take place on the Thursday preceding the Planning Applications Committee meeting.
3. The applicant will be notified in advance in writing of the time and date of the visit and of any requirements in respect of the site visit (such as the pegging out of the development proposal). If applicants, or their agents, attend for site access purposes they will be advised at the start of the site visit that the purpose of the visit is to gather information and that they may not address the meeting.
4. The public does not have a right of attendance at the site, other than from public vantage points, and cannot address the meeting.
5. A Planning Officer will accompany Councillors to explain the development proposal and to answer any questions. Councillors should only allow themselves to be addressed by Officers or by fellow Councillors. Where a Councillor is approached by any other person, they should inform the Planning Officer present.
6. The Chairman of the Committee, or his representative, must maintain control over the conduct of each site visit which, whilst not part of a formal meeting of the Committee, will be conducted as a single meeting and in an orderly fashion.