

5.2 – Planning Code of Conduct

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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.