

# **PART 7 – THE CODES, PROTOCOLS AND ADVICE**

## **B – COUNCILLORS’ PLANNING CODE OF CONDUCT**

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## 1. INTRODUCTION

- 1.1 This Code of Practice and Procedure is a **guide** for both Councillors and Officers who deal with planning applications, planning policy and guidance. Unlike the Councillors Code of Conduct, it is not a legal requirement, however the Code should be followed at all times to avoid allegations of malpractice. It is consistent with the Councillors' Code of Conduct, which forms part of the Constitution (Part 7A) and to which all Councillors are subject. It incorporates advice from the Local Government Ombudsman, the National Planning Forum, and the "Probity and Planning" report produced by the Local Government Association and Planning Advisory Service. This Code supersedes previous advice given to Councillors and Officers.
- 1.2 A successful planning system relies on mutual trust and an understanding of both Councillors' and Officers' roles, who should both act not only in a fair and impartial way but be seen to do so whilst reflecting best practice, thereby increasing public confidence; reducing the likelihood of Borough decisions being challenged; and helping Councillors and Officers in dealing with what may be difficult situations. If you do not follow this Code, you may put:
- the Council at risk of proceedings on the legality or maladministration of a discussion; and
  - yourself at risk of being named in a report made to the Council, or if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Chief Executive.
- 1.3 Making a planning decision requires an informed judgement based upon firm policies. The decisions reached by Councillors and Officers will affect the daily lives of everyone including the private interests of individuals, be it applicants or adjoining neighbours, landowners and developers. It is imperative that the planning system is an open process actively inviting public opinion before decisions are made. The process of decision-making must therefore be transparent in nature.
- 1.4 The Human Rights Act 1998 also has a role within the planning process. The normal rule under the Act is that it is unlawful for a public authority to act in a manner which is incompatible with a Convention right. A breach of this rule would entitle the relevant party to a variety of remedies or damages in certain cases. The Act allows for a right to a fair hearing and rights to private property. When considering a planning application, it must be considered whether these rights have been complied with.

## **2. GENERAL ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS**

- 2.1 Councillors and Officers have defined roles within the planning process. Councillors are responsible to the public, whereas Officers are responsible to the Council. All statutory provisions and codes setting out standards must be followed. In doing so, this will preserve the public perception of the integrity of public service which must be maintained.
- 2.2 The Officers' role is to advise Councillors of the relevant planning policies and other material considerations, whilst the Councillors' role is to take planning decisions based on that advice.
- 2.3 Councillors exercise two roles in the planning system.
- They determine applications, arriving at a decision to grant or refuse permission by using planning criteria and by excluding non-planning considerations.
  - They act as representatives of public opinion.
- 2.4 Officers must be objective and impartial at all times. The areas of professional advice to be given will include planning, legal and highway issues and this advice must be based on the officers' professional judgement. This advice must not be compromised or influenced by political considerations although these may be relevant through the formal development of the Council's planning policies.
- 2.5 Councillors are all subject to the Code of Conduct which sets out their responsibility to identify and declare any pecuniary interest, and that they must not take part in any discussion or debate on any matter in which you have a pecuniary interest.

## **3. DECLARATION AND REGISTRATION OF INTERESTS**

- 3.1 Each Councillor is responsible for declaring their interests, but advice can be sought from the Monitoring Officer or legal officer and / or clerk to the Committee. Further advice regarding individual declarations of interest can be found in the Councillors' Code of Conduct and in the guidance produced by the Department of Communities and Local Government. Failure to disclose an interest may have the consequences set out in paragraphs 3.13 below.
- 3.2 The Local Government Act 2000 (as amended by the Localism Act 2011) re-obliged Local Authorities to introduce a Code of Conduct for Councillors. The Code was adopted by the Council on July 2012. The requirements relating to the declaration of Disclosable Pecuniary Interests are detailed in the Councillors' Code of Conduct found earlier in this section. The requirements of the Code of

Conduct are applicable to Councillors when dealing with planning matters.

- 3.3 A Statutory Register of Councillors' Interests is maintained by Democratic Services. It is the individual Councillor's responsibility to notify the Monitoring Officer of any changes to their own Interests, whether by way of addition or deletion as soon as they occur. Councillors are also required to register any gifts or hospitality received, over £25 in value.
- 3.4 Councillors and Officers must observe the Council's Anti-Fraud and Corruption Policy which aims to identify issues of fraud and corruption, bring them into the open and ensure that investigations are carried out appropriately. **The policy clearly states that when dealing with planning applications, gifts or hospitality must not be accepted.** Examples of what is meant by "gifts and hospitality" are given in the Policy. Again, if required, advice can be sought from the Monitoring Officer.
- 3.5 Any Councillor who has substantial property interests, or other interests which would prevent them from voting on a regular basis, should avoid serving on the Development Management Committees.
- 3.6 **Disclosable Pecuniary Interests**
- Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Councillors. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter. Councillors may have a Disclosable Pecuniary Interest if the issue being discussed affects them more, either positively or negatively, than other people in the area. The Councillor must say they have a Disclosable Pecuniary Interest and may make representations but must not participate in any discussion of, vote on, or discharge any function related to, any matter in which they have a pecuniary interest, unless dispensation has been granted. The definition of a Disclosable Pecuniary Interest is set out in Sections 8 & 9 of the Councillors' Code of Conduct found earlier in this section.
- 3.7 A Councillor with a Disclosable Pecuniary Interest in a matter who attends a meeting at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of its consideration, or when the interest becomes apparent. Having done this the Councillor can remain in the meeting, can make representations, but may not speak further or vote on the matter unless they have been granted dispensation. The Councillor should make the declaration at the beginning of the meeting or as soon as they are aware of the issue being discussed.

The Councillor should say if anything being discussed relates to anything they are required to declare on the register of interests.

3.8 Disclosable Pecuniary Interests in relation to planning applications could include:-

- an application made by or on behalf of the Councillor
- ownership/occupation of the property directly the subject of the application
- an application relating to a site which is a close neighbour of the Councillor's property. Immediate neighbours are almost certainly likely to give rise to a prejudicial interest. How far this may extend would depend upon the development proposed, and the location of the properties. Each case would need to be judged on its own merits and it would not be appropriate to have hard and fast rules to apply to all circumstances. Relevant factors could include:
  - generation of more or less traffic locally
  - visual impact on the Councillor 's property
  - whether a precedent for the area might be established which could affect the Councillor 's property
- an application made by, or on behalf of, or affecting a company or firm in which the Councillor has an interest (e.g. is remunerated Director or is a Partner)
- where the Councillor is involved in a firm or company associated with an application site, e.g. where the firm is the agent, architect, the development company, etc.
- an application made by, or on behalf of, or affecting a club or society, etc., to which the Councillor belongs, e.g. Freemasons, trade unions, voluntary bodies, etc.

These examples would also apply to matters where enforcement or any other action was being considered. The list cannot be exhaustive, and Councillors are encouraged to seek guidance from the Monitoring Officer. Some case studies are included after paragraph 3.18 below.

3.9 ***Where your interest is a Disclosable Pecuniary Interest:-***

- **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.
- **Don't** get involved in the processing of the application.
- **Don't** seek to accept any preferential treatment or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a Councillor. This would include, where you have a personal and prejudicial interest in a proposal, using your position to discuss that proposal with officers or Councillors when other members of the public would not have the same opportunity to do so.

- **Do** notify the Monitoring Officer in writing of your own interest and note that:
  - notification to the Monitoring Officer should be made no later than submission of the application;
  - the proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers; and
  - it may be advisable that you employ an agent to act on your behalf on the proposal in dealing with officers and any public speaking at Committee (where permitted).

3.10 A Councillor may, however, regard themselves as not having a Disclosable Pecuniary Interest in a matter if that matter relates to:

- (i) another relevant authority of which they are a Councillor (in practice this refers to Parish or Town councils, the Fire Authority and the Police Authority)
- (ii) another public authority in which the Councillor holds a position of general control or management and would include:
  - any Government Department
  - the Armed Forces
  - Health Authority, NHS Trust, PCT
  - Education Governing bodies
  - Advisory bodies
  - The Arts Council
 (See Schedule 1 to the Freedom of Information Act 2000.)
- (iii) a body to which he has been appointed or nominated by the Council as its representative (e.g. a Governor of a school).

[There are similar provisions for Councillors who are Council tenants, when considering school meals, transport and travelling expenses and the Councillor is the parent or guardian of a pupil (unless the item relates to the particular school where the child is a pupil), to matters relating to sick pay and Councillors' Allowances.]

The interest must be declared, and the Councillor is still required to consider all the surrounding circumstances before deciding whether it is appropriate for them to stay in the meeting and take part in the debate and vote. There may be additional factors present which make the interest prejudicial. Advice can always be sought from the Monitoring Officer.

3.11 The Local Government Ombudsman has confirmed that there are times when a Councillor may lose the right to act as a private individual. If you have a Disclosable Pecuniary interest that is required to be declared and would mean you that you cannot take part in the discussion - you cannot attend as if you were a member of the public.

### **Effect of Failing to Declare an Interest**

- 3.14 If a Councillor fails to declare an interest it is a criminal offence if you fail, without reasonable excuse, to comply with the requirements under s30 or s31 Localism Act 2011 to register or declare Disclosable Pecuniary Interests or take part in council business at meetings or when acting alone, when prevented from doing so. If a Councillor fails to declare an interest, the Magistrates Court may, upon conviction, impose a fine of up to level 5 (currently £5,000.00), and an order disqualifying the person from being a Member of a relevant authority for up to five years.

### **Interests of Officers**

- 3.15 Officers must act impartially. The Council will review, on a regular basis, the restrictions adopted on outside activities under the Local Government and Housing Act 1989 under which private work and interests are declarable.
- 3.16 Officers must declare any interests in any planning matter or application before the Council, must not deal with such matters on behalf of the Council, and must not give advice to Councillors or other officers on them. An officer with an interest or financial interest in a planning matter must withdraw from any relevant Committee or Council meeting whilst the matter is discussed. Officers must maintain their professional integrity and should avoid becoming associated in the public mind with representatives of the development industry or environmental pressure groups. This also applies in the case of delegated decisions. If an officer has an interest in an application, he/she must declare that interest and take no part in its processing or in the making of the decision.

## **4. PRE-APPLICATION DISCUSSIONS**

- 4.1 The Chair and Members of any of the Development Management Committees normally should not become involved in any discussions or negotiations relating to any planning application or proposed planning application (whether for or against that proposal or application), which may be the subject of consideration at the Committee of which they are Chair or a Councillor. A Cabinet Member or relevant Committee Chair or Vice-Chair should become party to the negotiations or attend meetings if requested to do so by the Assistant Director of Planning. The relevant Officer must always be present at such meetings or negotiations.
- 4.2 Whilst such discussions between developers, officers and third parties who are opposed to or in favour of any particular development may be encouraged, it will always be made clear at



the outset, that such discussions will not bind the Council to make a particular decision, and any views expressed are personal and provisional.

- 4.3 Officers should be present with Councillors at pre-application meetings. Officer advice given will be consistent and based upon the Development Plan (i.e. Structure and Borough Local Plan and Neighbourhood Plans) and other material considerations. Every effort will be made to ensure that there are no significant differences of interpretation of planning policies between Planning Officers.
- 4.4 A written note will be made of any pre-application discussions. An officer should take notes at the meeting, as well as note of any phone conversations or relevant e-mails recorded for the file. Notes should record issues raised and advice given. The note(s) should be placed on the file as a public record. If there is a legitimate reason for confidentiality regarding a proposal, a note of the non-confidential issues raised, or advice given can still normally be placed on the file.

Two or more Officers will attend potentially contentious meetings, with a follow up letter sent, particularly when documentation has been left with the Borough.

- 4.5 Care will be taken to ensure that advice is seen to be impartial.
- 4.6 Except to the extent set out in the Rules of Procedure, to maintain impartiality the general rule is that Councillors should not take part in pre-application discussions and if they do should always be accompanied by an officer.

## **5. DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS THEIR CLOSE RELATIVES AND OFFICERS AND COUNCIL DEVELOPMENT**

- 5.1 Councillors whose business or other interests are likely to bring them into frequent contact with the planning system should generally avoid selection for Development Management Committees.
- 5.2 Any planning proposals submitted by Councillors, their close relatives, officers or the Council (be they planning applications, development plan proposals or enforcement issues) can easily give rise to suspicions of impropriety. It is perfectly legitimate for such proposals to be submitted but it is vital to ensure they are handled in a manner which gives no grounds for accusations of favouritism.

- 5.3 In order to avoid any risk of criticism in all cases of an application by a (i) Councillor or a member of their family, and there are objections to it or it is contrary to the adopted planning policies; or (ii) an Officer employed in a role which is part of or interacts with the planning application process and there are one or more objections or it is contrary to adopted planning policies then in either case the application will be considered by the appropriate Development Management Committee and not by officers under delegated powers. The Report must clearly state the applicant is a Councillor or an Officer of the Council.
- 5.4 Proposals for the Council's own development (or a development involving the Council and another party) and private applications in respect of Borough owned land (e.g. prior to a land sale being agreed or negotiated) – that receive 3 public objections or a single objection from an RBWM Councillor, will be determined by the relevant Development Management Committee and not delegated to Officers. Decisions will be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Borough if the development is permitted. It is important that the Borough is seen to be treating such applications on an equal footing with all other applications as well as actually doing so.
- 5.5 Councillors who act as agents for people making an application to the Royal Borough should play no part in the decision-making process for that proposal, neither should they, nor an officer, play any part in relation to their own personal application.
- 5.6 The Monitoring Officer will be notified of such applications so that this officer can confirm that relevant applications have been processed properly.

## **6. LOBBYING OF, AND BY, COUNCILLORS AND ATTENDANCE AT PUBLIC MEETINGS**

- 6.1 Councillors may be subject to lobbying (both for and against) on planning matters and specific planning applications. Great care is essential to maintain the Council's, and indeed, the Councillor's own integrity and the public perception of the planning process when Councillors are lobbied.
- 6.2 Taking account of the need to make decisions impartially, Councillors should not favour, or appear to favour, any person, company, group or locality. Councillors should remember that they have a duty to represent the interests of the whole of the Council's area.

Councillors who are members of a lobbying group which have publicly expressed support for or against an application, will

certainly have a personal interest which should be declared. An example might be membership of a Residents' Association which regularly comments on applications. The Councillor may also have a prejudicial interest, but this will depend on careful consideration of all the surrounding circumstances (for example the Councillor's role in the group and the extent to which the Councillor is publicly identified with their position). If in doubt, the matter should be discussed with the Council's Monitoring Officer.

- 6.3 Ward Councillors should maintain an uncommitted position on an application, until the time for decision comes. The Committee can expect help from Ward Councillors in drawing relevant local circumstances to the Committee's attention, but Councillors are reminded that they are elected to serve the interests of the whole Borough, not just their Ward, and that they should restrict their contributions to material planning matters.
- 6.4 Councillors must be aware that if they express a particular view on a planning application, before they have had the opportunity to consider all the relevant representations and facts at the appropriate Committee, they may be predetermining the application, and it may be inappropriate for them to be involved in the final decision process. Councillors should therefore ensure that they attend the Committee with an open mind, ready to consider each application on the arguments before them.
- In addition, those Councillors who have come to, and indicated this before the meeting, a conclusive view on an application or other planning matter, should carefully consider whether their continued involvement in determining the application or other matter would prejudice the integrity of the planning process. Their continued involvement could also amount to maladministration in such cases. Further guidance, if required, can be given by the Monitoring Officer, or their representative at the Committee meeting.
- 6.5 If it is suggested that the public believe the Councillor had come to a clear view on the planning matter or application before the meeting when the decision is to be made, there should be some reasonable basis for the public belief. This might be a quote from the Councillor in the press or authentic reports of statements made etc. which are not repudiated by the Councillor or evidence in written form from the Councillor, e.g. letters of objection. In such cases, the Councillor should not take part in the debate on or vote on the issue as this would be unfair and prejudicial and may amount to maladministration.
- 6.6 Advice will always be available on this topic from the Monitoring Officer or the legal adviser.

- 6.7 Councillors who will be involved in the determination of a planning matter may, prior to any meeting, listen to a point of view about a planning proposal and may be asked for planning or procedural advice. The Councillor should refer the person making the request to the Case Officer or Unit Manager.
- 6.8 Individual Councillors should reach their own conclusions on an application or other planning matter rather than follow the lead of another Councillor. Any political group meetings prior to Committee meetings should not be used to decide how Councillors should vote and the party whipping process should not be used in relation to planning applications. Planning decisions cannot be made on a party-political basis in response to lobbying.
- 6.9 Councillors involved in decision making on planning matters should not organise support or opposition to a proposal, lobby other Councillors, or act as an advocate or put pressure on Officers for a particular recommendation or decision.
- 6.10 As long as a Councillor is not prevented from attending and/or speaking and voting at a meeting for the reasons set out in this Code, any Member of the Council may attend any Development Management Committee of which they are not a Member. Councillors are requested to notify Democratic Services in advance of the meeting if they intend to speak, as this can affect the timings of the meetings.
- 6.11 Councillors (in particular Councillors involved in determining planning matters) who find themselves contacted by an individual or group as a lobby should explain that whilst they can listen to what is said, it prejudices their impartiality to express a firm point of view or an intention to vote one way or another. As regards unsolicited written material from individuals or groups, it is suggested that the Planning Case Officer should be contacted to ascertain if he has received a similar communication. This will ensure that all the necessary information has been received by the Council and also enables Officers to comment on the contents of that material before any decision is made on the determination of the application. If any Councillor considers that they have been exposed to undue or excessive lobbying or approaches, this should be reported to the Monitoring Officer, who will in turn advise the appropriate Officers.
- 6.12 Officers involved in the processing or determination of planning matters should not attend public meetings in connection with development proposals (i.e. pre-application) or submitted planning applications unless those meetings have been arranged by or with the express agreement of the Committee or of the relevant Assistant Director or Executive Director. To do so could lead to allegations of bias or prejudice in relation to a particular point of view. If put in such a position, inadvertently, Officers should only

provide information and give no view on the merits or otherwise of the proposal.

- 6.13 Similarly, Councillors involved in the determination of planning applications should take great care to maintain impartiality when attending public meetings in relation to planning matters. At such meetings it is preferable for no view on the merits or otherwise of a proposal to be given.
- 6.14 If the Monitoring Officer believes that a Councillor has prejudiced their position by expressing a conclusive view on an application before its determination by the Committee, the Monitoring Officer will advise the Councillor that it would be inappropriate for that Councillor to take part in the debate, or vote on the application.
- 6.15 If Councillors are requested to provide information by any individual or group, then regard should be had to the general provision under the Code of Conduct as to disclosure of information. A Councillor must not disclose information given to him in confidence by anyone, or information acquired which he believes is of a confidential nature, without the consent of a person authorised to give it, or unless he is required to do so by law; nor should a Councillor prevent another person from gaining access to information to which that person is entitled by law. If a Councillor has any doubt as to whether the information requested can be provided, then they should contact the Monitoring Officer for further advice.

## **7. PARISH COUNCILLORS**

- 7.1 There is nothing in the Code of Conduct which prevents dual-hatted Councillors (councillors who serve on Parish/Town councils and on the Borough Council) speaking and voting at both parish and unitary tiers on the same planning issue. The advice is that Councillors who take this course need to declare their membership of the Parish or Town Council as an interest when attending the Borough's Development Management Committees. The advice goes on to emphasise that:

*“Councillors are under a legal obligation to approach decision making with an open mind, prepared to listen to all sides of the argument. Dual-hatted Councillors who choose to speak and vote at Parish and principal levels will need to make it very clear that their vote at Parish level represents a preliminary view and that they will reconsider the matter afresh at principal level. Failure to do this may lead to a legal challenge of the principal authority's (the Council's) decision on the grounds of predetermination.”*

Different considerations apply where a Parish Council is the applicant in relation to a particular planning application.

- 7.2 Each Parish and Town Council has its own Code of Conduct which is substantially in the same terms as the one that this Council has adopted.

## **8. OFFICER REPORTS TO PANEL**

- 8.1 Reports to Committees on planning matters must be balanced, accurate and cover all relevant points. Where a planning application is subject to a full report this will refer to the relevant provisions of the Development Plan, and all other relevant material planning considerations. Where appropriate this will include a full description of the site and any related planning history. It will also contain a summary of statutory and non-statutory representations received.
- 8.2 As recommended by the Nolan Report, all reports will have a written recommendation of action/decision, and oral reporting (other than to update an existing report) will only be used on rare occasions and any oral reports will be carefully minuted when this does occur. New objections do not need to be specifically minuted and will be treated as updates.
- 8.3 All reports will contain an appraisal which clearly justifies the stated recommendation, together with all policies to be relied upon in terms of approving or rejecting an application. Any relevant policies not specifically mentioned in the Report but raised during debate will be minuted.
- 8.4 All reasons for refusal and conditions to be attached to permissions must be clear and unambiguous, and when not contained in the Officers' recommendations will be minuted. Whenever the Development Management Committee resolves not to follow approved policies, then this must be recorded clearly together with convincing reasons for the decision. If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated.

## **9. SITE VISITS**

- 9.1 Whether formal or informal site visits are made, Councillors should be careful to follow this guidance taken from the Nolan Report.

In all cases the Councillor should avoid committing themselves one way or the other in respect of the application and must not give any undertakings as to how they would vote. Councillors must not enter into discussion on the merits of the application and should not be seen to take sides. If they do speak to an applicant the Councillor should also try to speak to local objectors. Councillors should keep

to public highways and only go onto private land if invited. They have no right to go onto the application site or adjoining property. If a site visit is made the Council's identification badge should be carried on such visits.

- 9.2 A decision by a Committee to carry out a formal site visit normally only takes place where it is felt by the Committee that decisions cannot be taken without viewing the site and adjoining properties. Examples of when formal site visits might be appropriate would be where:
- the impact of the proposed development is difficult to visualise from the plans and any supporting material; or
  - the proposal represents a departure from the Development Plan; or
  - the proposal is contrary to a specific policy, or raises wider policy issues; or
  - the proposal raises particularly unusual factors, for example it would have a major environmental impact or could lead to loss of jobs and/or financial hardship (e.g. enforcement against an existing use or development that has already been carried out); or
  - there is considerable local concern about a proposal, allied to planning reasons for carrying out a visit (e.g. the physical relationship of the site to other sites in the neighbourhood).
- 9.3 The purpose of a site visit is for Councillors to use the visit for fact finding to gain further knowledge of the development proposal, the application site and its relationship to adjacent sites.
- 9.4 Following formal site visits, Officers will prepare a report on the planning issues and any relevant information obtained from the site visit to enable the next Committee to determine the application. Where appropriate, officers will attempt to secure reasonable access to the application (or objector's) site. Site owners are under an obligation to permit access to the Councillors and Officers present but are under no such obligation to any other resident or interested party.
- 9.5 The agreed procedures do not allow Councillors to receive representations from interested parties i.e. the Applicants and Objectors during the course of the site visit. All representations are made in the meeting itself. No decision is made at the site visit, and it is essential that Councillors and Officers ensure that those attending are not led to believe that a decision has been taken on the visit, or that conclusive views have been reached. Site visits should not be used as a lobbying opportunity by objectors or supporters, and this should be made clear to any members of the public who may be in attendance.

- 9.6 Officers will ensure that all correspondence in relation to site visits clearly identifies the purpose of a site visit, the format and conduct of the visit, and if appropriate the procedure for applicants/agents and interested parties to address Councillors.
- 9.7 Those Councillors wishing to make representations, either on the application or to emphasise (or rebut) any specific issue arising from the site visit, can do so when the matter is reported back to the Committee for a decision. Other parties, applicants and objectors can make written submissions to the officers which will be reported to the Committee.

## **10. PRE-COMMITTEE TECHNICAL BRIEFINGS**

- 10.1 Officers will provide a briefing to all Members of the Committee prior to any meeting of the Committee. These briefings will advise of any verbal updating at the meeting that will be necessary and to afford the Councillors an opportunity to give notice to the Officers of any potential problems. No decisions are or can be made at these briefing meetings.

## **11. DETERMINATION OF PLANNING APPLICATIONS**

- 11.1 When dealing with planning matters only material planning considerations must be taken into account. Any decision made should be justified against the Development Plan and other material considerations. The Committee's reasons should be clear and convincing.
- 11.2 If the Development Plan is material to the application then the statutory position is that the application should be determined in accordance with the Development Plan unless material considerations indicate otherwise. [Section 54A of the Town and Country Planning Act 1990 (as amended).]
- 11.3 Officers involved in the processing and determination of Planning applications also must act in accordance with the Council's Disciplinary Rules and Procedures, Procedure Rules within the Constitution, Councillor and Officer Code of Conduct and with the relevant sections of the Royal Town Planning Institute's Code of Professional Conduct.
- 11.4 Where any of the Development Management Committees are considering a planning application, members of the public and applicants shall be entitled to speak prior to determination of the application in accordance with the Protocol on Public Speaking at Planning Meetings which forms part of the Council's Constitution, Part 7F.



- 11.5 Under the Council's Scheme of Officer Delegation certain types of applications may be determined by the Assistant Director of Planning. These are listed in the Council's Constitution.
- 11.6 If a Councillor requests that an application normally determined under delegated powers should be referred to a Development Management Committee, the Councillor is asked to complete a formal request card or submit that request in writing providing reasons for referring the application to Committee if possible - but this is a matter for their own discretion. The completed request should be given to the Assistant Director of Planning so that the Officers' report can contain any information relevant to the reason for referral.

## **12. THE DECISION-MAKING PROCESS AND DECISIONS CONTRARY TO OFFICER RECOMMENDATION AND/OR THE DEVELOPMENT PLAN**

- 12.1 Where the Development Plan is relevant, decisions should be taken in accordance with it unless material considerations indicate otherwise.
- 12.2 In discussing, and then determining, a planning application or other planning matter, Councillors must confine themselves to the planning merits of the case and the reasons for making a final decision should be clear and convincing, and supported by planning evidence. If Councillors wish to refuse or approve an application against Officer advice, or impose additional conditions to the permission, the reasons for refusal, approval or the additional conditions to be applied must be clearly stated at the time the propositions are moved at the meeting. A detailed minute of Councillors' reasons will be made.
- 12.3 Committee meetings are well attended by the public, applicants and professional advisers, and objectors. It is particularly important that Councillors and Officers are seen to conduct the business of the Committee in a fair and sensitive manner. The debate on a planning application should be confined to the planning merits of a development proposal.
- 12.4 If the Officer's report recommends approval of a departure from the Development Plan, the justification for this should be included, in full, in the report.
- 12.5 Wherever approved policies are not followed clear and convincing reasons must be recorded. Legal and Planning Officers will always attend meetings of the Committee to advise so that procedures can be properly followed and planning issues properly addressed and to advise the Chair and Councillors.

## **13. MINUTES**

- 13.1 The Minutes shall be a full and detailed record of the decisions made at the Committee. Updating of reports by officers does not have to be recorded but new issues introduced, and policies used for making the decision will be recorded in the minutes.
- 13.2 If a resolution is passed which is contrary to the Officer recommendation (whether for approval or refusal) a detailed Minute of the Committee's reasons will be made and a copy placed on the application file.
- 13.3 Details of any declarations of Interest will be recorded under a separate heading in the Minutes.

#### **14. COMPLAINTS AND RECORD KEEPING**

- 14.1 If a member of the public, or applicant, wishes to complain about the Council's process of an application, this will be dealt with in accordance with the Council's Complaints Procedure. In the first instance they should write to the Assistant Director of Planning. The complaint will be acknowledged in writing and will be investigated as quickly as possible; a written reply will be given. The Council's complaints process will not deal with dissatisfaction with a planning decision that has been made.
- 14.2 So that complaints can be fully investigated and, in any case, as a matter of general good practice, record keeping will be complete and accurate. Every planning application file must contain an accurate account of events throughout its life, with particular care being taken with regard to those applications that are likely to be determined by officers under delegated authority. Such decisions should be as well documented and recorded as those taken by the Committee.
- 14.3 A record of all written complaints received by the Assistant Director of Planning will be maintained, and will be monitored regularly.

#### **15. BREACH OF CODE**

- 15.1 Any breach of this "Code of Conduct" will be reported to the Monitoring Officer, who will investigate the matter and take such action as necessary.

#### **16. TRAINING**

*Do make every effort to attend the planning training provided by the Council if you are going to participate in meetings dealing with planning matters.*

*Do endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum, thus assist you in carrying out your role properly and effectively.*

*Do suggest to the Assistant Director of Planning any other areas of planning legislation you require training on*

## **17. SUMMARY**

Serving as a Member of the Council and as a Member of a Development Management Committee brings clear responsibilities to the whole community and not to any particular section of it. Similarly the whole community has a right to expect Members of the Council and Panels to consider matters transparently, impartially and fairly having regard only to relevant information and disregarding irrelevant details.