

Code of conduct for members in relation to planning matters

Introduction

This Code was originally drawn up on the recommendation of the review of standards in local government by 3rd Report of the Nolan Committee on Standards in Public Life, published in 1997 and against the background of the increasing possibilities of liability for local authorities and councillors in the event that mistakes are made. The Code was subsequently reviewed in July 2012 to take account of the Localism Act 2011.

This Code is designed to assist and provide guidance for members on their roles when dealing with planning matters, whether in relation to policy or the decision making on planning applications. The principal purpose is to maintain standards of transparency and fairness when dealing with residents, interest groups, applicants and developers and officers of the Council. Adherence to the Code will also minimise the possibilities for legal action against the Council and individual councillors. In this respect the Code contains important guidance for all members of the Council not just those serving on the Planning Committee.

This Code forms part of Ealing Council's Local Code of Conduct for Councillors, and failure to comply with it may potentially result in a complaint under the council's standards regime.

The Code

General

- Under the Localism Act 2011 a member is not to be taken to have had, or to have appear to have had, a closed mind when making a decision just because the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took or would or might take, in relation to a matter, and the matter was relevant to the decision.
- Although this provision recognises the role of members in matters of local interest and debate, if you are a member of the Planning Committee taking part in a decision on a planning matter, you should not make up your mind how to vote prior to consideration of the matter by the Planning Committee and therefore you should not comment in advance how you intend to vote which might indicate that you have a closed mind.
- This does not prohibit your ability as a ward member to represent the views of your constituents throughout the planning process, provided that you make it clear that those views are not necessarily your own.
- If you have any doubts about the interpretation of this Code, you should consult appropriate officers on the point.
- Protocol for Member involvement in Pre-application and application presentations and discussions

- 5.1 It is recognised that there is an increasing role for members at both the pre-application and application stages of planning proposals. This is encouraged provided members' roles are clearly understood. The role needs to be unambiguous and transparent to members themselves and to developers and the public. Members of the public and local residents are sometimes concerned that proposals, when considered at the pre-application stage, are in effect 'decided in advance'. This is not the case and it is entirely appropriate and proper that all councillors consider taking an active part in discussions concerning development proposals at the pre-application stage and in relation to planning applications. There should be no ambiguity about the requirements or responsibilities of councillors in this respect. In particular members need to be aware of the distinction between giving and receiving information and engaging in negotiations. Without a published protocol member involvement may inadvertently open members to challenge on the grounds of apparent pre-determination. Members should be aware that presentations by developers are, in effect, a form of lobbying and that the general principles set out below relating to lobbying are relevant.
- 5.2 Members should be aware of the differences in publicity for the pre-application and application stages of any development proposal. The pre-application stage is a paid-for service. The submission of information and documents by an applicant/developer is a matter of choice and not as a statutory requirement of the planning process. The pre-application process is a means by which an applicant or developer can seek advice on the appropriateness of a development in terms of either its use or design. The pre-application service does not give a green light to proposals but is intended to weed out proposals that are clearly unacceptable and to shape proposals to a point where they can be further assessed through a formal planning application. Pre-application discussions are always made on the basis that they are 'without prejudice' to the consideration a subsequent application against planning policy, and other material considerations, including representations made by local residents and other parties.
- 5.3 On this basis pre-application discussions are considered private and confidential discussions between the applicant/developer and the Council and are not publicised on the Council's website or notified to local residents and interested parties at the time the pre-application discussions are ongoing. In the interests of transparency, the Council will make available the material received from the application/developer and the advice given to the applicant/developer by officers, upon request, from the time a formal, valid planning application is received by the Council.
- 5.4 The Council's Protocol for member involvement in pre-application and application presentations and discussions is set out below as follows:
- Any presentations or discussions with developers, should be part of structured arrangements agreed with officers in advance and may also include other interested parties. Where members are approached by applicants or developers to attend meetings the matter should be referred to the planning case officer so that they are aware of the

meeting. Officers of appropriate seniority should normally attend the meeting depending on the size and complexity of the scheme under consideration.

- Meetings and any presentations should be limited to the development proposal and a question and answer session on factual matters on the clear basis that the discussion is being held to improve understanding and not to discuss the merits of the application. This should be confirmed at the start of the presentation. Within this context, members can comment on aspects of the scheme providing that they keep an open mind.
- Members should avoid giving any indication that they have already decided how they propose to vote.
- Questions from members will be appropriate to clarify aspects of a proposal as long as they do not develop into negotiations.
- When appropriate (depending on the size and complexity of the scheme) the applicant/developer will be required to submit a written note of the meeting to the planning case officer which should be checked for accuracy.
- All meetings of members with applicants/developers should be entered on a Register of Member Involvement in Planning Matters which will be made available to the public.
- In respect of all member contact with developers and applicants, officers will need to know:
 - the time and date of the meeting
 - the name of those present
 - the site in question
 - why the meeting has been arranged, and
 - the nature of the development proposal.

Lobbying

- Lobbying is acknowledged to be an integral part of the planning process and is appropriate, provided that care is taken to avoid members' integrity and impartiality being called into question.
- If you are approached about a planning matter (even if you are not a member of the Planning Committee) by any applicant, agent, objector or other interested party, you should:
 - (a) Consider whether or not it would be prudent in the circumstances to make notes of the meeting and (if so) make such notes
 - (b) Disclose any such contact if you make representations about a planning matter (either at or outside the Planning Committee meeting)
 - (c) Avoid contact with agents who either are not members of the Public Relations and Communications Association (PRCA) or are unwilling to confirm that they undertake to comply with the [PRCA Public Affairs Code](#)
 - (d) In the light of such contact, and of other relevant considerations (including, for members of the Planning Committees, the importance of remaining impartial as a decision maker), carefully exercise your judgment as to the best means to play your representative role as a ward member with regard to the planning matter in question

- (e) Avoid giving the impression that you, or anyone else, can exert any improper influence over the planning process
 - (f) If the contact is to seek professional, technical or legal advice with regard to a planning matter, consider whether or not it is appropriate to refer the enquirer to the appropriate council officer or other appropriate independent person or organisation
 - (g) Immediately report to the appropriate officer any improper contact, pressure or inducements to yourself or - if you become aware of them - to others involved in the planning process, and
 - (h) Ensure the requirements regarding the Register of Members Interests on Planning Applications are adhered to.
8. Whether or not you are a member of the Planning Committee, if you are approached as set out in paragraph 7 above, you shall - if requested by an officer or by another member - disclose details of the approach at any relevant meeting of the Planning Committee which you attend.
 9. If you are approached about a planning matter and you are a member of the Planning Committee you should, in addition to the points at 7 and 8 above:
 - (a) Consider whether or not your impartiality as a decision maker might be compromised or seen to be compromised by such contact, and
 - (b) Avoid giving any commitment, or the impression of a commitment, to take any particular stance in relation to a forthcoming decision of the Planning Committee.
 10. In some circumstance you may consider that you would prefer to represent a view or support objections to an application, in which case, should stand aside from determination of any subsequent application and make it clear that it is your intention to do so.
 11. If you are approached about a planning matter and you are Chair or Vice Chair of the Planning Committee you should:
 - (a) Recognise that your role as Chair / Vice Chair prevents you from responding to contact in the same way as other ward members, and
 - (b) Recognise and make clear that any contact will not influence your special responsibility for the fair and impartial handling and consideration of planning matters considered at Planning Committee Members' Interests.
 12. If you have business or other interests bringing you into frequent contact with the planning system locally you should avoid membership of the Planning Committees. Such interests might include you acting as a planning agent or other consultant in respect of planning applications within the borough.

Planning Committee Members' own Planning Applications

13. Planning applications submitted by current and former councillors and relatives can easily give rise to suspicions of impropriety. There are therefore specific procedures which are intended to ensure that these are handled in a transparent way that give no grounds for accusations of favouritism.

14. If you are a member of the Planning Committee and you are contemplating making an application, you should:
- (a) notify the Director of Legal and Democratic Services
 - (b) play no part in the consideration of your application. If you are present at a meeting when the application is considered, you should withdraw from the meeting for that item (as a minimum) and nominate someone else to speak on your behalf if you would otherwise be entitled to do so under the Committee's Public Speaking Protocol.
 - (c) ensure that any disclosable pecuniary interest is registered or disclosed in accordance with the Ealing Local Code of Conduct for Councillors
 - (d) not take any part in the planning process relating to that application which could be interpreted as improper lobbying of officers or other members.
15. It is anticipated that applications which would normally be determined under officer delegations or Planning Committee as the case may be will respectively continue to be determined on the same basis subject to compliance with the requirements of paragraph 14 above and unless the Director of Legal & Democratic determines otherwise.
16. If you think that you have a disclosable pecuniary interest in a matter (as set out in paragraphs 9 of the Ealing Code of Conduct for Councillors and the relevant regulations), you should take no part in the proceedings other than is permitted by paragraph 12 of the Code.
17. If you are a member of the Planning Committee and consistently feel unable to fulfil that role within the constraints of an approved planning policy you should consider carefully whether you should continue to serve on the Committee. This will not prevent you from serving on the Planning Committee if you disagree with a particular approved policy but are still able to recognise and uphold its legal significance in the planning process

Gifts & Hospitality

18. You should not accept hospitality or gifts from any person who you know or suspect to be an applicant, agent, or interested party (including an objector) in a planning matter due to be considered by the Planning Committee irrespective of whether this is below the threshold in the Ealing Council Code of Conduct for Councillors. In the exceptional circumstances where it is not practicable for you to refuse such hospitality or gifts then you should report the receipt of such gifts or hospitality to the appropriate senior officer of the Council, as provided for in Ealing Code of Conduct for Councillors. Any gifts you receive should be donated to an appropriate body under any arrangements approved by the Standards Committee or to one of the Mayor's charitable appeals.

Site Visits

19. Where you know a site to be the subject of or affected by a planning matter or you know it is likely to become subject to or be affected by a planning matter, you should not enter that site for any purpose in connection with such matter except in the course of an official site visit.
20. If you are a member of the Planning Committee and visit an application or enforcement site you should:
 - (a) avoid giving any indication of your likely decision
 - (b) be aware of the provisions of clauses 4-5 of this Code above, if any other person is present on that site visit
 - (c) avoid entering into a dialogue with any third parties during the course of a site visit without an officer being present, and
 - (d) observe the Council's Protocol for Site Visits during all site visits.
21. You should only ask for a site visit where the expected benefit is substantial. This means that a site visit is only likely to be necessary if:
 - (a) the impact of the proposed development or enforcement action is difficult to visualise from the plans and any supporting material, including photographs taken by officers (although in that case, additional illustrative material should have been requested in advance)
 - (b) there is good reason why the comments of the applicant and objectors cannot be expressed adequately in writing, or
 - (c) the proposal is particularly contentious.

Where decisions are deferred for the purposes of an official site visit, you should ensure that the detailed reasons for that decision are stated at the meeting at which this decision is taken, and minuted.

Further considerations for members are set out in the Appendix at the end of this Code (The Planning Committee Site Visits Protocol).

Contact with officers

22. Officers have a duty to give impartial advice to you and to the Council on planning applications and to make recommendations to the Planning Committee only on the basis of the Development Plan and other material considerations. You should not attempt to use your position as a member to improperly influence officers into making a particular recommendation or delaying applications or enforcement action.
23. You should not seek to delay the enforcement of planning control (including the bringing of prosecutions) because of lobbying from a person having an interest in the land the subject of such enforcement.

The Planning Committee Meeting

24. If you are a member of the Planning Committee you must not take part or vote on any planning matter if you have not been present throughout consideration of the matter at that meeting.

25. If a planning application which would normally be decided under the delegated powers procedure relates to a site in your ward you may submit a written request to the Chair or nominated Vice Chair asking that this application be brought to Planning Committee for decision giving reasons for the request.
26. If the Chair or nominated Vice Chair agrees to your request, the committee agenda report will include a note of your request and reasons.
27. If you are a member of a Planning Committee you must ensure that, where a decision of a Planning Committee is contrary to the officer recommendation, a clear statement of the reasons for that decision is given at the time the decision is taken, and minuted.
28. Whenever a matter is deferred for decision by a meeting of the Planning Committee, for example for the purpose of holding a site visit or for further information to be obtained, there will be no guarantee that the matter will return to a meeting of the Planning Committee with the same membership as the one which made the deferral.

Training

29. If you are a member of a Planning Committee you must participate in a programme of training on the planning system organised for you by officers.
30. If you are a member of the Planning Committee and you fail to participate in the programme of training this may result in you being asked to stand down as a member of Planning Committee.
31. You should be aware that:
 - (a) Training is particularly important for members who are new to Planning Committee and for members who have not attended training in the recent past, and
 - (b) Where you have genuine difficulty in attending any particular training session, officers will try where practicable to accommodate a request for an individual or repeat session

Complaints about planning matters

32. Members will be approached by their constituents with issues relating to way in which planning applications or related matters have been dealt with or regarding the decisions made.
33. Members should refer the matter to the Complaints Team for consideration as a service request or as a formal complaint, depending on the issues raised.
34. In the interest of fairness and transparency for both landowner / applicant and local residents, members should avoid prejudging the issue prior to the relevant service request or complaint being dealt with by officers.

35. Where a resident wishes to raise a formal complaint, in almost all circumstances it is appropriate for the complaint to be submitted by the resident and not by an individual member.

Appendix - Planning committee site visits protocol

Background

1. This Protocol has been written having regard to the recommendation contained in the guide issued by the Local Government Association and the Planning Advisory Service in April 2013, 'Probity in Planning for Councillors and Officers'. The guide recommends that councils should have a clear and consistent approach on when and why to hold a site visit and how to conduct it.

This Protocol should be read in conjunction with the existing Members' Codes of Conduct and in particular paragraph 17-19 of the Code of Conduct for Members in Relation to Planning Matters as follows

Site Visits

17. Where you know a site to be the subject of or affected by a planning matter or you know it is likely to become subject to or be affected by a planning matter, you should not enter that site for any purpose in connection with such matter except in the course of an official site visit.

18. If you are a member of the Planning Committee and visit an application or enforcement site you should:

- (a) avoid giving any indication of your likely decision
- (b) be aware of the provisions of clauses 4-5 of this Code above, if any other person is present on that site visit
- (c) avoid entering into a dialogue with any third parties during the course of a site visit without an officer being present, and
- (d) observe the Council's Protocol for Site Visits during all site visits.

19. You should only ask for a site visit where the expected benefit is substantial. This means that a site visit is only likely to be necessary if:

- (a) the impact of the proposed development or enforcement action is difficult to visualise from the plans and any supporting material, including photographs taken by officers (although in that case, additional illustrative material should have been requested in advance), or
- (b) is good reason why the comments of the applicant and objectors cannot be expressed adequately in writing, or
- (c) the proposal is particularly contentious.

2. Purpose of site visits

Probity in Planning confirms that the purpose of site visits is for Planning Committee members to observe site and surroundings and gain a better understanding of the issues. They are not to be used as a lobbying opportunity by objectors or supporters.

3. Arrangements for site visits

- A decision to hold a site visit will be made following discussion between Planning and the Chair or Vice Chair) having regard to paragraph 19 of the Code of Conduct set out above.
- A list of site visits will be sent to all councillors by officers 5 working days prior to the Planning Committee meeting.
- Officers will try to ensure (as far as possible) that the applicant is there to give access to the site.

4. Conduct at the visit

Role of Chair

- Chair to take note of attendance and forward to Committee clerk for records purposes (Chair also advises attendance at the Committee meeting).
- At start of the visit, the Chair should introduce themselves and the Committee members to the applicant/agent and any members of public.
- The Chair will also advise that the purpose of the visit is for members to see site and surroundings and to gain a better understanding of the issues but that it is not an opportunity for lobbying and that there will be no discussion the merits of the proposal.
- The lead officer/case officer will present facts of the proposal.
- For some schemes, particularly major ones, it may be appropriate for a representative of the developer to be present at the site visit (usually the architect or planning consultant) to present the scheme, explain the development in an objective way and to answer factual questions the Planning Committee members may have. Where officers consider it appropriate for a site visit presentation to occur, the agreement of the Chair of Planning Committee will be sought beforehand.
- During the visit, during and after the presentation, the chair will allow public to ask questions in orderly manner, but not go into debate.
- The Chair will advise objectors that there will be opportunity for an objector to speak at the Committee meeting (and if so, a representative of the applicant) and that the councillors will debate the proposal then and not on the site visit.
- If going into a site, the Chair will ensure that there is applicant agreement for any residents/ members of public to enter (generally allowing one or two representatives).
- It is the Chair's decision whether to go into adjacent sites to view potential impact.

5. Planning Committee Members

It is expected that Committee members will:

- Stay together on arrival at a site and listen to the Chair & lead officer
- Not talk to residents at same time as chair or officers are speaking
- Not engage in separate dialogue with members of the public or applicant/agent
- Avoid giving any indication of their likely decision on the proposal

- Avoid entering into any dialogue with the objectors or applicant/agent without an officer being present.

6. Ward Members

- It is expected that ward members will:
- Allow the site visit proceedings to flow uninterrupted
- Not talk to residents at same time as chair or officers speaking

7. Lead planning officer and any case officers in attendance

The role of lead officer is to ensure relevant facts are provided to the Committee members. This will normally be by way of a brief presentation by showing selected plans to illustrate proposals, looking at the site and surroundings (often from outside), and going onto site to look at detail if necessary. Larger sites will normally have a pre-planned route, advised to Committee members at the start. Officers will provide clarifications to Committee and, if Chair agrees, to questions from members of public.

8. Large schemes and/or large attendance

Site visits for large schemes or where a large attendance is anticipated, officers will make any necessary additional arrangements in advance including the possible use of a hall or special area for the presentation with plans on display in advance, and for the Chair to set out expectations for the visit at the start.