

## 5.2 Planning Code of Conduct

### CONTENTS

| Section         | Subject  |
|-----------------|--|
| 1               | Introduction   |
| 2               | Predisposition, Predetermination, or Bias                |
| 3               | Interests  |
| 4               | Training of Councillors                                  |
| 5               | Application by a Councillor or an Officer                |
| 6               | Application by the Council                               |
| 7               | Lobbying   |
| 8               | Pre-meetings, Presentations and Briefing Sessions        |
| 9               | Site Visits  |
| 10              | The Role of the Executive                                |
| 11              | Relationship between Councillors and Officers            |
| 12              | Conduct at the Committee                                 |
| 13              | Decision making  |
| 14              | Record keeping   |
| <b>Appendix</b> |  |
| A               | Council guidelines for determining planning applications |
| B               | Do's and Do Not's  |

#### 1. INTRODUCTION

- 1.1 The Planning Code of Practice has been adopted by Tower Hamlets Council to regulate the performance of its planning functions. Its major objectives are to guide Councillors and officers of the Council in dealing with planning related matters and to inform potential developers and the public generally

of the standards adopted by the Council in the exercise of its planning powers.

- 1.2** The Planning Code of Conduct is in addition to the Code of Conduct for Members adopted under the provisions of the Localism Act 2011. Councillors should follow the requirements of the Code of Conduct for Members and apply this Code in light of that Code. The purpose of this Code is to provide more detailed guidance on the standards to be applied specifically in relation to planning matters.
- 1.3** Planning decisions involve balancing many competing interests and making an informed judgement against a local and national policy framework. In doing this, Councillors need to make decisions having regard to the wider public interest on what can sometimes be controversial proposals. The provisions of this Code are designed to ensure that planning decisions are taken with sound judgement and for justifiable reasons, in a fair consistent and open manner and that Councillors making such decisions are perceived as being accountable for those decisions. The Code is also designed to assist Councillors in dealing with and recording approaches from developers and objectors and is intended to ensure that the integrity of the decision-making process is preserved.
- 1.4** This Code applies to Councillors at all times that they are involved in the planning process. This would include, where applicable, when part of decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings. It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.
- 1.5** This Code is part of the Council's ethical framework and in addition to the Code of Conduct for Members should be read in conjunction with the Member/Officer Protocol. If a Councillor does not abide by the Code then that Councillor may put the Council at risk of proceedings on the legality or maladministration of the related decision and the Councillor may be at risk of either being named in a report to the Standards Advisory Committee or Council. A failure to abide by the Code is also likely to be a breach of the Code of Conduct for Members and which could result in a complaint being made to the Monitoring Officer.
- 1.6** **If a Councillor has any doubts about the application of this Code to their own circumstances they should seek advice early, from the Monitoring Officer and preferably well before any meeting takes place.**

## 2. PREDISPOSITION, PREDETERMINATION OR BIAS

- 2.1 Section 25 of the Localism Act 2011 ('the 2011 Act') provides that a Councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter. This reflects the common law position that a Councillor may be predisposed on a matter before it comes to Committee, provided they remain open to listening to all the arguments and changing their mind in light of all the information presented at the meeting. Nevertheless, a Councillor in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the Councillor was biased.
- 2.2 As to predetermination, this is a legal concept and is used in situations where a decision maker either has, or appears to have, a closed mind. That is s/he has made up his/her mind in advance of proper consideration of an issue and the merits of an application. Section 25 of the 2011 Act does not amount to the abolition of the concept of predetermination however, as no one should decide a case where they are not impartial or seen to be impartial. Critically, Councillors need to avoid any appearance of bias or of having a predetermined view before taking a decision. Indeed, Councillors should not take a decision on a matter when they are actually biased in favour or against the application, or where it might appear to a fair and informed observer that there was a real possibility of bias, or where a Councillor has predetermined the matter by closing his/her mind to the merits of the decision.
- 2.3 Any planning decision made by a Councillor who can be shown to have approached the decision with a closed mind will expose the Council to the risk of legal challenge.
- 2.4 Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a Councillor makes it clear they are willing to listen to all the considerations presented at the committee before deciding on how to vote (predisposition).
- 2.5 If a Councillor considers that s/he does have a bias or cannot be impartial then they **must** withdraw from considering that application.
- 2.6 Councillors should note that, unless they have a disclosable pecuniary interest or a significant personal interest (see section 3 below), they will not appear to be predetermined through-
- listening or receiving viewpoints from residents or other interested parties;
  - making comments to residents, interested parties, other Councillors or appropriate officers, provided they do not consist of or amount to

prejudging the issue and the Councillor makes clear that they are keeping an open mind;

- seeking information through appropriate channels; or
- being a vehicle for the expression of opinion or speaking at the meeting as a Ward Councillor, provided the Councillor explains their actions at the start of the meeting or item and makes it clear that, having expressed the opinion or ward/local view, they have not committed themselves to vote in accordance with those views and will make up their own mind having heard all the facts and listened to the debate.

**2.7** The following advice applies:

- Councillors must not make up their mind, or appear to have made up their mind on how they will vote on any planning matter prior to formal consideration of the matter at the meeting of the Committee and of the Councillor hearing the officer's presentation and evidence and arguments on both sides. This includes deciding or discussing how to vote on any application at any sort of political group meeting, or lobby any other Councillor to do so. If a Councillor has an interest in a local lobby group or charity or pressure group they may appear predetermined by their actions and/ or statements made in the past. The Councillor should take advice from the Legal Adviser to the Committee on how to deal with this.
- It must be noted that if a Councillor is predetermined then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or predetermination or, a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- A Councillor may appear pre-determined where the Council is the landowner, developer or applicant and the Councillor has acted as, or could be perceived as being, a chief advocate for the proposal. This would amount to more than a matter of membership of both the Cabinet and Development Committee, but that through the Councillor's significant personal involvement in preparing or advocating the proposal the Councillor will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits. (See Section 6 below for guidance on applications submitted by the Council).
- Councillors should recognise that in being a Councillor of a political group they are allowed to be predisposed in relation to planning policies of the Council or to planning policies of the Councillor's political party, providing that predisposition does not give rise to a public perception that the Councillor has due to his/ her political

membership predetermined a particular matter. (See Section 7 below relating to Lobbying).

- When considering a planning application or any other planning matter Councillors must:
  - act fairly and openly;
  - approach each planning issue with an open mind; carefully weigh up all relevant issues; and
  - determine each item on its own planning merits
  
- And Councillors must not:
  - take into account irrelevant issues;
  - behave in a manner that may give rise to a public perception that s/he may have predetermined the item; and
  - behave in such a manner which may give rise to a public perception that s/he may have been unduly influenced in reaching a decision.

### **3. INTERESTS**

**3.1** In order to avoid allegations of bias it is important that Councillors are scrupulous in declaring interests at the meeting.

**3.2** Chapter 7 of the 2011 Act places requirements on councillors regarding the registration and disclosure of their pecuniary interests ('DPI') and the consequences for a councillor taking part in consideration of an issue in the light of those interests. The definitions of DPI taken from the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 are set out in paragraph 5.1 of the Members' Code of Conduct. A Councillor must provide the Monitoring Officer with written details of relevant interests within 28 days of their election or appointment to office. Any changes to those interests must similarly be notified within 28 days of the Councillor becoming aware of such changes. A failure to register or declare a DPI or the provision of false or misleading information on registration, or participation in discussion or voting in a meeting on a matter in which a Councillor has a DPI, are criminal offences.

**3.3** A DPI relating to an item under discussion requires the immediate withdrawal of the Councillor from the Committee. In certain circumstances, a dispensation can be sought from the Monitoring Officer to take part in that particular item of business and which could arise where the Councillor is the applicant or has made a representation for or against the application.

**3.4** Having regard to the requirement that a Councillor who has an interest in an application must be disqualified from considering it, then consideration must

also be given to personal interests. A personal interest in a matter arises if a Councillor anticipates that a decision on it might reasonably be regarded as affecting (to a greater extent than other council tax payers, ratepayers or residents of the Council's area) the well-being or financial position of the Councillor, a relative or a friend or

- the employment or business carried out by those persons, or in which they might be investors (above a certain level)
- any of the bodies with which the Councillor is associated, and which the Councillor will have registered in the register of interests.

- 3.5** If a Councillor has a personal interest in any planning then the Councillor shall, if present, disclose the existence and nature of the interest at the start of the meeting and, in any event, before the matter is discussed or as soon as it becomes apparent. The full nature of the interest must be declared. If, in accordance with the Members' Code of Conduct, the interest is 'sensitive', the Councillor must disclose to the meeting that s/he has an interest that is sensitive but need not disclose the nature of the interest or any other sensitive information. The declaration and disclosure of a personal interest does not usually debar a Councillor from participation in the discussion provided that the personal interest is not so significant that there is a real possibility of bias or predetermination and which is likely to prejudice the Councillor's judgement of the public interest (see 3.6 below).
- 3.6** The position is different however where a member of the public, with knowledge of the relevant facts, would reasonably regard the personal interest as so significant that there is a real possibility of bias or predetermination and which is likely to prejudice the Councillor's judgement of the public interest. Examples of this are the Councillor is working closely with a developer or a group of objectors to achieve a certain outcome; lobbying other Councillors on the Committee; acting as an agent for a person pursuing a planning matter with the Council; or generally declaring voting intentions ahead of the meeting etc.
- 3.7** A Councillor with a personal interest which might appear to a fair and informed observer that there was a real possibility of bias must not participate in the discussion on the application and must leave the room immediately when the discussion on the item begins or as soon as the interest becomes apparent. S/he cannot seek to influence the decision, save that if a member of the public has the right to attend the meeting, make representations, answer questions etc., then a Councillor will have the same right. Once the Councillor has exercised that right then the Councillor must withdraw from the room for the rest of that item and play no further part in the discussion or vote.

**3.8** Being a Councillor for the ward in which particular premises is situated is not necessarily declarable and as a general rule Councillors of the Committee may deliberate on matters affecting their wards provided they do so with an open mind. Councillors should remember, however, that their overriding duty is to the whole community not just to the residents and businesses within their ward. Councillors have a duty to make decisions impartially, and should not improperly favour, or appear to improperly favour, any person, company, group or locality. If a Councillor feels that they must make representations for their ward then the Councillor can declare this and make representations but must then leave before the debate and vote.

**3.9** More information on what constitutes an interest as well as the obligation on Councillors to register their interests is contained in the Code of Conduct for Members set out in Part 5.1 of the Constitution. The ultimate responsibility for fulfilling these requirements rests with individual Councillors but the Council's Monitoring Officer or the Divisional Director Legal are available to give advice if required.

#### **4. TRAINING OF COUNCILLORS**

**4.1** As the technical and propriety issues associated with planning are not straightforward, Councillors who sit on either the Development Committee or the Strategic Development Committee must participate in a programme of training on the planning system and related matters agreed by and organised by officers. The programme will consist of compulsory and discretionary elements. If a Councillor fails to participate in the compulsory elements of the training this may result in that Councillor being asked to stand down as a Councillor of relevant Committee.

**4.2** Councillors should be aware that training is particularly important for those who are new to the Development Committee and for Councillors who have not attended training in the recent past. Other Councillors are free to attend the training in order to gain an understanding of planning issues.

**4.3** The compulsory training programme will cover issues relating to probity in planning, principles in planning to reflect government guidance and case law. Discretionary training will seek to extend Councillors' knowledge of planning law, regulations, procedures, Codes of Practice, Development Plans and best practice. The aim of the training is to assist Councillors in carrying out their role properly and effectively.

**4.4** Where a Councillor has a genuine difficulty in attending any particular training session officers will try, when practicable, to accommodate a request for an individual or repeat session.

## **5. APPLICATION BY A COUNCILLOR OR OFFICER**

5.1 Councillors may need to determine an application submitted by a Councillor or an officer, or by a company or individual with which a Councillor or officer has an interest or relationship. For the avoidance of doubt, the term Councillor or an officer includes any former Councillors or officers. In such cases, it is vital to ensure that such application is handled in a way that gives no grounds for accusations or favouritism. Accordingly the matter will be dealt with as follows-

- (a) The matter will be referred to the Corporate Director, Development and Renewal, who shall decide whether or not the application should be referred to the relevant Committee, or determined under delegated powers, if the application is in accordance with development plans and all other material planning considerations.
- (b) On receipt of such an application, the Corporate Director, Development and Renewal will pass a copy of the application to the Monitoring Officer who will satisfy himself/herself that the application can be, and is being, processed and determined without suspicion or impropriety.
- (c) If a Councillor or an officer submit their own proposal to the Council which they serve, they must take no part in its processing or the decision making process.
- (d) The Councillor making the application would almost certainly have a DPI and should not address the Committee as the applicant but should appoint an independent agent to represent his/her views.
- (e) Councillors of the Committee must consider whether the nature of any relationship with the person (either a Councillor or an officer) applying for planning permission requires that they make a declaration of interest and if necessary also withdraw from the meeting.
- (f) In respect of former Councillors or former officers the above requirements shall apply for a period of three (3) years following their departure from the Council.

## **6. APPLICATION BY THE COUNCIL**

6.1 Councillors may need to determine an application submitted by the Council for the Council's own development. It is perfectly legitimate for such proposals to be submitted to and determined by the Local Planning Authority. Proposals for such development should be treated with the same transparency and impartiality as those of private developers so as not to give rise to suspicions of impropriety.

6.2 If a Councillor has been heavily committed or involved in an area of policy/issue relating to such an application (e.g. as a Cabinet Member), then that Councillor must consider whether they have an interest which should be



disclosed. In such circumstances, the Councillor should seek advice from the Legal Adviser to the Committee

## **7. LOBBYING**

**7.1** Lobbying is the process by which applicants and their agents, objectors, non-Committee Councillors and other interested parties seek to persuade Councillors who sit on the Committee to come to a particular decision. It is a legitimate part of the planning process for them to approach Councillors who sit on Committee as these discussions can help Members to understand the issues and concerns. This can happen prior to an application being made or at any time after the application is made.

**7.2** Whilst lobbying is a normal and perfectly proper part of the political process, it can cause the perception of bias or predetermination especially when a Councillor must enter the meeting with an open mind and make an impartial determination on the relative merits based on all the evidence presented at the meeting. To avoid such perception if a Councillor is approached s/he should following the principles set out in section 2.6 of this Code and also:

- (a) explain the potentially conflicting position they are in if they express a final opinion on a proposal before consideration at the Committee;
- (b) explain the procedures by which representations can be made;
- (c) explain the kinds of planning issues that the Council can take into account;
- (d) inform the person making the approach that such approach should be made to officers within the Place Directorate or to elected Councillors who are not Councillors of the either the Development Committee or Strategic Development Committee;
- (e) forthwith notify in writing to the Monitoring Officer the fact that such an approach has been made, identifying the application, the nature of the approach, by whom it was made, and the action taken by the Councillor concerned. This should include any offers made of planning gain or constraint of development, through a proposed section 106 Planning Obligation or otherwise; and
- (f) keep an adequate written record so as to enable the Councillor to disclose the fact and nature of such an approach at any relevant meeting of the Committee.

**7.3** If the Councillor does discuss the case then in no circumstances should a Councillor give an indication of voting intentions or otherwise enter into an unconditional commitment to oppose or support the application. To do so without all relevant information and views would be unfair and detrimental. As stated in 7.2(c) above, the Councillor must keep an adequate written record of the discussion so as to enable the Councillor to disclose the fact and

nature of such an approach at any relevant meeting of the Development Committee.

- 7.4 Councillors should not accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, then the Councillor must comply with the provisions in the Code of Conduct for Members on Gifts and Hospitality.
- 7.5 Councillors should not become a member of, lead or represent a national charity or local organisation whose primary purpose is to lobby to promote or oppose planning proposals. If a Councillor does then it is likely to appear to a fair and informed observer that there is a real possibility of bias and that Councillor will be required to withdraw from the debate and decision on that matter.
- 7.6 Where Councillors contact fellow Councillors regarding their concerns or views they must not seek to attempt to persuade or put pressure on the Councillor that they should vote in a particular way.
- 7.7 In no circumstances should a Councillor give an indication of voting intentions or otherwise enter into an unconditional commitment to oppose or support the application. To do so without all relevant information and views would be unfair and detrimental.
- 7.8 Where a Committee member feels that s/he has been unreasonably or excessively lobbied on a particular proposal s/he must make a declaration at the Committee on that application that s/he has been lobbied. Provided that member has followed the principles in this Code then s/he will still be able to speak and vote on the application.

## **8. PRE-MEETINGS, PRESENTATIONS AND BRIEFING SESSIONS**

- 8.1 Councillors should avoid agreeing to any formal meeting with applicants, developers or groups of objectors. If a Councillor considers that a formal meeting would be useful in clarifying the issues, then the Councillor should not seek to personally arrange such a meeting but should request the Divisional Director Planning and Building Control to organise it. If such a meeting takes place it will be properly recorded on the application file and a record of the meeting will be disclosed when the application is considered by the Committee.
- 8.2 If a Councillor does arrange a private meeting with an applicant, developer, agent or objector then this must be declared at the Development Committee meeting by the Councillor. As in Section 7.2(c) above, the Councillor should keep an adequate written record of the meeting. This record should then be referred to the Divisional Director Planning and Building Control to organise it

so that it will be properly recorded on the application file and a record of the meeting will be disclosed when the application is considered by the Committee.

- 8.3** Where there is to be a presentation by applicants/ developers, Councillors should not attend unless it has been organised by an officer. If a Councillor does attend a presentation not organised by officers then the Councillor must inform the Divisional Director Planning and Building Control that s/he has done so. The Councillor should keep an adequate written record of the presentation. This record should then be referred to the Divisional Director Planning and Building Control to organise it so that it will be properly recorded on the application file and a record of the meeting will be disclosed when the application is considered by the Committee.
- 8.4** When Councillors attend presentations, they should ask relevant questions to clarify their understanding of the proposal. Councillors should be mindful, however, that the presentation is not part of the formal process of debate and determination of any subsequent application and that this will be carried out by the appropriate Development Committee.
- 8.5** Councillors should bear in mind that a presentation is a form of lobbying and they must not express any strong view or state how they or other Councillors might vote. Further Councillors are reminded that if they do attend a presentation then any hospitality or gifts received over the value of £25.00 must be disclosed and registered in the normal way.
- 8.6** Public meetings are sometimes organised as part of the Council's pre-application process (contained in the Council's Planning tool kit). All Councillors are encouraged to participate in such pre-application discussions.
- 8.7** Further where briefing sessions (generally for major applications) have been arranged (by officers) for Councillors following submission of an application then Councillors should attend these sessions as it will give them an opportunity to better understand the Council's planning policies and its economic objectives.
- 8.8** Councillors should note that the Code of Conduct of Member and this Code apply to any of the above meetings, presentations or briefing sessions and that at any subsequent Committee considering the application that Councillors must disclose attendance at any such meetings and/ or presentations.

## **9. SITE VISITS**

- 9.1** Site visits by Councillors determining schemes are an essential part of determining a planning application. It is good practice for Councillors to visit

an application site before a meeting, so that they can familiarise with the site or surrounding area and Councillors should try to attend the pre-Committee site visits organised by officers. A site visit may also assist Councillors in matters relating to the context of the application and the characteristics of surrounding area. Whilst Councillors can make comments and ask appropriate questions during the site visit they should avoid expressing opinions which can cause the perception of bias or predetermination. Further Councillors shall not make a decision whilst on site. Councillors can, of course, rely upon their own local knowledge.

- 9.2** During site visits, Councillors of the Planning Committees shall not engage individually in discussion with applicants or objectors.
- 9.3** On site visits applicants, developers, objectors or other interested parties who attend shall only be permitted to point out to Councillors features to look at either on the site or in the vicinity, which are relevant to the application. No discussion will take place on the merits of the application.
- 9.4** Should it is not possible for a Councillor to attend an organised site visit and a Councillor then carries out a site visit on their own, the guidelines below apply-
- The Councillor must notify the Divisional Director Planning and Building Control of the intention to visit (which will be recorded on the file).
  - The Councillor must carry out the visit discreetly and the Councillor must not make himself/ herself known to the applicants or neighbours.
  - The Councillor must treat the site visit as an opportunity to seek information and to observe the site only. The Councillor must not use the site visit as or allow it to become an impromptu lobbying opportunity for the applicant or objectors.
  - Councillors should not hear representations from the applicant or any other party and the Councillor shall have regard to the provisions on Lobbying in Section 7 above, and advise them that they may make representations in writing to the Council and direct them to relevant officers.
  - Councillors must not express opinions or views on the application to anyone as this may lead to an allegation of apparent bias or pre-determination.
  - Councillors should note that the Code of Conduct for Members and this Code apply to any such visit.
- 9.5** As in Section 7.2(c) above, the Councillor should keep an adequate written record of the site visit, including any new information gained from such visit. This record should then be referred to the Divisional Director Planning and Building Control to organise it so that it will be properly recorded on the

application file and a record of the meeting will be disclosed when the application is considered by the Committee.

- 9.6** Once the application has reached the determination stage, Councillors should not request a site visit unless the Councillor considers that it is really necessary, and the Committee may decide to revisit the site where particular site factors are significant in terms of the weight attached and it would be difficult in the absence of a site visit to assess the application or there are significant policy or precedent implications and specific site factors need to be carefully addressed.

## **10. THE ROLE OF THE EXECUTIVE**

10.1 The Executive consists of 10 people, namely the Mayor and 9 Councillors. Each of the 9 Councillors has a specific Portfolio and one of those Portfolios is Strategic Development. The Mayor is responsible for most decisions about day-to-day Council services but this excludes the regulatory council functions such as planning.

10.2 Councillors on the Planning Committees have specific responsibility for planning. However, planning is important to all Councillors and can help deliver other local objectives. Further, planning takes account of wider, long-term public interests including the environment, economic growth and prosperity, a cohesive and empowered society, good health and wellbeing, enhancement of heritage, conservation, local culture and community identity.

10.3 The Executive therefore has an interest in Strategic Planning: hence the Member of the Executive with the Strategic Development portfolio. As such, the Mayor, the lead Member and other Members of the Executive may be approached regarding or become involved in planning applications. This is perfectly acceptable but where the Mayor, the lead Member or other Members of the Executive are approached or become involved then this Code of Conduct also applies to them, particularly paragraphs 6, 7, 8 and 10. Further, they should not attend the pre-Committee site visits organised by officers unless they sit on the Planning Committee.

10.4 Additionally, Councillors of the Executive should not meet to discuss how to vote on any application at any sort of political group meeting, or lobby any other Councillor to do so.

## **11. RELATIONSHIP BETWEEN COUNCILLORS AND OFFICERS**

**11.1** Councillors shall not attempt in any way to influence the terms of the officers' reports upon any application including a particular recommendation.

Officers are advising Councillors. They must give impartial policy advice on planning considerations and the recommendations as set out in the report without seeking to persuade Councillors. (This does not prevent a Councillor from asking questions or submitting views to the Divisional Director Planning and Building Control, which may be incorporated into any Committee report).

- 11.2** Any criticism by Councillors of an officer in relation to the handing of any application should be made in writing to the Corporate Director, Development and Renewal and/ or the Monitoring Officer rather than to the Officer handling the application.
- 11.3** If any officer feels or suspects that pressure is being exerted upon him/her by any Councillor in relation to any particular application, s/he shall forthwith notify the matter in writing to the Monitoring Officer.
- 11.4** If any officer of the Council who is involved in dealing with any application has had any involvement with an applicant, developer or objector, whether or not in connection with the particular application being determined, which could possibly lead an observer with knowledge of all the relevant facts to suppose that there might be any possibility that the involvement could affect the officer's judgement in any way, then that officer shall declare this interest in the public register held by the Monitoring Officer and take no part. This public register is to be available for inspection at the Development Committee meeting.
- 11.5** No officer of the Council shall engage in any paid work for any planning matter for which Tower Hamlets is the Planning Authority other than on behalf of the Council.

## **12. CONDUCT AT THE COMMITTEE**

- 12.1** Councillors must not only act fairly but must also be seen to act fairly. Councillors must follow agreed procedures at all times and should only ask questions at the appropriate points in the procedure. At no time should a Councillor express a view which could be seen as pre-judging the outcome. During the course of the meeting Councillors should not discuss (or appear to discuss) aspects of the case with the applicant, a developer, an objector, their respective advisers or any member of the public nor should they accept letters or documents from anyone other than an officer from Democratic Services or the Legal Advisor to the Committee.
- 12.2** Councillors of the Committee shall refrain from personal abuse and party-political considerations shall play no part in the Committee's deliberations. Councillors shall be respectful to the Chair and to each other and to officers and members of the public including applicants, developers, objectors and their representatives and shall not bully any person.

- 12.3** When asking questions at a meeting, Councillors shall ensure that their questions relate only to planning considerations relevant to the particular application.
- 12.4** The Committee must ensure that they hear the evidence and arguments for and against the application and approach each planning issue with an open mind.
- 12.5** If a Councillor arrives late for a meeting, s/he will not be able to participate in any item or application already under discussion. Similarly, if a Councillor has to leave the meeting for any length of time, s/he will not be able to participate in the deliberation or vote on the item or application under discussion at the time of their absence. If a Councillor needs to leave the room, s/he should ask the Chair for a short adjournment
- 12.6** It is permissible for the Chair of the meeting to curtail statements of parties if they are merely repeating matters which have already been said.
- 12.7** In considering the application, Councillors are advised that if objections are founded on a demonstrable misunderstanding of the true factual position, or otherwise indicate no more than an uninformed reaction to a proposal then such carry no weight whatever and must be ignored. Further Councillors are advised that the mere number of objections irrespective of their content can never be a good reason for refusing an application. What matters are the grounds on which such are based.

### **13. DECISION MAKING**

- 13.1** When a report goes before the Committee rather than being determined through officer delegation, the reasons why will be set out in the report to the Committee.
- 13.2** Councillors must come to meetings with an open mind and in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2007 and section 70(2) of the Town and Country Planning Act 1990, Councillors must make decisions in accordance with the Development plan unless material considerations indicate otherwise. Attached at Appendix A' are the Council's Guidelines for determining planning applications.
- 13.3** Councillors should only come to their decision after due consideration of all of the relevant information reasonably required upon which to base a decision. If it is considered that there is insufficient time to digest new information or that there is simply insufficient information before Councillors then Councillors can request that further information be provided and, if necessary, defer or refuse the application.

- 13.4** Councillors must not take part in the meeting's discussion on a proposal unless they have been present to hear the entire debate, including the officers' introduction to the matter. If an application has previously been deferred then the same Councillors will be asked to reconsider the application when it is returned to Committee.
- 13.5** Where Councillors take a decision to defer any proposal then the reasons for Committee's decision must be given and recorded.
- 13.6** When a Councillor is proposing, seconding or supporting a decision contrary to officer recommendations or the Development Plan then s/he must clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. The Councillor must be aware that s/he may have to justify the resulting decision by giving evidence in Court or at Enquiry in the event of any challenge.
- 13.7** Prior to deciding the matter before the Committee, Councillors must consider the advice that planning, legal or other officers give to the Committee with respect to the recommendation or any proposed amendment to it.
- 13.8** **At the end of the day, Councillors must bear in mind that they are involved in planning matters to represent the interests of the whole community and must maintain an open mind when considering planning applications. When Councillors take decisions on planning applications they must do so in accordance with the development plan unless material considerations indicate otherwise. Councillors must only take into account material planning considerations, which can include public views where they relate to relevant planning matters. 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 material planning reasons.**

#### **14. RECORD KEEPING**

- 14.1** In order that planning applications are processed properly and that any complaints can be fully investigated, record keeping will be complete and accurate. Every planning application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings, significant telephone conversations and any declarations of interests by Councillors. Records will be kept in accordance with the Council's Information Governance Framework and, specifically, the Council's Records Management Policy.



**APPENDIX "A"**  
**(To Planning Code of Conduct)**

**COUNCIL GUIDELINES FOR DETERMINING PLANNING APPLICATIONS**  
**APPLICATIONS UNDER THE TOWN & COUNTRY PLANNING**  
**ACT 1990**

- ( i )           The emphasis in determining applications is upon a plan led system. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 requires all planning applications to be determined in accordance with the Development Plan (comprised of the London Plan (produced by the Mayor of London), Local Plan and Neighbourhood Plans (should any be adopted)) and any other material considerations. If the Development Plan is material to the application then the statutory position is that the application **must** be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- ( ii )           The term "other material considerations" has a wide connotation as expressed by the following judicial comment:-  
***".....I find it impossible, however, to accept the view that such considerations are limited to matters relating to amenity.....it seems to me that any consideration which relates to the use and development of land is capable of being a planning consideration"***.
- ( iii )           Material considerations include national planning guidance in the form of Government Circulars, Planning Policy Guidance Notes, Non-Statutory Development Control Guidelines and case law. A ministerial statement may be a material consideration.
- ( iv )           Material considerations can include (but are not limited to):-
- ( a )    Local, strategic, national planning policies and policies in the Development Plan;
  - ( b )    Emerging new plans which have already been through at least one stage of public consultation;
  - ( c )    Government and Planning Inspectorate requirements - circulars, orders, statutory instruments, guidance and advice;
  - ( d )    Previous appeal decisions and planning Inquiry reports;
  - ( e )    Principles of Case Law held through the Courts;
  - ( f )    Loss of sunlight (based on Building Research Establishment guidance);
  - ( g )    Overshadowing/loss of outlook to the detriment of residential amenity (though not loss of view as such);
  - ( h )    Overlooking and loss of privacy;
  - ( i )    Highway issues: traffic generation, vehicular access, highway safety;
  - ( j )    Noise or disturbance resulting from use, including proposed hours of operation;
  - ( k )    Smells and fumes;
  - ( l )    Capacity of physical infrastructure, e.g. in the public drainage or water systems;
  - ( m )    Deficiencies in social facilities, e.g. spaces in schools;

- (n) Storage & handling of hazardous materials and development of contaminated land;
- (o) Loss or effect on trees;
- (p) Adverse impact on nature conservation interests & biodiversity opportunities;
- (q) Effect on listed buildings and conservation areas;
- (r) Incompatible or unacceptable uses;
- (s) Local financial considerations offered as a contribution or grant;
- (t) Layout and density of building design, visual appearance and finishing materials;
- (u) Inadequate or inappropriate landscaping or means of enclosure; and
- (v) Disabled persons access.

(v) Matters which are not material considerations again can include (but are not limited to):-

- (a) Matters controlled under building regulations or other non-planning legislation e.g. structural stability, drainage details, fire precautions, matters covered by licences etc.;
- (b) Private issues between neighbours e.g. land/boundary disputes, damage to property, private rights of access, covenants, ancient and other rights to light etc.;
- (c) Problems arising from the construction period of any works, e.g. noise, dust, construction vehicles, hours of working (covered by Control of Pollution Acts);
- (d) Opposition to the principle of development when this has been settled by an outline planning permission or appeal;
- (e) Applicant's personal circumstances (unless exceptionally and clearly relevant, e.g. provision of facilities for someone with a physical disability – see (vi) below);
- (f) Previously made objections/representations regarding another site or application;
- (g) Factual misrepresentation of the proposal;
- (h) Opposition to business competition;
- (i) Loss of property value;
- (j) Loss of view; and
- (k) Personal remarks (e.g. the applicant's motives).

(vi) The personal circumstances of an applicant for planning permission are not generally a material consideration because they do not relate to the character or use of the land. However, in exceptional circumstances they may outweigh other material planning considerations. Where this is the case, specific and valid reasons must be given to justify the exception.

(vii) What constitutes a material consideration is a matter of law. The weight to be attached to the consideration is a matter of planning judgement for the decision-maker having regard to the planning evidence.

- (viii) It is essential to consider thoroughly any advice given by a statutory consultee or relevant Government Department, including views expressed by English Heritage or the Environment Agency.
- (ix) The view of local residents are relevant when determining a planning application, but it must be recognised that such opposition cannot be a reason in itself for refusing or granting planning permission unless founded on valid planning reasons, which are supported by substantial evidence.
- (x) Account should be taken of previous Council decisions, appeal decisions in relation to the site, or other related appeal decisions.
- (xi) It is not permissible to prevent, inhibit or delay development which could reasonably be permitted.
- (xii) Planning Conditions should only be imposed for a planning purpose and not for any ulterior one. They must fairly and reasonably relate to the development. Thus it is essential to avoid conditions which are unnecessary, unreasonable, unenforceable, imprecise or irrelevant.

DRAFT

**APPENDIX "B"**  
**(To the Planning Code of Conduct)**

**DO'S AND DO NOT'S**

**1. Councillors must:**

- (a) Attend compulsory training sessions;
- (b) Be open minded and impartial;
- (c) Declare any actual interest;
- (d) Act solely in the public interest;
- (e) Listen to the arguments for and against;
- (f) Carefully weigh up all relevant issues;
- (g) Ask questions that relate only to planning considerations relevant to the particular application;
- (h) Make decisions on merit and on material planning considerations only;
- (i) Respect the impartiality and integrity of the Council's officers;
- (j) Report any lobbying from applicants, agents, objectors or any other Councillor;
- (k) Promote and support the highest standards of conduct; and
- (l) Promote equality and not discriminate unlawfully against any person, and treat all people with respect;

**2. Councillors must not:**

- (a) Be biased or give the impression of being biased;
- (b) Improperly confer an advantage or disadvantage on any person nor seek to do so;
- (c) Act to gain financial or other benefit for themselves, their family, friends or close associates;
- (d) Place themselves under a financial or other obligation to any individual or organisation that might seek to influence the performance of their duties as a Councillor (e.g. by accepting gifts or hospitality from any person involved in or affected by a planning proposal);
- (e) Place themselves in a position where their integrity might reasonably be questioned;
- (f) Participate in a meeting where they have a DPI;
- (g) Participate in a meeting where they have an interest which does or could be reasonably considered as giving rise to bias; and
- (h) Express opinions during site visits to any person present, including other Councillors.