

**APPENDIX 1  
PROBITY IN PLANNING**

**Plymouth City Council**

**Code of Good Practice for Members and Officers in connection with the determination of Planning and associated Applications**

**Authors: Head of Legal Service and Assistant Director of Development (Planning Services)**

**Contents**

- 1. Introduction**
- 2. Status of the Code**
- 3. General Role and Conduct of Councillors and Officers**
- 4. Declaration and Registration of Interest**
- 5. Predetermination, Predisposition or Bias**
- 6. Development Proposals Submitted by Members, Officers and the Council**
- 7. Lobbying**
- 8. Pre-Application Discussions**
- 9. Order of Planning Committee Considerations**
- 10. Ward Members Speaking at Planning Committee**
- 11. Public Speaking at Planning Committee**
- 12. Site Visits**
- 13. Decisions Contrary to the Development Plan**
- 14. Decisions Contrary to Officer Recommendation**
- 15. Legal and Other Officer Attendance**
- 16. Appeals and Inquiries**
- 17. Performance**
- 18. Monitoring and Review of Decisions**
- 19. Training**
- 20. Complaints**

## **1.0 INTRODUCTION**

- 1.1 Central Government takes the view that the conduct of both Officers and Members in Local Government needs to be of the highest standing: on this depends the bond of trust between Councils and their local people, which is essential if Councils are to play their part in leading communities and improving people's quality of life. Plymouth City Council agrees with this statement.
- 1.2 The local administration of the planning system has come under close scrutiny which has included the Nolan Committee's Third Report which investigated standards in public life, by the Local Government Act 2000 which introduced a new structure by which local authorities were to promote high standards of conduct, through a revised National Code of Conduct for Members which was introduced in 2007, and, most recently, with the 2009 updated guidance note by the Local Government Association on "Probity in Planning".
- 1.3 The Nolan Report recommended that all practices and procedures in connection with a particular process are designed so as to avoid the grounds for an accusation of malpractice arising. Clearly, the determination of planning applications is one such area and this Code proposes to offer clear guidance and advice as to procedures and practices to elected Members, Officers and members of the public in connection with the determination of planning applications. This Code will ensure that not only are the applications determined in a fair and impartial way, but also in a way which is seen to be fair and impartial. The introduction of the Local Government Act 2000 and associated legislation provides the necessary statutory framework, by which these standards may be achieved, maintained and regulated by each local authority.
- 1.4 Clearly, one of the key purposes of the planning system is to control development in the public interest. When performing this role the Local Planning Authority and elected members are making decisions that necessarily affect land and property interests, as well as the financial value and settings of land holdings. Clearly, there is a need to make decisions that are open, impartial and based on sound judgement and reason. The process of determining applications should leave no grounds for a suggestion that a decision has been impartial, biased or ill founded in any way. Decisions must always be made on planning grounds and planning grounds alone.
- 1.5 The 2009 guidance note from the Local Government Association states that "planning is moving to the heart of local authorities' place – shaping and community planning roles". It also recognises "councillors as champions of their local communities". The guidance also confirms that it is not there to suggest there is only one best way of doing things and so it is important that this Code of Practice responds to the planning and regeneration aspirations of Plymouth's growth agenda as well as the commitment to continuous improvement and move towards excellence in service delivery.
- 1.6 Furthermore, the spirit of the Local Government Act 2000 is also of vital importance, as it takes a wide view and expects that Members will appreciate that matters of probity touch upon broader matters such as relations with other Members, the public and staff; the treatment of confidential material and will, accordingly, do their utmost to set high standards in all such areas.

## **2.0 STATUS OF THE CODE**

- 2.1 This Code shall set out the basis as to how Officers and Members should determine planning applications submitted to the City Council and ensures that conduct accords with the City Council's Codes of Conduct for Members and Officers which is contained within the City Council's Constitution.
- 2.2 This Code is referred to in the City Council's Constitution by way of a note and there is a link to the Code.
- 2.3 A breach of this Code, does not usually amount to a breach of criminal law but may adversely affect the standing of the City Council. It could result in a decision being judicially reviewed or a complaint of maladministration or allegation of a breach of the Code of Conduct made to the Local Government Ombudsman

## **3.0 GENERAL ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS**

- 3.1 Elected Members are guided by the general advice contained in the National Model Code of Conduct (Local Authorities (Model Code of Conduct) Order 2007 - S1 2007/1159). This Code is further amplified by reference to the City Council's Standing Orders in respect of general Council procedures as well as further amplification in specific Codes of Conduct such as the advice contained in this Code or guidance from the Standards Board.
- 3.2 Councillors and Officers have different but complementary roles with the determination of planning applications and it is important that an open, respectful and transparent relationship is developed based upon mutual trust and understanding of each others positions. It is important for the overall standing of the City Council and the achievement of national performance targets that they work as an effective team. The role of a Councillor when determining a planning application is to have an overriding duty to the whole community and, accordingly, in deciding the outcome of an application to make a reasoned decision taking into account the provisions of the Development Plan and all relevant material considerations. All decisions should be taken in the interests of Plymouth as a whole.
- 3.3 The basis of the planning system is that consideration is given to all development proposals and these are determined against the wider public interest. Much is often at stake in such decisions and in the process for local people and development interests, as well as for the City of Plymouth itself. Given the nature of these decisions opposing views are often held by those involved. Whilst these views must be taken into account in the determination of planning applications, as stated above, they must not favour any person, group or locality. Members must therefore take steps to ensure that in their discharge of their Planning Committee duties the distinction between this role and their role as an individual Ward Councillor is constantly made clear. If Members wish to act in the latter capacity they must make that clear at the outset. Members who do not feel that they can act in this way should consider whether they are best suited to serve on the Planning Committee, especially if they feel that they will often be placed in the position of wishing to represent constituents and wishing to speak as a Ward Member rather than a Member of the Planning Committee (See paragraph 5.4).
- 3.4 In reaching a decision Councillors should take account of the relevant material considerations connected with the application but should not favour any person, group or locality or put themselves in a position where they may appear to do so.

- 3.5 All decisions should be made in an open and transparent manner by the Members of the Planning Committee and this should not at any time be compromised in any way. Therefore, such actions as messages being passed to Members of the Planning Committee during a debate should be avoided as this could give an impression of undue influence from a third party. In the first instance in an emergency any notes should be passed to the Democratic Support Officer.
- 3.6 In order to ensure that decisions are taken on planning grounds and are sound it is incumbent on all Planning Committee Members to give full consideration to reports prepared by Officers and familiarise themselves with all relevant national planning guidance, Development Plan policies and other material considerations well in advance of the consideration of a development proposal at the Planning Committee itself.
- 3.7 The role of Officers is to advise Councillors and the City Council as a whole (through the Cabinet and relevant Portfolio Holders) and to carry out work as set out in the Corporate Plan and agreed Business Plans. Officers are employed by the City Council, not by individual councillors, and it follows that instructions to them may only be given through a decision of the City Council, the Cabinet, the relevant Portfolio Holders, or the Planning Committee.
- 3.8 The conduct of Officers who advise on the determination of planning applications is contained generally in the City Council's protocol for Member/employee relations and is supplemented by guidance from their professional bodies, such as Royal Town Planning Institute, the Law Society, and the Institute of Legal Executives. Officers may not be instructed by any Member to conduct themselves in a manner which would place them in conflict with their professional codes of conduct.
- 3.9 Officers are required to act impartially at all times in determining applications and providing advice at the Planning Committee. Officers will be expected to conduct themselves in all they say and do in a manner which totally preserves this position of impartiality.
- 3.10 During the determination of an application, it is possible that Officers and Members may be offered hospitality by an interested party. Even though this rarely occurs in Plymouth, it is important to recognise that, if at all possible, these offers should be politely declined. However, any Members receiving any gift or hospitality, in their capacity as Members, over the value of £25, should provide within 28 days of receipt, written notification of the details to the Monitoring Officer of the Council for entry into the register of gifts and hospitality which is open to public inspection and located in the Members Services Office for Members. Similarly, for Officers, in the event that the receipt of hospitality is unavoidable, they must ensure that the hospitality is of a minimal level and declare its receipt as soon as possible by completing a "Hospitality Declaration Form" and submit this to the Assistant Director of Development (Planning Services) for signature.

#### **4.0 DECLARATION AND REGISTRATION OF MEMBERS INTEREST**

- 4.1 Members are required to give a general notice of interest that they hold usually upon their election or appointment to office and are under a duty to maintain that declaration and amend, as necessary, within 28 days of becoming aware of any such changes, throughout their term of office.
- 4.2 A register of Members' interests will be maintained by the City Council's Monitoring Officer and is available for public inspection.

- 4.3 Furthermore, Members are under a duty to declare interests as and when matters arise at Planning Committee. Guidance on these issues may be sought by Members from the Standards Board and/or the City Council's Monitoring Officer. The decision as to whether an interest ought to be declared rests with the individual Councillor involved.
- 4.4 There are two types of interest, 'personal' and 'prejudicial'.
- 4.5 In respect of a personal interest the guiding principle is:
- (1) if the matter relates to an interest in respect of which the Member has given notice in the statutory register of Member's interests; and
  - (2) if a decision upon it might reasonably be regarded as affecting to a greater extent than other Council Tax payers, ratepayers or inhabitants of the Authority's area, the well being or financial position of themselves, a relative or friend or employer.
- 4.6 However, where a Member considers s/he has such a personal interest in a matter, s/he must always declare it; but it does not then necessarily follow that the personal interest debars the Member from participation in the discussion.
- 4.7 The guiding principle in deciding whether a personal interest has become a prejudicial interest is whether or not the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the Members' judgement of the public interest. There are exceptions to this, however, in that if a discussion relates to another authority of which the Councillor is a Member; or another public authority in which the Councillor has a position of general management or control; or a body to which the Councillor has been appointed or nominated as a representative of the authority; then it may be the case that the Member would be expected to declare the interest but it may not be deemed to be prejudicial to the extent that the Member would still be permitted to participate in the determination of the application.
- 4.8 In respect of matters not excluded in 4.7 in which a Member has a prejudicial interest the position is straightforward, the Member should declare the interest, have the declaration recorded in the Minutes and they must not participate in any discussion on the matter.
- 4.9 However the Local Authorities (Model Code of Conduct) Order 2007 (S1 2007/1159) introduced a New Model Code of Conduct which came into force in Plymouth in October 2007. This new Model Code of Conduct now allows a Member with a prejudicial interest the same right to speak, as is afforded a member of the public. Therefore, a Member with such an interest is allowed five minutes, in accordance with the public speaking arrangements as set out in section 10. The Member will speak from the speaker's chair, prior to any debate and other speakers and must immediately leave the room once finished. The Member cannot remain in the room to observe the debate or vote. This is to ensure that Members of the Planning Committee do not by their presence, influence or seek to influence the remainder of the Planning Committee.
- 4.10 If a Member is aware of such a prejudicial interest prior to the Planning Committee then the Democratic Support Section should be notified at least two days before the meeting. Further, confirmation should be given as to whether the Member will be using their right to speak. However, if a Member only becomes aware of the

prejudicial interest during the Planning Committee meeting then they must immediately declare it and state whether they wish to speak. If they wish to speak then they will move to sit in the speaker's chair and then leave the room once they have finished.

- 4.11 As the public are allowed to speak at a Planning Committee a Member with a prejudicial interest is also provided with the same opportunity. The Member will be permitted to speak for five minutes but must immediately leave the room once finished. The Member cannot remain in the room to observe the debate or vote. This avoids any issues of improperly influencing a decision of the Planning Committee.
- 4.12 Member should also not give grounds for a suspicion that any such interests may arise and have not been declared.
- 4.13 When an application is to be determined, there is an expectation that it will be dealt with transparently, openly and in a fair way. Members of the Planning Committee will be expected to take account of all relevant evidence and give it appropriate weight in the decision making process and arrive at a reasoned sound decision.
- 4.14 A situation can arise when a Member of the Planning Committee represents a Ward within which a contentious application is lodged. If, prior to the matter being considered by the Planning Committee, that Member decides to make a public statement, and either supports or opposes the application, it will be difficult for that Member to be seen to subsequently determine the application transparently, openly and fairly. Accordingly, it is suggested that, in those circumstances, the Member should make an open declaration, in relation to his or her position and not vote on the determination of the application at Planning Committee. The open declaration should be noted in the Planning Committee minutes. The Member will also be required to vacate their seat within the Planning Committee and to sit within the public gallery for the duration of the consideration of the item, and where they have exercised their right to speak as a Ward member, they can address the Planning Committee at the appropriate time in accordance with the Ward Member speaking arrangements (see section 10).
- 4.15 An alternative approach may be for the Planning Committee Member to refrain from making any public statement on an application and to invite another Ward Member to attend the Planning Committee to speak on the local ward issues and for the Member of the Planning Committee, if s/he has not made a public statement in support of or against the application, to confine his/her comments to the relevant planning issues, taking into account the interests of the City as a whole.

## **5.0 PREDETERMINATION, PREDISPOSITION OR BIAS**

- 5.1 In addition to any declaration of personal or prejudicial interests, Members of the Planning Committee need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application. The Standards Board for England has provided guidance on predetermination, predisposition and bias.
- 5.2 A distinction is drawn by the courts between a Member having clearly expressed an intention to vote in a particular way before a meeting (predetermination) and a predisposition to an initial view, but where the member is clear they are willing to listen to all the material considerations presented at the Planning Committee before

deciding on how to exercise their vote on behalf of the community. In the latter case there is no predetermination.

- 5.3 If a Planning Committee Member has been lobbied by friends or others and wishes to predetermine their position to promote or oppose a planning application they will need to consider whether this has become a personal interest or not. Whether or not it is a personal interest, they need to consider if their view is likely to be regarded as predetermined and against the fair determination of the application. If they have predetermined their position, they should avoid being part of the Planning Committee when that planning application is considered.
- 5.4 A Ward Member who is also a Member of the Planning Committee wishing to campaign for or against a proposal could speak at a Planning Committee on behalf of their constituents, having declared their predetermined position. The Member can continue to represent those ward interests as a spokesperson for their local community, notwithstanding their normal Planning Committee membership. However, they would have to declare their position and not take part in the vote to avoid accusations of bias.
- 5.5 It will be evident from paragraphs 5.1 – 5.3 that the appropriate action is not clear cut and will depend on the circumstances of a particular case and application. Planning Committee members need to avoid bias and predetermination and take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in an open and fair manner. To do this Members taking the decision on an application must take account of all the evidence presented before arriving at a decision, and should avoid committing themselves one way or another before hearing all the arguments.
- 5.6 Ultimately it is the responsibility of the individual member to ensure that their role on the Planning Committee is not compromised and it is also for them to strike the balance that may need to be made between ward and other interests and the requirements of the Planning Committee.

## **6.0 DEVELOPMENT PROPOSALS SUBMITTED BY MEMBERS, OFFICERS AND THE COUNCIL**

- 6.1 In accordance with the City Council's Officer Code of Conduct (June 2000), employees must declare any financial or non-financial interests which relate to their work to the appropriate Director, Assistant Director, or Head of Service, including membership of any organisation not open to the public without formal membership and commitments of allegiance. Such declarations will be maintained in documents which will not be publicly disclosable.
- 6.2 Such declarations can be made on a regular basis without any known future applications coming forward. In such situations, planning and other associated applications will not be allocated to that employee to deal with.
- 6.3 However, it will sometimes occur that an employee only identifies a conflict of interest in the course of determining an application. At this point it is the responsibility of the employee to immediately raise the declaration with the Director, Assistant Director, or Head of Service and for the employee to take no further action in the determination of the case. Again, a record of the declaration will be maintained in documents which will not be publicly disclosable.

- 6.4 In all instances where there is a conflict of interest the appropriate procedure would be for that Officer to notify the Director, Assistant Director, or Head of Service of that conflict and to have no further part in the determination of the application.
- 6.5 Any proposals submitted by Members and Officers shall be dealt with so as to give no grounds for accusations of favouritism or lack of impartiality in accordance with the following procedure:
- It is the responsibility of all Members and Officers when making a planning application to identify themselves as an Officer or Member of the City Council on a form to be submitted with the planning application;
  - Assistant Director of Development (Planning Services) (or a designated representative) shall identify any such application;
  - The City Council's Monitoring Officer shall be notified of any such proposals;
  - The application shall be allocated for determination to an Officer who is unknown to or has no regular contact with the Member/Officer;
  - The proposal shall be determined by a report to the Planning Committee and not determined under delegated powers;
  - The Member/Officer shall take no part in the processing of the application.
- 6.6 Any application submitted by Plymouth City Council shall be processed in the same transparent and impartial manner as for any other applicant.

## **7.0 LOBBYING**

- 7.1 It is recognised that lobbying is a normal and perfectly legitimate element of the process of considering planning applications. If a Member, who is not on the Planning Committee to determine an application, wishes to support a particular viewpoint then that Member has a right to appear at Planning Committee and seek permission to address the meeting.
- 7.2 Lobbying can, however, lead to the impartiality and integrity of a Member being called into question, unless care and common sense is exercised by all the parties involved. Therefore, if a Member of the Planning Committee determining the application is lobbied then there are two courses of action open to that Member:
- (a) to adopt the approach set out in Section 4.14 or 4.15 of this Code;
  - (b) to restrict him or herself to give merely procedural advice, and to direct the person who is lobbying to the Officer who is dealing with the application, so that their opinions may be included in the Officer's report to the Planning Committee. If that Member expresses an opinion it should be made clear that such an opinion is expressed at that time and that he or she would only be in a position to make a decision after having considered all the relevant material considerations giving those considerations the appropriate weight and reached a reasoned decision.
- 7.3 Any political meeting prior to the Planning Committee meeting should not be used to decide how Councillors should vote. The use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration.

7.4 Members should refrain from seeking to influence the outcome of the officer's decision or recommendations and should generally avoid organising support for or against a planning application.

## **8.0 PRE-APPLICATION DISCUSSIONS**

8.1 The use of pre-application discussions is recognised as a legitimate way to obtain informal views as to the merits of a development proposal.

8.2 It is recommended that pre-application discussions between Officers and prospective applicants take place in accordance with the following guidelines:

- it should be made clear that the advice and discussions will not bind the formal determination by the Local Planning Authority of any subsequent planning application, and that any views expressed represent provisional professional officer views only;
- advice should be given in a consistent and impartial way based on the provisions of the Development Plan and other relevant material considerations;
- Officers should make it clear whether or not they will be the decision maker (i.e. it is an application that falls within the Scheme of Delegation for Officers to determine) or that they are the advisor to the decision maker (i.e. it is an application that falls within the Terms of Reference for the Planning Committee who will make the decision)
- notes of meetings and telephone calls to confirm the discussions which took place should be kept on file;
- at least one officer from the Planning Service should attend meetings;
- a follow-up letter is advisable when documentary material has been left with the City Council.

8.3 In exceptional cases it may be appropriate for Members of the Planning Committee and/or the Cabinet or Ward Members to receive presentations arising from pre-application discussions prior to the submission of a planning application. In such circumstances it will be made clear at the outset that no Planning Committee Members present will offer any view or comment (other than questions of clarification) although Ward Members and Members of the Cabinet are at liberty to express opinions in support or opposition for the proposals as they will not be part of the Planning Committee vote on the proposals when they are reported to the Planning Committee in due course.

8.4 In no circumstances should ANY Member of the City Council meet with a developer without the presence of an Officer.

## **9.0 ORDER OF PLANNING COMMITTEE CONSIDERATIONS**

9.1 All decisions that are to be made by the Planning Committee will be based upon comprehensive written reports by Officers supplemented, where necessary, by an oral presentation which will include a site plan, an aerial photograph of the site, photographs of the site, key application plans and drawings, and other relevant material that the Officer considers will assist the Planning Committee in the consideration of the proposal.

9.2 All reports to the Planning Committee will include the following information:

- Site Description

- Proposal Description
- Relevant Planning History
- Consultation Responses
- Representations
- Analysis of Issues
- Equality and Diversity Issues
- Planning Obligations
- Conclusions
- Recommendations
- Conditions
- Statement of Reasons for Approval/Refusal
- Relevant Policies

- 9.3 In most cases the Assistant Director of Development (Planning Services) will make a recommendation to the Planning Committee to either refuse planning permission, with reasons, or to approve planning permission, with conditions. In exceptional circumstances the Assistant Director of Development (Planning Services) may not be in a position to make a recommendation to the Planning Committee through the main report, or may need to report updates on specific aspects of the proposal. Where this is necessary reasons will be given as part of the Officer presentation to the Planning Committee. In order to ensure efficient and effective decision making there may be occasions when the Assistant Director of Development (Planning Services) seeks from the Planning Committee delegated authority to determine a planning application after the expiry of an advertisement period, or upon receipt of additional details, or will seek delegated authority to refuse permission where a Section 106 agreement linked to a resolution to grant consent is not, in his/her opinion, being expedited with sufficient speed by the applicant or will seek to defer to the Assistant Director for further negotiations in consultation with Chair, Vice Chair, Lead Opposition Group Member for Planning.
- 9.4 Where further detail and clarification on a published report is required, this will be provided in the form of a written addendum report, to be made public no later than 5.00 p.m. the day prior to the Planning Committee meeting. Officers will always seek to ensure that the use of addendum reports is kept to the absolute minimum.
- 9.5 In exceptional circumstances, a further oral report may need to be provided at the Planning Committee meeting itself.
- 9.6 The order for consideration of all planning applications will be as follows:
1. Planning Officer Oral Presentation
  2. Any Planning Committee Member(s) with a prejudicial interest who wish to speak for or against a proposal (who will then leave the room).
  3. Any Ward Councillor(s) who wish to speak for or against the proposal.
  4. Any Public Speaker who wishes to speak against the proposal.
  5. Any Public Speaker who wishes to speak in favour of the proposal.
  6. Questions to the Planning Officer by Planning Committee Members.
  7. Planning Committee Members debate and consider the proposal.
  8. Planning Committee Members move and debate any alternative motions to the recommendation and the Chair puts these to the vote as appropriate.
  9. Chair of Planning Committee puts the original recommendation to the vote, if necessary
  10. Formal Decision of Planning Committee on the proposal.

## **10.0 WARD MEMBERS SPEAKING AT PLANNING COMMITTEE**

- 10.1 Once the Planning Committee agenda and accompanying papers are made available to the public five days prior to the Planning Committee meeting, a Ward Member must notify the City Council's Democratic Support Section, details of which will be on the agenda papers, that they wish to speak and give details of the item upon which they wish to speak under Part 1. Notification by either telephone, fax, letter or e-mail must be received by no later than 4.30 p.m. two weekdays before the Planning Committee meeting.
- 10.2 The Ward Member who has notified that they wish to speak needs to attend the Planning Committee at least quarter of an hour before the start of the meeting and should register their details with the Democratic Support Clerk. They will need to provide their name and ward, the application they are to speak on, and whether they are an objector or supporter of the proposal.
- 10.3 The Ward Member will be allowed to speak for up to a maximum of five minutes and must do so from the speaker's chair. The Ward Member will speak third, after the Officer presentation and after any Planning Committee Members with a prejudicial interest. This is an opportunity for the Member to put their case either in support or in objection to the planning application in order to help inform the Planning Committee debate. After speaking the Ward Member must return to the public gallery and there will be no further involvement of the Ward Member in the deliberations of the Planning Committee.
- 10.4 Ward Members will not be permitted to address questions to the Planning Committee or Planning Officers.
- 10.5 Ward Members will not be permitted to distribute papers, plans or other material at the Planning Committee meeting and will not be allowed to use slides, overheads, videos or other means of visual aids. Documents not previously submitted will not be circulated as not all parties will have had sufficient time to react to the submissions and the Planning Committee will not have proper time to consider them. In the event of material being circulated it will be disregarded by the Planning Committee.
- 10.6 Ward Members should not interrupt other speakers or interrupt the Planning Committee debate. Under no circumstances should they approach Members of the Planning Committee during the meeting as this could give the impression of undue or inappropriate influence.
- 10.7 Ward Members are advised not to make slanderous statements or any other racial motivated, discriminatory or inflammatory remarks.
- 10.8 The Chair of Planning Committee can suspend the right to the Ward Members speaking in relation to an individual item or the whole Planning Committee if he/she considers it necessary to maintain order at the meeting.
- 10.9 The Chair of Planning Committee can also require a Ward Member to cease speaking and leave the meeting if in the opinion of the Chair the speaker's statement falls within 11.7 above.
- 10.10 There is no limit on the number of Ward Councillors who can speak at the Planning Committee meeting on a development proposal.

## **11.0 PUBLIC SPEAKING AT PLANNING COMMITTEE**

- 11.1 Once the Planning Committee agenda and accompanying papers are made available to the public five days prior to the Planning Committee meeting, a member of the public, applicant or agent must notify the City Council's Democratic Support Section, details of which will be on the agenda papers, that they wish to speak and give details of the item that they wish to speak on. Notification by either telephone, fax, letter or e-mail must be received by no later than 4.30 p.m. two weekdays before the Planning Committee meeting.
- 11.2 The only participants allowed to publically speak at the Planning Committee will be the applicant or agent and/or third party objectors and supporters. In the case of third parties only those who have made written representations in time on the planning application will be eligible to speak. In the case of Public Rights of Way applications there will also be a further participant, the landowner, who will be allowed to speak after the Officer presentation, and any Members, objectors and supporters have spoken.
- 11.3 In all circumstances the maximum number of public speakers will be one objector and one in support of the development proposal. If there are several persons wishing to speak (whether objectors or supporters) it will be necessary for them to nominate a representative to speak on their behalf.
- 11.4 Once a representative has been nominated that person will also be the one to speak if the application should be deferred for any reason and need to return to the Planning Committee for a decision. In the event an application is deferred all speakers will be given the opportunity to address the Planning Committee for a second time when the planning application returns to Planning Committee for decision.
- 11.5 Any person nominated as a spokesperson for a group of objectors or supporters must notify the Democratic Support Section by 4.30 p.m. on the day before the Planning Committee.
- 11.6 If in circumstances where a nominated representative cannot be agreed upon, the City Council will allocate the speaking allocation to the first registered person wanting to speak.
- 11.7 All speakers need to attend the Planning Committee at least half an hour before the start and should register their details with the Democratic Support clerk. They will need to provide their name and address, the application they are to speak on and whether they are the applicant, agent, landowner or an objector or supporter of the proposal.
- 11.8 Third parties who wish to speak against a proposal will be the fourth to address the Planning Committee in accordance with the order set out in paragraph 9.6. Third parties (including the applicant or agent) who wish to speak in favour of a proposal will be fifth to address the Planning Committee as set out in paragraph 9.6.
- 11.9 Each person will be allowed to speak up to a maximum of five minutes and must do so from the speaker's chair. The purpose is to provide an opportunity for applicants, landowners and third parties to put their case and inform the Planning Committee debate. After speaking the speaker must return to the public gallery and there will be no further involvement of the speaker in the deliberations of the Planning Committee.

- 11.10 Speakers will not be permitted to address questions to the Planning Committee or Officers during the consideration of a proposal. If a resident wishes to ask questions then they may do so through the “Elector’s Question” procedure.
- 11.11 Speakers will not be permitted to distribute papers, plans or other material at the Planning Committee and will not be allowed to use slides, overheads, videos or other means of visual aids. Documents not previously submitted will not be circulated as not all parties will have sufficient time to react to the submissions and the Planning Committee will not have proper time to consider them. In the event of material being circulated it will be disregarded by the Planning Committee.
- 11.12 Speakers should not interrupt other speakers or interrupt the Planning Committee debate.
- 11.13 Speakers are advised not to make slanderous statements or any other racial motivated, discriminatory or inflammatory remarks.
- 11.14 The Chair can suspend the right to public speaking in relation to an individual item or the whole Planning Committee if he/she considers it necessary to maintain order at the meeting.
- 11.15 The Chair can also require a speaker to cease speaking and leave the meeting if in the opinion of the Chair the speaker’s statement falls within 11.12 or 11.13 above.
- 11.16 The Chair of Planning Committee at any time may adjourn the Planning Committee and ask for the public gallery to be cleared to maintain order at the meeting if there is any activity or behaviour which, in his/her opinion, is disrupting the proper consideration of a planning application and/or the conduct of the business of the Planning Committee.

## **12.0 SITE VISITS**

- 12.1 As part of agreeing the programme of Planning Committee meetings, dates will also be programmed in advance for Planning Committee site visits before every meeting. Members and Officers will be expected to give priority to these dates in relation to other commitments in order not to disrupt unduly the conduct of business for the Planning Committee. Planning Committee site visits can be very useful for Members to assess the planning issues arising from a development proposal by looking at these issues on the ground.
- 12.2 If, prior to a Planning Committee meeting, a Member considers that additional illustrative material would assist the Planning Committee to visualise the impact of the proposed development (over and above the planning application drawings and plans and the material forming part of the Officers’ presentation to the Planning Committee) they should advise the Assistant Director of Development (Planning Services) at least three working days before the Planning Committee meeting clearly specifying what additional material is needed and why.
- 12.3 On occasions, Officers will recommend a site visit ahead of any formal recommendation. However, the frequency of site visits needs to be balanced with the need for expediency in the planning process and where necessary to meet national and local performance targets. Excessive deferral of proposals to undertake site visits could not only affect the reputation of the Planning Committee

and therefore the City Council but also unduly delay the processing of planning applications.

- 12.4 If a Member of Planning Committee moves a resolution for a site visit at a Planning Committee meeting not having attended the scheduled visit under paragraph 12.1 or not having made requests in time under the procedure set out in paragraph 12.2, Planning Committee will exercise a strong presumption against agreeing to defer the planning application for a further site visit.
- 12.5 If a site visit is to be made by the Planning Committee it will consist of an inspection of the site (and adjoining sites and buildings as necessary) with the assistance of Officers. The purpose of the site visit is to assess the site and surroundings in the context of the development proposals under consideration, relevant development plan policies and proposals, and identified material considerations.
- 12.6 Site visits conducted by the Planning Committee will normally be unaccompanied (by third parties). As such there is no obligation on the City Council to notify the applicant or objectors of the arrangements for a site visit. However, where access is needed to a development site by the applicant and/or landowner and/or adjacent sites accompanied site visits are necessary. Before Members enter the site(s) or building(s) a senior Officer will explain to any applicants, objectors, or supporters in attendance the procedure for the conduct of the visit.
- 12.7 Under no circumstances are Members of the Committee or Officers to enter into any discussions with Ward Members, applicants, supporters or objectors on the site visit regarding the merits or demerits of the proposal. During the site visit Members and Officers should avoid comments that could be interpreted as deliberations on the proposal itself, restricting themselves to questions of clarification or observations of fact. If, in the opinion of the Chair of the Planning Committee, the conduct of Members, Officers or third parties is of such a nature as to be potentially in conflict with any of these requirements, or the safety of the Members or Officers is in question, he/she will immediately suspend the site visit. If the Chair of the Planning Committee does suspend a site visit the application will be determined by a subsequent Planning Committee without further recourse to a site visit (even if a further request is made by a Member).
- 12.8 Ward Members may be present at a site visit but this is only to accompany the Planning Committee members, it is not an opportunity for the Ward Members to put forward any case for or against the proposal. The Ward Member is only present to assist with any clarification that may be required in connection with local area issues.
- 12.9 All site visits will commence with the Chair of the Planning Committee making a statement to all in attendance regarding site visit procedures. The statement is as follows:

“May I remind Members of the Planning Committee that the purpose of this site visit is solely to familiarise your selves with the site and its surroundings and the location of relevant parts of the proposal. This may or may not involve visiting third party premises which will be my decision and mine alone. The case officer(s) will be responsible for providing factual information to Members regarding the site and the proposed development.

The applicant or their agent may be present on the site, either to enable access or to ensure health and safety procedures are followed. They are not permitted to

present their case. If Members wish to gain access to other parts of the site or to seek clarification on detail these must be put to me and I will ask the case officer to deal with these issues without further involvement of the Members and who will report back to the Chair.

Ward Members may be present to accompany the Members but this is not an opportunity for the Ward Member to put forward any case for or against the proposal. The Ward Member is only there to assist with any clarification that may be required in connection with local area issues.

Neighbours may be present outside the site and may be asked by the Chair to allow access to their premises as appropriate. Similarly they are not permitted to present a case or answer questions. At no time during this site visit should Members engage in debate or offer recommendations either to each other, Ward Members, the applicant or third parties as this may be seen as pre-determination and prevent that Member from debating and voting upon the scheme when considered at a future planning committee meeting.

As Chair of the Planning Committee, and as set out in the code of Good Practice, I am able to suspend a site visit if they are not conducted in an appropriate manner or there are health and safety issues”.

### **13.0 DECISIONS CONTRARY TO THE DEVELOPMENT PLAN**

- 13.1 The general principle in planning is that where the Development Plan is up to date and relevant, planning applications should be determined in accordance with it unless material considerations indicate otherwise.
- 13.2 All applications must be assessed in accordance with Section 38(6) of the Planning and Compensation Act 2004.

### **14.0 DECISIONS CONTRARY TO OFFICER RECOMMENDATION**

- 14.1 Department of Communities and Local Government Circular 03/09 advises that the most common cause for costs being awarded against a Local Planning Authority is where there are unsubstantiated reasons for refusal. However, the circular recognises that planning can often involve judgements concerning the character and appearance of a local area and the precise interpretation and application of development plan policy requirements. As such the circular states:

“Planning Authorities are not bound to accept the recommendations of their officers. However, if officers’ professional and technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so costs may be awarded against the authority”. (DCLG Circular 03/09, paragraph B20, April 2009).

- 14.2 Planning applications can also give rise to local controversy and sustained opposition, leading to Members being actively lobbied (see Section 7). However as Government guidance states:

“...local opposition or support for a proposal is not, in itself, a ground for refusing or granting planning permission, unless it is founded upon valid planning reasons”. (“The Planning System: General Principles”, February 2004).

Planning authorities will be at risk of costs for unsubstantiated reasons for refusal that rely almost exclusively on local opposition for their justification.

- 14.3 If a decision is to be made contrary to the Assistant Director of Development (Planning) recommendation, then the Planning Committee must give full reasons for the decision, which shall be minuted. Circular 03/09 makes it explicit that the authority will be expected to show clearly why the development cannot be permitted. The Officer shall be given an opportunity to advise Members of the possible implications of such a decision with particular reference to national planning guidance and case law and to assist if additional conditions or reasons for refusal are required to be imposed on an application.
- 14.4 If the Planning Committee intend to make a decision contrary to the officer recommendation, whether a refusal or approval, a detailed minute of the Planning Committee's reasons will be made and placed on the application file.
- 14.5 In the event that the Planning Committee are minded to grant an application contrary to Officers recommendation then they must provide:
- (i) full conditions and relevant informatives;
  - (ii) full statement of reasons for approval (as defined in Town & Country Planning (General Development Procedure) (England) (Amendment) Order 2003);
  - (iii) relevant Local Plan and Local Development Framework policies and proposals.
- 14.6 Where a Member of the Planning Committee moves a motion to refuse an application contrary to the Officers' recommendation then the Member moving the motion MUST provide:
- (i) full reasons for refusal, which must include a statement as to demonstrable harm caused and a list of the relevant plan and policies which the application is in conflict with;
  - (ii) statement of other policies relevant to the decision.

In the event of a Member motion to refuse, which is seconded, the Chair will if necessary adjourn the meeting for a few minutes to allow Officers to advise of any other relevant planning issues to assist them with their reasons. Vague, generalised or inaccurate assertions about a proposals' impact, which are unsupported by an objective analysis, are more likely to result in a costs award.

If the Member moving the motion does not meet the requirements of (i) and (ii) above the motion shall be not be deemed to have been properly made.

- 14.7 If, in the opinion of the Assistant Director of Development (Planning Services) the possible decision of the Planning Committee to refuse planning permission would carry a high risk of an award of costs against the Local Planning Authority, he/she shall formally ask the Planning Committee to defer a decision. The purpose of the deferral shall be to provide time for a full consideration by officers of the Planning Committee's concerns about the application, such that officers may advise of grounds of refusal, should the Planning Committee remain minded to refuse the application. In making an assessment about the level of risk of a cost award, the Assistant Director of Development (Planning Services) shall have regard to:

- The application's level of compliance with the Local Development Framework and other adopted policies
- The robustness of the evidence that can be cited to support a refusal of planning permission
- All other material considerations

14.8 Any decision made during the Planning Committee forms the full and final decision of the City Council (subject to agreed matters for deferral and final ratification) and it is therefore essential that both Members and Officers carefully follow the above procedure in order to provide a legally binding decision.

## **15.0 LEGAL AND OTHER OFFICER ATTENDANCE**

15.1 A senior Legal Officer will always attend the Planning Committee meeting to ensure that the proceedings have been properly conducted in accordance with all relevant policies and procedures. A senior Legal Officer will attend site visits as and when required.

16.2 Occasionally specialist officers from other City Council services will need to attend the Planning Committee meeting. Very exceptionally officers from other statutory organisations who can provide specialist technical advice to assist the Planning Committee in the determination of planning applications may attend the meeting.

## **16.0 APPEALS AND INQUIRIES**

16.1 In the event that planning permission is refused either under delegated powers conferred on the Assistant Director of Development (Planning Services) or by the Planning Committee, an applicant may exercise his/her right of appeal. Officers are responsible for preparing the City Council's evidence for these appeals, and the vast majority of these are dealt with by written representations involving an exchange of statements. On occasions specialist Counsel and consultant support is needed to supplement the evidence of Officers.

16.2 In the case of an applicant exercising his/her right to an informal hearing or a Public Inquiry Officers will be responsible for presenting the City Council's evidence and attending to present that evidence. Members are at liberty to attend in their capacity as Ward Members and may be called to give evidence as a Ward Member. Members of the Planning Committee will not normally be required to attend to present the Council's case.

16.3 In the case where the Planning Committee has refused planning permission contrary to Officer's recommendations Officer's will normally prepare and present the evidence in their role as employee of the Local Planning Authority. It will be for the Assistant Director (Planning Services) to identify the officers to prepare and present the evidence.

16.4 It should not be necessary for Members of the Planning Committee to become involved in preparing and presenting the case at appeal on an overturn decision, because the reasons for refusal and statements on relevant policies put forward by the Members in reaching their decision should be sufficient to defend the case. However, there may be some situations where in an inquiry a Member involvement as a relevant witness is necessary in order to provide a full and accurate case. In circumstances where the Assistant Director of Development (Planning Services)

considers this to be the case the Member will be expected to attend any Informal Hearing or Public Inquiry in support of the City Council's case.

- 16.5 In exceptional circumstances the Assistant Director (Planning Services) may not be able to prepare the City Council's evidence to the hearing or inquiry because the Officer's earlier recommendation on the grounds of refusal is so prejudiced by the earlier advice given. In these circumstances a nominated Member of the Planning Committee together with an externally appointed consultant will need to present the Council's evidence.

## **17.0 PERFORMANCE**

- 17.1 The responsibility to meet performance targets, whether set locally or nationally, is shared by both Officers and Members. Unnecessary delay at any point in the process of determining an application can result in targets not being met, but more importantly delays can damage the reputation of the organisation and the realisation of the regeneration of the City.
- 17.2 Therefore when making decisions as to the most appropriate course of action Members and Officers need to ensure primarily that a fair and reasonable planning decision is made, but that in so doing account must also be taken of the performance implications.

## **18.0 MONITORING AND REVIEW OF DECISIONS**

- 18.1 Members should also play an active part in regularly reviewing the outcome of planning decisions so that lessons can be learned and the future consideration and determination of planning application proposals can be improved as part of a broader commitment to continuous improvement.
- 18.2 Every year the Planning Committee will undertake an Annual Site Visit to review completed projects and look at key regeneration sites that form part of the Local Development Framework. There may also be the need for review site visits during the determination stage of planning applications.
- 18.3 The Assistant Director of Development (Planning Services) will present the Annual Monitoring Report describing development activity within the city to the Planning Committee each year.
- 18.4 Members of Planning Committee should assist in the preparation of the Local Development Framework by engaging in key consultation stages and discussing with Officers the application of key policies. The Chair of Planning Committee will also meet regularly with the relevant Portfolio Holder to discuss the interrelationships between policy development and policy application.
- 18.5 Members of the Planning Committee should therefore ensure that they are available for review visits as and when necessary throughout the year and for a whole day of visits to completed projects for the Annual Site Visit.

## **19.0 TRAINING**

- 19.1 No Member may sit at a Planning Committee meeting without first having received the full Planning Committee Induction training. This training will expire if the Member has not sat on the Planning Committee within 12 months of receiving the training, or has had a gap of at least 6 months from the Planning Committee.

- 19.2 Given the complex legislative framework for determining planning applications and the constant reforms and changes to procedure within the planning system, the Assistant Director of Development (Planning Services) will provide a Planning Committee Training Programme comprising regular sessions covering:
- Induction
  - Training Workshops
  - Annual Monitoring Report
  - Annual Site Visit
  - Annual Public Rights of Way Workshop
- 19.3 Officers will offer the opportunity once a year for a training session on planning issues for all Members of the City Council.
- 19.4 Members will be expected to make themselves available to attend these training sessions in order to keep up to date on the latest planning and development issues. It will be the responsibility of each individual Member to ensure that they have had at least the Induction training in order to be able to sit at a Planning Committee meeting. The Assistant Director of Development (Planning Services) will maintain a register of Member training. Training will be provided using a range of training methods.

## **20.0 COMPLAINTS**

- 20.1 A complaint that a Member or Officer has breached this code should be made in writing to the Head of Legal Services and would be referred to the Standards Committee or Monitoring Officer for investigation and determination.
- 20.2 A complaint made in writing regarding the determination of a planning application or a related planning matter would be investigated by the Assistant Director of Development (Planning Services) and/or a Member of the Planning Service Management Team) under the Council's complaints procedure.
- 20.3 A complaint may be made to the Local Government Ombudsman in the event that a complainant was not satisfied with the result of an investigation under the Council's complaints procedure. This must be made on the appropriate prescribed form and submitted direct to the Local Government Ombudsman.