



Meeting of the

# TOWER HAMLETS COUNCIL

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Wednesday, 25 June 2008 at 7.30 p.m.

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## SUPPLEMENTAL AGENDA

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### VENUE

Council Chamber, 1<sup>st</sup> Floor,  
Town Hall, Mulberry Place,  
5 Clove Crescent,  
London E14 2BG

If you require any further information relating to this meeting, would like to request a large print, Braille or audio version of this document, or would like to discuss access arrangements or any other special requirements, please contact:

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**TO THE MAYOR AND COUNCILLORS OF THE LONDON BOROUGH OF TOWER  
HAMLETS**

You are summoned to attend a meeting of the Council of the London Borough of Tower Hamlets to be held in **THE COUNCIL CHAMBER, 1ST FLOOR, TOWN HALL, MULBERRY PLACE, 5 CLOVE CRESCENT, LONDON, E14 2BG** at **7.30 p.m.** on **WEDNESDAY, 25 JUNE 2008**

Martin Smith  
**Chief Executive**

**LONDON BOROUGH OF TOWER HAMLETS**

**COUNCIL**

**WEDNESDAY, 25 JUNE 2008**

**7.30 p.m.**

- 10 .1 Proposed amendments to the Council's Constitution: Development 1 - 30  
Procedure Rules/Planning Code of Conduct**  
To incorporate the comments of the Standards Committee (17<sup>th</sup> June  
2008) on proposed changes to the Planning Code of Conduct

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**LONDON BOROUGH OF TOWER HAMLETS**

**COUNCIL MEETING**

**WEDNESDAY 25<sup>th</sup> JUNE 2008**

**PROPOSED AMENDMENTS TO THE CONSTITUTION -  
PLANNING CODE OF CONDUCT/DEVELOPMENT PROCEDURE RULES**

**REPORT OF THE ASSISTANT CHIEF EXECUTIVE**

**1. INTRODUCTION**

- 1.1 The Council adopted a revised Code of Conduct for Members in September 2007, in accordance with the provisions of the Local Authorities (Model Code of Conduct) (England) Order 2007.
- 1.2 The Council's Constitution includes a range of additional codes and protocols which together with the Code of Conduct for Members form part of the Authority's ethical and decision making framework.
- 1.3 The Planning Code of Conduct (Part 5.2 of the Constitution) is one of those additional codes and this has now been reviewed to ensure consistency with the new Code of Conduct for Members and in particular to reflect the new arrangements for Members making representations to committee on planning matters; and to update and incorporate best practice. It is important to note that the Planning Code of Conduct applies not just to members of the Development and Strategic Development Committees but to all Councillors in relation to their involvement with the planning process. The rules and provisions of the Code therefore form part of the general code of conduct training that is mandatory for all Members.
- 1.4 The Standards Committee has responsibility for advising the Council on the codes and protocols that form the Authority's ethical framework. The proposed revised Planning Code of Conduct was considered by the Standards Committee on 17<sup>th</sup> June 2008. The Committee endorsed the draft Code attached at Appendix 'A' and recommended its adoption to the Council.
- 1.5 The Development Procedure Rules (Part 4.8 of the Constitution) and the Functions/Delegations of the Development Committee (Part 3.3.4) have

also been subject to review to ensure consistency with the new Code of Conduct and continued best practice. The proposed revised documents are attached at Appendices 'B' and 'C'. Members will note the proposed new Rule 15 ('Referral to Committee of a planning application delegated to the Corporate Director, Development and Renewal') which will enable Councillors in certain circumstances to refer to the Development Committee for decision a planning application that would otherwise fall to be determined by the Corporate Director under delegated authority.

## **2. PROPOSED REVISIONS**

- 2.1 The proposed revised sections of the Constitution are attached as follows and are now recommended to the Council for adoption:
- 2.2 **Appendix 'A'**: Revised Planning Code of Conduct (Constitution Part 5.2)
- 2.3 **Appendix 'B'**: Revised Development Procedure Rules (Part 4.8)
- 2.4 **Appendix 'C'**: Revised Development Committee Functions/Delegations (Part 3.3.4)

## **3. RECOMMENDATIONS**

- 3.1 That the proposed revised Planning Code of Conduct (Part 5.2); Development Procedure Rules (Part 4.8) and Development Committee Functions and Delegations (Part 3.3.4) be adopted as attached at Appendices A - C for inclusion in the Council's Constitution.

## **4. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 4.1 There are no significant financial implications arising from the recommendations in this report.

## **5. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)**

- 5.1 The comments of the Assistant Chief Executive (Legal Services) have been incorporated into the body of this report and appendices.

## APPENDIX A

### 5.2 – Planning Code of Conduct

#### CONTENTS

<b>Section</b>	<b>Subject</b>
1.	Relationship to the Members' Code of Conduct
2.	Development Proposals and Interests under the Members' Code of Conduct
3.	Pre-Determination in the Planning Process
4.	Contact with Applicants, Developers and Objectors
5.	Lobbying of Councillors
6.	Lobbying by Councillors
7.	Pre-application discussions
8.	Post-Submission Application Discussions
9.	Site Visits
10.	Public Speaking at Meetings
11.	Relationship between Members and Officers
12.	Applications submitted by Members, Officers and the Council
13.	Decision Making
14.	Training
15.	Appendix A attached

## **Planning Code of Conduct**

### **Introduction**

#### **The aim of this Code**

to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

#### **The key purpose of Planning:**

to manage development in the public interest.

#### **Your role as a Member of the Planning Authority:**

to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.

#### **When the Code applies:**

this code applies to Members at all times they are involved in the planning process. This includes, 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.

**If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer and preferably well before any meeting takes place.**

### **1. Relationship to the Members' Code of Conduct**

1.1 **Do** apply the rules in the Members' Code of Conduct first, which must always be complied with.

1.2 **Do** then apply the rules in this Planning Code, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning matters. If you do not abide by this Code, you may put:

- the Council at risk of proceedings on the legality or maladministration of the related decision which may lead to that decision being quashed; and



- yourself at risk, if the failure is also likely to be a breach of the Members' Code of Conduct, a complaint could be made to the Council's Standards Committee.

## 2. Development Proposals and Interests under the Members' Code of Conduct

2.1 **Do** refer to the Members' Code of Conduct (contained in part 5.1 of the Council's Constitution) for assistance in identifying personal and prejudicial interests or seek advice prior to attending a meeting.

- you will have a **personal interest** in any business where it relates to or is likely to affect:-

a) An interest that you must **register**

- **Do** remember that even if your interest is noted the register of interests, you must declare it in meetings where matters relating to that interest are being discussed.

b) An interest that is not on the register, but where the well-being or financial position of you, members of your family, or people with whom you have a close association is likely to be affected by the item being discussed more than it would affect the majority of inhabitants of the ward affected by the decision.

- Where you have a personal interest it will also be a **prejudicial interest** in a matter if all of the following conditions are met:-

a) A member of the public, who knows the relevant facts, would **reasonably think your personal interest is so significant** that it is likely to prejudice your judgment of the public interest.

### **and if it either**

- b) - Is a matter that affects your financial interests (or of a body with which you are associated); **or**  
- Relates to a regulatory matter (such as determining a planning application) or to a licensing matter.

### **and**

c) It is a matter which does not fall within one of the **exempt categories** of decisions (listed in paragraph 6.2 of the Members Code of Conduct).

2.2 **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. Preferably, disclose your interest at the beginning of the meeting or as soon as it becomes apparent to you.

- **Do** remember that the ultimate responsibility for declaring an interest rests with you.

2.3 **Effect of having a personal interest in a matter;**

you may stay and take part in the debate and decision on that item.

2.4 **Effect of having a personal prejudicial interest in a matter;**

you must leave the meeting room/chamber for the duration of consideration and decision on the item and not seek to influence the debate or decision unless

If you have followed the Council's Development Procedure Rules (contained in part 4 of the Council's Constitution); exercising your public speaking rights, you may address the Committee (or meeting) make your representations, or answer questions (if any). However, you must immediately leave as soon as you have finished addressing the Committee. You cannot remain in the meeting room or in the public gallery during the debate or decision on the matter.

**and**

- Remember you must not seek to improperly influence a decision in which you have a prejudicial interest.

2.5 **Where your interest is personal and prejudicial;**

**Do** then act accordingly:-

- **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter.

- **Don't** try to represent your Ward views, get another Member to do so instead.

- **Don't** get involved in the processing of the application.

- **Don't** seek or 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.

- **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate officer, in person or in writing, the Code places greater limitations on you in representing that proposal than would apply to a normal member of the public.

2.6 **Do** remember if you are not a Planning Committee Member, the above rules also applies to you. If you do exercise your public speaking rights (as in accordance with the Council's Development Procedure Rules) and therefore wish to address the Planning Committee;

- You will also need to declare a personal or prejudicial interest.

- If you have a prejudicial interest in the matter, you will have to leave the meeting immediately after addressing the Committee. Remember you cannot remain in the meeting room or public gallery during the debate and decision on that item.

2.7 **Do** also ensure if you are a visiting Member (and just wish to observe the meeting) you must also disclose, if relevant the existence and nature of any your interests which you may have.

### **3. Pre-determination in the Planning Process**

3.1 Pre-determination is a legal concept. The phrase pre-determination is used in situations where a decision maker either has, or appears to have a closed mind, that is he/she has made up his/her mind in advance of proper consideration of an issue and the planning merits of an application. Accordingly it is advised:-

- You must not make up your mind, or appear to have made up your mind on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the Committee and of your hearing the officer's presentation and evidence and arguments on both sides. If you have an interest in a local lobby group or charity or pressure group you may appear pre-determined by actions and statements made in the past. You should take advice from the legal adviser to the Committee on how to deal with this.

- It must be noted that if you are pre-determined 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 pre-determination or, a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- 3.2 **Do** be aware that you may appear pre-determined where the Council is the landowner, developer or applicant and you have 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 Planning Committee, but that through your significant personal involvement in preparing or advocating the proposal you 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 paragraph 12 below for guidance on applications submitted by the Council).
- 3.3 **Do** recognise that being a Member of a political group you are allowed to be predisposed in relation to planning policies of the Council or to planning policies of your political party, providing that predisposition does not give rise to a public perception that you have due to your political membership have predetermined a particular matter (please refer to paragraphs 5 and 6 below relating to Lobbying).
- 3.4 **Do** follow the guidelines below, when considering a planning application or any other planning matter:-
- act fairly and openly;
  - approach each planning issue with an open mind;
  - carefully weigh up all relevant issues;
  - do not take into account irrelevant issues;
  - do determine each item on its own planning merits;
  - avoid behaviour which may give rise to a public perception that you may have predetermined the item; and
  - avoid behaviour which may give rise to a public perception that you may have been unduly influenced in reaching a decision.

#### 4. Contact with Applicants, Developers and Objectors

4.1 **Do** refer those who approach you for planning, procedural or technical advice to officers within the planning directorate.

4.2 **Don't** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should not seek to arrange a meeting yourself but should request the Service Head Development Decisions to organise it.

- If such a meeting takes place it will be properly recorded on the application file and the record of the meeting will be disclosed when the application is considered by the Committee.

4.3 If you do arrange a private meeting with a developer you must declare this at the Planning Committee meeting.

- consider whether or not it would be prudent in the circumstances to make notes when contacted; and
- report to the Service Head Development Decisions any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.
- follow the rules on lobbying.

#### 4.4 In addition - presentations by Applicants/Developers:

- **Don't** agree to attend a planning presentation where it has not been organised by an officer.
- However, if it cannot be avoided and you attend on your own **do** inform the Service Head Development Decisions that you have done so.
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the appropriate Planning Committee.
- **Do** be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other Members might vote.
- **Do** remember that if you do attend a presentation any hospitality or gifts received over the value of £25.00 must be disclosed and registered.

- **Do** also remember to declare if appropriate, at Planning Committee that you have attended a presentation given either by the applicant/developers.

## 5. Lobbying of Councillors

- 5.1 **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it may prejudice your impartiality and your ability to participate in the Committee's decision making if you are asked to express either:
- 5.2
- an intention to vote one way or another or,
  - such a firm point of view that it amounts to the same thing.
- 5.3 **Do** remember that your overriding duty is to the whole community not just to the residents and businesses within your ward. You have a duty to make decisions impartially, and you should not improperly favour, or appear to improperly favour, any person, company, group or locality. If you feel you must make representations for your ward you can now declare this make your representations but you must then leave before the debate and vote.
- 5.4 **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure you must comply with the provisions in the Members Code of Conduct on Gifts and Hospitality.
- 5.5 **Do** pass on any lobbying correspondence you receive to the Service Head Development Decisions at the earliest opportunity.
- 5.6 **Do** promptly refer to the Service Head Development Decisions any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- 5.7 **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- 5.8 **Do** note that, unless you have a personal and prejudicial interest, you will not appear to be pre-determined or to have breached this Planning Code of Good Practice through:

- listening or receiving viewpoints from residents or other interested parties;
- making comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you 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 Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

## **6. Lobbying by Councillors**

- 6.1 **Don't** 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 you do, you will appear to be biased and are likely to have a personal and prejudicial interest. You will be required to withdraw from the debate and decision on that matter.
- 6.2 **Do** join general groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, but disclose a personal interest where that organisation has made representations on a particular proposal. **Do** also make it clear to that organisation and the Planning Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal.
- 6.3 **Don't** excessively lobby fellow Councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- 6.4 **Don't** decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so.

## **7. Pre-Application Discussions**

- 7.1 **Do** try to attend public meetings which may be organised as part of the Council's pre-application process (contained in the Council's Planning tool kit). All Members are encouraged to participate in pre-application discussions.

- **Do** remember that both this Code and the Members' Code of Conduct will apply when attending such meetings. In particular public presentations may be given.

## **8. Post-Submission Application Discussions**

- **Do** try to attend, where briefing sessions (generally for major applications) have been arranged (by officers) for Members.
- Planning Committee Members are encouraged to attend these sessions as it will give them an opportunity to better understand the Council's planning policies and its economic objectives
- **Do remember** this may involve the developer making a presentation. Please be guided by this Code and the Members' Code of Conduct when you attend.

## **9. Site Visits**

9.1 Site visits by Members determining schemes are an essential part of determining a planning application. It is good practice for Members to visit an application site before a meeting, so that they can familiarise with the site or surrounding area.

9.2 **Do** try to attend the pre-Committee site visits organised by the Council. However, where it is not possible to attend the organised site visit and you carry out a site visit on your own follow the guidelines below:-

- Notify the Service Head Development Decisions of your intention to visit (which will be recorded on the file).
- Carry it out discreetly and do not make yourself known to the applicants or neighbour.
- Treat the site visit only as an opportunity to seek information and to observe the site. It is important to ensure that site visits do not become an impromptu lobbying opportunity for the applicant or objectors.
- **Don't** hear representations from the applicant or any other party have regard to the provisions on Lobbying of Councillors in paragraph 5 above, and advise them that they may make



representations in writing to the Council and direct them to relevant officers.

- **Don't** express opinions or views on the application to anyone as this may lead to an allegation of apparent bias or pre-determination.
- **Do** have close regard to this Code and the Members' Code of Conduct during your visit.

9.3 **Do** ensure that where you have attended without an officer any new information which you gain from the site visit, is reported back to the case officer so that this officer can report this to all members of the planning committee if relevant.

9.4 **Do** not request a site visit once the application has reached the determination stage, meaning at Committee unless you feel it is really necessary because:

- 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. Public Speaking at Meetings

**Do** ensure that you comply with the Council's Development Procedure Rules (contained in the Council's Constitution) with regard to public speaking.

**Don't** allow members of the public to directly communicate with you during the Committee's proceedings (orally or in writing) as this may give the appearance of bias.

## 11. Relationship between Members and Officers

11.1 **Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Service Head Development Decisions, which may be incorporated into any committee report).

11.2 **Do** recognise that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their Professional Code(s) of Conduct.

## **12. Applications submitted by Members, Officers and the Council**

12.1 **Do** be aware that it is perfectly legitimate for planning applications to be submitted by Members, officers (including any former Members/officers) and the Council. However, it is vital to ensure that they are handled in a way that gives no grounds for accusations or favouritism. Accordingly the matter will be dealt with as follows;

- If a Member or an officer submit their own proposal to the Council which they serve, they should take no part in its processing or the decision making process.
- Members who act as agents for people pursuing a planning matter with the authority should take no part in its processing or the decision making process.
- If an application is submitted either by a Member of officer he/she should notify the Monitoring Officer. Also, if a Member wishes to act as an agent on a planning matter the Monitoring Officer should be notified.
- In respect of former Members of former officers this requirement shall apply for a period of three years following their departure from the Council.
- The matter will be referred to the Corporate Director, Development and Renewal, who shall decide whether or not the application should be referred to Committee, or determined under delegated powers, if the application is in accordance with development plans and all other material planning considerations.
- The consideration in Committee of the application from a Member would be considered as being a prejudicial interest and the Member would be required to withdraw from any consideration of the matter.
- The Member should not address the Committee as the applicant but should appoint an independent agent to represent his/her views.
- Members of the Committee must consider whether the nature of any relationship with the person (either a Member or an officer) applying for planning permission requires that they make a declaration of interest and if necessary also withdraw from the meeting.

## 12.2 Application submitted by the Council

- Proposals for a Council's own development can give rise to suspicions of impropriety. It is perfectly legitimate for such proposals to be submitted to and determined by the Local Planning Authority. Proposals for a Council's own development will be treated no differently from any other application.
- **Do** be aware if you are a Cabinet Member who is also a Member of the Planning Committee you may have been heavily committed or involved in an area of policy/issue relating to an application, if so, you must consider whether you have an interest which should be disclosed. Seek advice from the legal adviser to the Committee.

## 13. Decision Making

- 13.1 **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your reasons are recorded and repeated in the report to the Committee.
- 13.2 **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- 13.3 **Do** comply with section 38(6) of the Planning and Compulsory Purchase Act 2007 and 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.
- 13.4 **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.
- 13.5 **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter. If an application has previously been deferred the same Committee Members will be asked to reconsider the application when it is returned to Committee.
- 13.6 **Do** have recorded the reasons for Committee's decision to defer any proposal.

- 13.7 **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the Development Plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Do be aware that you may have to justify the resulting decision by giving evidence in Court or at Enquiry in the event of any challenge.
- 13.8 **Do** pay regard to the advice that either planning, legal or other officers give the committee with respect to the recommendation or any proposed amendment to it.

#### **14. Training**

14.1 **Don't** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council. The training programme will cover issues relating to probity in planning, principles in planning to reflect government guidance and case law. The following guidelines will be applied:-

- For newly appointed Members and substitute Members the training will be in two separate sessions; one on the planning process (including the principles of planning) the other on probity in planning;

and

- For all other Members and substitute Members who have attended a training seminar within 12 months of the last seminar attended they need only attend a refresher session on planning and probity.

14.2 **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, Development Plans and best practice beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.

14.3 This training will be open to all Members and brief handouts will be provided where appropriate.

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

- ( i )           The emphasis in determining applications is upon a plan led system. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires all planning applications to be determined in accordance with the Development Plan (i.e. the adopted Tower Hamlets Unitary Development Plan (UDP) 1998 as saved September 2007 and the adopted London Plan 2004 (as amended by Early Alterations December 2006) 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 )           Examples of material considerations are:-
- ( a )   appearance and character of development;
  - ( b )   traffic generation, highway safety and parking;
  - ( c )   Overshadowing, overlooking and loss of privacy;
  - ( d )   noise, disturbance or other loss of amenities;
  - ( e )   layout and density of buildings;
  - ( f )   relevant planning policies.
- ( v )           Matters which are not material considerations include:-
- ( a )   boundary disputes, covenants or other property rights;
  - ( b )   personal remarks (e.g. the applicant's motives);
  - ( c )   reduction in property values;
  - ( d )   loss of private view over the land.

- (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. In attaching weight to any offers of community benefit accompanying any planning application, Members must be mindful of the Advice in Circular 1/97 Planning Obligations (Section 106 Agreements) as to the legality and materiality of such offers.
- (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 (Circular 9/93 - Annex 3, Paragraph 15).
- (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.

## APPENDIX 'B'

### 4.8 Development Procedure Rules

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#### 1. SCOPE

- 1.1 These rules apply to all meetings of the Development Committee, Strategic Development Committee and Council in relation to the determination of planning applications.
- 1.2 As the determination of planning applications is a quasi-judicial function these rules provide processes and procedures which fulfil legal requirements of impartiality and natural justice.

#### 2. REPORTS

- 2.1 All applications are the subject of written reports with officer recommendations. Reports will be produced in a standard form approved by the Corporate Director, Development and Renewal, and will identify and analyse major material considerations of which the Committee need to take account when exercising its planning judgment.
- 2.2 In addition to the written report, illustrative material is usually available at least 30 minutes before the meeting at the meeting to explain the scheme and the planning files will also be available for inspection.

### **3. ADDENDUM UPDATE REPORTS**

- 3.1** It is common for material (such as late representations) to be received after the close of the agenda. This needs to be brought to the attention of the Committee so that it can be taken into account. Such material will be presented to Committee in written form at least 30 minutes before the beginning of the meeting in the Addendum Update Report which will comprise a summary of whatever has been raised, in the same way as representations are summarised in the main Committee report.
- 3.2** When such material is made available to members it will also be placed on the public planning file along with all the other papers for the application, subject only to any public exclusion restrictions.
- 3.3** The practicality of producing such a report means there has to be a cut-off point for receipt of late material which is noon on the day of the meeting. Generally material received after this time will not be reported to the Committee though the Corporate Director, Development and Renewal, has an absolute discretion in this regard.
- 3.4** Material must not be distributed to Committee members by members of the public (including public speakers) or other Members of the Council during the course of the meeting.

### **4. REPRESENTATIONS AND PETITIONS**

- 4.1** All representations and petitions upon a particular application which are received prior to the cut-off point are summarised either in the main Committee report or in the addendum update report. Copies of these representations and petitions are available for inspection at the meeting.

### **5. ORDER OF PROCEEDINGS**

- 5.1** Except as otherwise stated on the agenda, generally meetings take place at Tower Hamlets Town Hall, Mulberry Place, 5 Clove Crescent, London E14 2BG commencing at 7:30 pm
- 5.2** At the discretion of the Chair the agenda may be re-ordered at the meeting.
- 5.3** The procedure for considering each application shall be as follows:
- 5.3.1** The item will be introduced by the Corporate Director, Development and Renewal, or his/her representative
  - 5.3.2** An objector who has registered to speak in accordance with the procedure in Rule 6 will address the Committee
  - 5.3.3** The applicant/agent or supporter (if registered to speak in accordance with the procedure in Rule 6) will address the Committee



- 5.3.4** Committee and non-committee Member(s) may address the Committee for up to 3 minutes
  - 5.3.5** The Corporate Director, Development and Renewal, or his/her representative, will present the report and introduce the main issues
  - 5.3.6** Through the Chair, Committee members may ask questions of clarification
  - 5.3.7** The Committee will consider the item and reach a decision.
- 5.4** In order to be able to vote upon an item, a Member must be present throughout the whole of the Committee's consideration including the officer introduction to the matter.
  - 5.5** In the event that any contributor addresses the Committee through an interpreter, additional time may be allowed but the interpreter must not use the additional time to introduce new material.
  - 5.6** The minutes of the meeting will record the members and officers present at the meeting and record any declarations of interest made by members or officers.
- 6. PUBLIC SPEAKING**
- 6.1** Where a planning application is reported on the "Planning Applications for Decision" part of the agenda, individuals and organisations which have expressed views on the application will be sent a letter that notifies them that the application will be considered by Committee. The letter will explain the provisions regarding public speaking. The letter will be posted by 1<sup>st</sup> class post on Wednesday in the week prior to the meeting.
  - 6.2** When a planning application is reported to Committee for determination the provision for the applicant/supporters of the application and objectors to address the Committee on any planning issues raised by the application, will be in accordance with the public speaking procedure adopted by the relevant Committee from time to time.
  - 6.3** All requests to address a Committee must be made to the Committee clerk by 4pm on Friday prior to the day of the meeting. It is recommended that email or telephone is used for this purpose. This communication must provide the name and contact details of the intended speaker. Requests to address a Committee will not be accepted prior to the publication of the agenda.
  - 6.4** After 4pm on the Friday prior to the day of the meeting the Committee clerk will advise the applicant of the number of objectors wishing to speak.
  - 6.5** The order of public speaking shall be as stated in Rule 5.3.

- 6.6** Public speaking shall comprise verbal presentation only. The distribution of additional material or information to members of the Committee is not permitted.
- 6.7** Following the completion of a speaker's address to the Committee, that speaker shall take no further part in the proceedings of the meeting unless directed by the Chair of the Committee.
- 6.8** Following the completion of all the speakers' addresses to the Committee, at the discretion of and through the Chair, Committee members may ask questions of a speaker on points of clarification only.
- 6.9** In the interests of natural justice or in exceptional circumstances, at the discretion of the Chair, the procedures in Rule 5.3 and in this Rule may be varied. The reasons for any such variation shall be recorded in the minutes.
- 6.10** Speakers and other members of the public may leave the meeting after the item in which they are interested has been determined.

## **7. COUNCILLORS EXERCISING THEIR PUBLIC SPEAKING RIGHTS**

- 7.1** A Councillor who is a member of the determining Committee and who wishes to address the meeting but has a prejudicial interest is permitted to speak in accordance with Rule 6 above and must immediately leave the room once he/she has finished addressing the meeting. The Councillor cannot remain in the public gallery to observe proceedings on the matter.

## **8. COUNCILLORS WHO ARE NOT MEMBERS OF THE COMMITTEE**

- 8.1** Councillors who are not members of the determining Committee may make written representations to the Council about a planning application in the same way as can any other interested person.
- 8.2** A Councillor who is not a member of the determining Committee but who attends a meeting must declare any personal or prejudicial interest. The declaration of a prejudicial interest will preclude the member from remaining in attendance during consideration of the relevant item but not during the stages set out at Rules 5.3.1 to 5.3.4 above. The Member may address the meeting as set out in Rule 5.3.4.
- 8.3** A Councillor who is not a member of the determining Committee who speaks at a meeting must include within the speech details of any contact with the applicant, agent, adviser or other interested party and whether or not the speech is made on behalf of such person(s) or any other particular interest.
- 8.4** A Councillor who is not a member of the determining Committee but who is present at a meeting should sit separately from the Committee members, so as to demonstrate clearly that he/she is not taking part in the discussion, consideration or vote.

**8.5** A Councillor who is not a member of the determining Committee must not communicate in any way with members of the Committee or pass papers or documents to them before or during the meeting.

## **9. DECISIONS CONTRARY TO OFFICER RECOMMENDATIONS**

**9.1** Where a Committee proposes to make a decision contrary to the officer recommendation (whether for approval or refusal) and that decision would not necessarily be contrary to the provisions of the Development Plan, in order to ensure that members are clear of the basis upon which they are proposing to vote advice from officers should be sought. That advice will be based upon the material considerations that have been heard by the Committee and whether there are grounds that could be defended in the event of an appeal or legal challenge.

**9.2** Where a vote on the officer recommendation is lost, it is necessary for a new motion to either grant or refuse the application to be proposed. The Committee should receive advice from officers as to the appropriate form that the new motion should take.

## **10. DECISIONS CONTRARY TO THE DEVELOPMENT PLAN**

**10.1** The law requires that where the Development Plan is relevant, decisions must be taken in accordance with it unless material considerations indicate otherwise. If a Committee intends to approve an application which is contrary to the Development Plan, the material considerations must be clearly identified and the justification for overriding the Development Plan clearly demonstrated. The application will have to be advertised in accordance with Article 8 of the Planning (General Development Procedure) Order 1985 and, depending upon the type and scale of development proposed, may also have to be referred to the Department for Communities and Local Government. If the officer report recommends approval of a departure, the justification should be included, in full, in that report.

**10.2** If a Committee is minded to make a decision contrary to the officer recommendation (whether for approval or refusal) and that decision would be contrary to the provisions of the Development Plan, such motion may only contain the Committee's initial view and must be subject to a further report detailing the planning issues raised by such a decision. Further consideration of the matter must be adjourned to a future meeting of the Committee when officers will present a supplemental report setting out the proposed new position and explaining the implications of the decision.

**10.3** If, having considered a supplemental report, the Committee decides to determine the application contrary to the Development Plan, a detailed minute of the Committee's reasons, which as a matter of law must be clear and convincing, shall be made and a copy placed on the application file.

## **11. DEFERRALS**

- 11.1** Where it is necessary to defer the determination of an application, the matter will be placed on the list of “Deferred, Adjourned and Outstanding Items” in the agenda to enable further consideration as soon as possible. Generally where the reason for deferral does not involve any substantive new information being brought before the Committee (for example, following deferral for a site meeting or clarification of an issue) the Committee will be updated by means of the addendum update report and can usually proceed to determine the application at the next meeting. In such circumstances at the re-convened consideration there will be no further public speaking pursuant to Rule 6.
- 11.2** Where deferral is for a more substantive reason (such as renegotiating part of the proposal) then it would generally be appropriate for a fresh report to be presented to the Committee in the “Planning Applications for Decision” part of the agenda in order to ensure that that the Committee is apprised of all material considerations. Where a new full report is presented to Committee, public speaking pursuant to Rule 6 is permitted.
- 11.3** Such applications will be placed on the list of deferred items at the beginning of the agenda so that the Committee has a record of all applications that stand deferred.
- 11.4** Where an application is deferred and its consideration recommences at a subsequent meeting only Members who were present at the previous meeting will be able to vote. If this renders the Committee inquorate then the item will have to be reconsidered afresh. This would include public speaking rights being triggered again.

## **12. SITE VISITS BEFORE A COMMITTEE MEETING**

- 12.1** It is advisable that members are familiar with the sites of the applications on the agenda to enable them to make informed decisions on the planning applications before them and to avoid deferring those decisions pending site visits.
- 12.2** Where members visit the site themselves before the meeting, care must be taken to ensure that they comply with the Planning Code of Conduct at Part 5 of this Constitution. Such visits should be carried out discreetly and members should not make themselves known to the applicant or to neighbours. Accordingly members should avoid going onto the actual application site or a neighbouring property. The reason for this is that contact between a member of the Committee and the applicant or a local resident could be misinterpreted as lobbying. If such contact is made this should be declared in Committee, but this should not in itself prevent that member from taking part in the consideration of that application, provided that the member has followed the advice in the Planning Code of Conduct.

### **13. FORMAL SITE VISITS BY THE COMMITTEE**

- 13.1** A formal site visit will be arranged where the Committee have resolved on a majority vote to visit the site or if in the opinion of the Corporate Director Development and Renewal a site visit is recommended. . Site visits should only be selected where there is a clear and substantial benefit to be gained.
- 13.2** The procedure for formal site visits by the Committee shall be as follows:
- 13.2.1** Arrangements for visits will not normally be publicised or made known to applicants, agents or third parties.
  - 13.2.2** Where permission is needed to go on land, contact will be made with the owner by officers, but the owner cannot take any part in the visit, other than to effect access onto the site.
  - 13.2.3** The purpose of a site visit is to enable Members to inspect the site and to better understand the impact of the development. The Committee must not receive representations or debate issues during a site visit.
  - 13.2.4** An application cannot be determined at a formal site visit by a Committee and must be considered at the next appropriate meeting of the Committee.
  - 13.2.5** The Committee Clerk will make a note of the meeting and include it in the Update Report
  - 13.2.6** Failure to attend a Formal Site Visit shall not bar a Member from voting on an item at the meeting that considers the item provided the Member is satisfied that he/she is sufficiently familiar with the site.

### **14. DELEGATED POWERS**

- 14.1** The recommendations in the reports to Committees do not set out the full wording of planning conditions or reasons for refusal, but are a summary of them. This communicates the details of the recommended decision more clearly than many pages of detailed conditions or grounds. It is for the Corporate Director, Development and Renewal, to communicate the detailed wording to applicants pursuant to delegated powers. Where a particular concern about the precise wording of a condition or ground has been expressed at a meeting the Corporate Director will make the final wording available for inspection.
- 14.2** At the beginning of the agenda there is a general resolution to give delegated powers to the Corporate Director, Development and Renewal, to vary or add conditions or reasons for refusal. The reason for this is that there can sometimes be a delay before a decision is issued (such as waiting for the signing of a legal agreement or views from the Mayor of London) and something may arise which necessitates a minor amendment or an addition.

Power is delegated to the Corporate Director to obviate the need for further reference to Committee and delay to the process. The exercise of the power by the Corporate Director must not exceed the substantive nature of the Committee's determination and any amendment or addition which would do so shall be referred back to the Committee.

**15. REFERRAL TO COMMITTEE OF A PLANNING APPLICATION DELEGATED TO THE CORPORATE DIRECTOR, DEVELOPMENT AND RENEWAL**

**15.1** Any planning application which would be determined under delegated powers may be referred to the Development Committee pursuant to the following procedure.

**15.2** Within four weeks of the date of a planning application first being publicised any four Members of the relevant Committee may request that the application be referred to the Committee for determination by completing and signing a Planning Application Referral Request which shall be delivered to the Service Head, Development Decisions.

## APPENDIX 'C'

### DEVELOPMENT COMMITTEE: REVISED FUNCTIONS/DELEGATIONS

#### 3.3.4 Development Committee

<p><b>Membership:</b> Nine Members of the Council. Up to three substitutes may be appointed for each Member</p>	
<b>Functions</b>	<b>Delegation of Function</b>
<p><b>1. Planning Applications</b></p> <p>a) To consider and determine recommendations from the Corporate Director, Development and Renewal to grant planning permission for applications made under the Town and Country Planning Act 1990 to grant listed building consent or conservation area consent for applications made under the Planning (Listed Buildings and Conservation Areas) Act 1990 and to grant hazardous substances consent for applications made under the Planning (Hazardous Substances) Act 1990, including similar applications delegated to the Council to determine by other bodies (such as the Olympic Delivery Authority under the London Olympic Games and Paralympic Games Act 2006) that meet any one of the following criteria:</p> <p>i) Proposals involving the erection, alteration or change of use of buildings, structures or land with more than 35 residential or live-work units.</p> <p>ii) Proposals involving the erection, alteration or change of use of buildings, structures or land with a gross floor space exceeding 10,000 square metres.</p> <p>iii) Retail development with a gross floor space exceeding 5,000 square metres.</p> <p>iv) If in response to the publicity of an application the Council receives (in writing or by email) either more than 20 individual representations or a petition (received from residents of the borough whose names appear in the Register of Electors or by a Councillor and containing signatures from at least 20 persons with residential or</p>	<p>The Corporate Director, Development and Renewal (or any officer authorised by her/him) has the authority to make decisions on planning matters with the exception of those specifically reserved to the Development Committee, unless:-</p> <p>(i) these are expressly delegated to her/him or</p> <p>(ii) where it is referred to the Committee in accordance with Development Procedure Rule No 15</p>

business addresses in the borough) raising material planning objections to the development, and the Corporate Director, Development and Renewal considers that these objections cannot be addressed by amending the development, by imposing conditions and/or by completing a legal agreement.

- b) To consider and determine recommendations from the Corporate Director to refuse planning permission for applications made under the Acts referred to in (a) above, where in response to the publicity of an application the Council has received (in writing or by email) more than 20 individual representations supporting the development or a petition in the form detailed in (a) (iv) supporting the development.
- c) To consider and determine recommendations from the Corporate Director, Development and Renewal for listed building or conservation area consent applications made by or on sites/buildings owned by the Council.

*(Representations either individual letters or petitions received after the close of the consultation period will be counted at the discretion of the Corporate Director, Development and Renewal)*

## 2. Observations

- d) To respond to requests for observations on planning applications referred to the Council by other local authorities Government departments statutory undertakers and similar organisations where the response would be contrary to policies in the adopted development plan or raise especially significant borough-wide issues



**3. General**

- e) To consider any application or other planning matter referred to the Committee by the Corporate Director Development and Renewal where she/he considers it appropriate to do so (for example, if especially significant borough-wide issues are raised).

*It shall be for the Corporate Director Development & Renewal to determine whether a matter meets any of the above criteria.*

**Quorum**

3 members of the committee

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