

CONSTITUTION - PART 5 - CODES AND PROTOCOLS

PLANNING CODE OF GOOD PRACTICE:
FOR MEMBERS
AND OFFICERS

PART 1 - WHEN AN APPLICATION IS CONTEMPLATED OR FIRST RECEIVED

1.1 INTRODUCTION:

Some of the most controversial decisions that any Council has to take are planning decisions. They affect the neighbourhoods where people live, and can involve significant changes in the value of property. Naturally, they are the object of close public scrutiny.

The decisions that the Council makes can be overturned or criticised by a number of external authorities. Planning decisions can be appealed to the Secretary of State, they can be challenged in the High Court, and they can be the subject of a complaint to the Local Government Ombudsman. An additional safeguard for the public is that all Councillors and all Council Officers are subject to Codes of Conduct. They are required to be unprejudiced in their work and to avoid any possibility of being influenced by their own personal interests. These requirements apply to all Council decisions, but for certain types of decision like planning and licensing, the requirements of the Code go further than this. These are decisions where the Councillors are required to act as if they were a Court, without referring to political considerations, and taking into account the issues which the law says are relevant to the decision.

When Councillors are making planning decisions, they must be:-

- Open-minded – a Councillor must not make up his/her mind until they have heard all the relevant evidence, which will not happen until the date of the meeting. If Councillors indicate which way they intend to vote before that, they are disbarring themselves from taking part in the decision.
- Open and Transparent – The rules about interests in the Members' Code apply with particular force to Councillors who are making planning decisions. It is very important that in relation to each matter, Councillors consider whether they have an interest which should be explained to the public, or which might prevent them from making the decision. A Councillor must seek advice as soon as he or she thinks that there may be any doubt about this. Another aspect of the requirement for openness is the requirement on the Council to give clear and accurate reasons for any decision that has been taken. This applies to all decisions, but the need is greatest where permission is refused, or where an application is approved, but either the application appears to be contrary to the Council's policies or an application which appears similar has recently been refused.
- Stick to the Planning Issues – The law requires planning decisions to be made on the basis of what the Act calls "material considerations".

Some considerations are never material; this Code discusses these at Section 2.5 below.

- Impartial – Most planning decisions involve applying policies to particular situations. The policies have to be applied impartially without reference to the identity of the individuals concerned. Planning decisions are decisions about the use of land, not the people who own it. The circumstances of the individuals will only be relevant in very exceptional cases. Councillors should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so. Councillors who do not feel that they can be impartial in this way, should consider whether they are best suited to serve on Planning Committee.

This Code of Practice is supplementary to the Members' Code of Conduct and the Officers' Code of Conduct. It is intended to show how the general principles in those Codes should be applied to planning decisions. A breach of this Code may be a breach of the Members' Code or the Officers' Code.

PART 1: WHEN AN APPLICATION IS CONTEMPLATED OR FIRST RECEIVED

1.2 MEMBERS' AND OFFICERS OBLIGATIONS:

Councillors and Officers have different, but complementary, roles. Both serve the public. Councillors are responsible to the electorate, and are elected to represent all people of the District. Officers are responsible to the Council as a whole. They advise the Council and its committees and the executive, and carry out the Council's work. They are employed by the Council, not by individual Councillors, and it follows that instructions on development control matters may be given to Officers only through a Council or Committee decision. A successful relationship between Councillors and Officers can only be based upon mutual trust, respect and an understanding of each other's roles and positions. This relationship, and the trust which underpins it, must never be abused or compromised.

Therefore:

- **Individual Councillors should not give instructions to Officers on planning matters.**
- **Officers' actions must follow Council policy and Committee decisions.**
- **Officers must always act impartially**

The Royal Town Planning Institute ("the RTPI") Code of Conduct says planners:

- shall not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions;

- shall act with competence, honesty and integrity;
- shall fearlessly and impartially exercise their independent professional judgement to the best of their skill and understanding;
- shall discharge their duty to their employers, clients, colleagues and others with due care and diligence;

Through the Local Government and Housing Act 1989, restrictions are placed on the outside activities of senior staff, such as membership of political parties and serving on another Council.

All Planning and Legal officers engaged in the delivery of the planning service should regard themselves as being bound by their relevant codes of professional conduct, whether they are members of the relevant professional body or not.

If an application is submitted by or on behalf of an officer he/she will

Inform the Head of Planning Services and the Council's Monitoring Officer in writing and take no part in considering or determining the application and the application will be determined by committee.

1.3 APPLICANTS' RIGHTS:

Applicants have the right to have their applications dealt with fairly and in accordance with the law, this means on the one hand if the proposed development is in accordance with policy and other material planning considerations, the council should grant planning permission, and on the other hand, it means that the council should not seek unrelated benefits from any grant of permission.

1.4 RECEIPT OF APPLICATIONS:

All councillors receive a weekly list indicating the applications which have been registered as valid by the Council during the previous week. Depending on workload it can take up to two weeks for an application to be published on the list. At the back of the list there is basic information about applications which have been submitted invalidly during the previous week. The "Weekly List", is designed for members to read and to identify applications which are of particular interest to them, either because they serve on the Planning Committee or because they are the ward member. Members should then decide whether they need to speak to the case officer (whose name is clearly marked against each application on the list) or to view the application on the planning website or visit Planning Enquiries¹ in order to obtain further information. The member may also wish to discuss the matter with the appropriate parish council. It would be at this point that any member who felt that the matter ought not to be determined

¹ Planning Enquiries are open between 8.30 am and 4 pm Monday to Friday and are located at the Department of Development Services, Knapping Mount, West Grove Road, Harrogate, HG1 2AE. The Planning Register copy of the application will be available to view during normal opening hours, but if you wish to view the case file and/or speak to the case officer, please telephone her/him, or Planning Enquiries tel 556666 to make an appointment.

by officers in accordance with delegated powers, would raise the possibility with the Chair of the Planning Committee or submit a written representation to the Head of Planning Services (see section 1.5 (viii)). Exceptionally, a member may already have been approached by an applicant and/or a potential objector and advice as to how to deal with those approaches is given below in paragraph 1.5 (ii) and Appendix A.

Every second week, usually on a Tuesday, members of the Planning Committee will receive an agenda for the meeting of the Committee. Agenda Item 6 is the "List of Plans" to be considered by Members which includes a number of detailed reports on applications for determination at the meeting on the following Tuesday. The "List of Plans" is in two parts; Part A – applications before the Committee for determination and Part B – applications on which the Committee are being asked to express a view (i.e. for observations). For example, applications made by the County Council for their own development needs e.g. temporary classrooms or by a Government Department on behalf of the Crown e.g. development at Menwith Hill.

Under normal circumstances, about 90% of all applications (the most routine ones) will have been dealt with by officers. Attached to the back of the "List of Plans" is a detailed list of all the decisions taken by the Head of Planning Services on his own or in consultation with the Chair since the last meeting of the Committee. These relate to Agenda Item 7 (Delegated Planning Decisions) and are for reporting back purposes only. Members have the opportunity to ask questions about any particular application – but the decision cannot be altered. Applications for a Certificate of Lawful Development determined by the Solicitor to the Council and Enforcement Notices are reported back in the same way.

Members have clear responsibilities:-

- (i) they must read and study the papers;
- (ii) they must determine with whom they can properly discuss the matter; that would normally be the case officer but members may, from time to time, wish to raise issues with other planning officers or with the chair; or, on occasion, with the Solicitor to the Council;
- (iii) members may wish to make a personal visit to the site so that they have a clear understanding of the issues, further guidance on this is given at paragraph 2.3 below (the committee normally makes site visits to selected sites in advance of the appropriate meeting in any event);

At this stage there are a number of things that members should and should not do and these are dealt with in the next section.

1.5 GUIDANCE TO MEMBERS ON CONSIDERING APPLICATIONS AND DEALING WITH APPROACHES:

Good practice points are :-

Before the Meeting:

- (i) members should make themselves familiar with sites and proposals; they may listen to points of view expressed to them; but
- (ii) members must not, if they wish to be free to debate and vote on an application at committee, commit themselves to support or object to any proposal since to do so is to prejudge the application in the absence of all the relevant information and advice; members must be particularly careful in relationships with lobbyists never to commit themselves to a decision on how they will vote before attending the relevant committee (a form of words which members may care to use if they are contacted by an applicant or objector appears at Appendix A);
- (iii) where consideration of a matter is deferred from a Planning Committee to a future meeting of the Committee for decision, the matter is to be considered afresh in the light of a new report from the officers. The Committee members must, therefore, treat the matter as a new application

During the Meeting

- (iv) members must not "do deals" with each other, i.e. promise to support each other, because they must each determine applications on their planning merits which they do not fully know until the meeting. Site visits must not be used to barter votes on forthcoming decisions or to lobby other members;
- (v) members who receive correspondence about applications should ensure that copies are made available to the planning officers as early as possible;
- (vi) the ward member either as a member of the Committee or under the "Opportunity to Speak" Scheme may speak but should not be deferred to by the rest of the committee and should not be given preferential status;
- (vii) Any Member of the Council who has written formally in respect of a planning application, either as objector or supporter is likely to have committed themselves to refusing or approving the application. Consequently, they are no longer in a position to take the decision, because they are not open-minded as the law requires. They should leave the room whilst the item is before the Committee.

- (viii) An important exception to (vii) is that a Councillor may exercise a right to speak under the Opportunity to Speak Scheme, even if they have a prejudicial interest or have already committed themselves to supporting or opposing the application. . However once the opportunity to speak phase is completed the member must then withdraw from the chamber and must not be present in the chamber whilst the item is being debated or voted on.
- (ix) members should determine applications in accordance with the advice given to them by their professional officers unless they have good planning reasons, in knowledge of all material considerations, to take a different decision; and
- (x) members must bear in mind that parish councils do not have all the information available to Planning Committee members or the advice of professional planning officers in reaching their decisions and they should not automatically be deferred to although their views are relevant where they advance planning considerations.

1.6 PARTY POLITICAL CONSIDERATIONS

Members must vote in accordance with their individual judgement on particular issues. A summary of the advice on party political considerations is included in Appendix B.

1.7 THE SPECIAL POSITION OF WARD MEMBERS:

Ward members are inevitably in a difficult position. Ward members are particularly vulnerable to local residents, and to single issue pressure groups. On the other hand, they have been elected to speak for the people in that ward and they have often canvassed on particular issues which are relevant to a planning application. Their opinion therefore is a valuable and influential one.

Ward members have a special duty to their constituents, including those who did not vote for them. It is appropriate to listen to a constituent; it is perfectly proper to be influenced by what a constituent has to say; but it is not appropriate to "advocate" on behalf of a constituent. That may make a councillor seem to be unfair or prejudiced. The fundamental duty of the ward councillor, however, is to the WHOLE district and this duty overrides any duty that the Member may have to his or her constituents.

This Council's Planning Committee is sufficiently large for ward members' views to be taken into account but for them only to be held in the balance against the views of a variety of other members. Committees should respect the views of the ward member but those views should not necessarily prevail; they have to be weighed in the balance with all the other issues.

No form of words could cover every nuance of these situations. Each local councillor has to observe an appropriate balance between being an active ward councillor and his or her overriding duty to the whole local community.

Maintaining that balance means that, while a ward member may be influenced by the views of the others, it is his or her responsibility alone to decide what view to take on any question which councillors have to decide on the basis of the statutory Development Plans and other material planning considerations. It is those planning considerations, interpreted in the interest of the whole district which must be the overriding consideration in debating and determining a planning application

It is up to the chair to decide when any member (including a ward member) should speak but it is not appropriate for a member to speak both first and last.

A ward member not sitting on the committee has the right to speak under the Opportunity to Speak Scheme.

1.8 LINKS TO APPLICATION SITES AND POTENTIAL MEMBER INTERESTS:

If an application is submitted by or on behalf of a member then he/she must;

- (i) inform the Head of Planning Services in writing
- (ii) recognise that they have a prejudicial interest and take no part in any discussion of the application with any other member
- (iii) take no part in any determination of the application
- (iv) Save for where the member exercises the right to address the committee under the opportunity to speak scheme (see para 1.5 viii) shall not attend the meeting which considers the application for the duration of that consideration

A member who lives close to an application site, will usually have a prejudicial Code of Conduct interest to declare. This means that, subject to the exception referred to in paragraph 1.5 (viii) they can not take part in the decision and must declare the interest and leave the meeting room. A member in these circumstances may not stay to listen to such an application even if they are not a member of the committee making the decision. This may also be the case if a relation or friend of the member lives close to the application site and is likely to be the case where the relative or friend has submitted the application

Members must understand that the decision whether and what interest they have remains their own but that where another person reasonably believes that the member has an undeclared interest then they may report the member to the Standards Board for England for breaching the code of conduct. Guidance on this issue was released by the Standards Board in May 2007 and this is reproduced in appendix F hereto.

1.9 OFFICERS' MEETINGS WITH DEVELOPERS:

These are confidential unless the developer indicates otherwise. Once the application has been made, information disclosed at these meetings will usually become public information and may be available in response to a request under the Freedom of Information Act. Before then, Officers cannot reveal that information without breaching confidence.

During the course of carrying out their duties, officers may be offered hospitality from people with an interest in a planning proposal. If possible, such offers should be declined politely. If receipt of hospitality is unavoidable, officers should ensure it is of the minimum level and declare its receipt as soon as possible. The departmental hospitality books should be used to record all such offers, whether or not accepted. The books will be regularly reviewed by the Director of Development Services and by the Chief Executive.

PART 2: APPLICATIONS DETERMINED BY COMMITTEES

2.1 ROLE OF CHAIRS (at the Planning Committee or District Development Sub-Committee)

Chairs should:-

- (i) ensure that they are familiar with Standing Orders;
- (ii) always endeavour to have a pre-meeting briefing from officers before relevant committees meetings;
- (iii) reach a view on what relationship they intend to have with their shadow chairs (if any);
- (iv) allow officers to speak to a technical report in order to give additional information or to explain matters; chairs need not permit officers to take members through a report which has been made available in good time before the meeting (indeed, officers are under instructions not to do so);
- (v) allow officers to deal with questions on technical aspects from members and to give any advice that officers believe is material to the application;
- (vi) allow ward members to speak on clear ward issues relevant to planning;
- (vii) generally, allow all members the opportunity to put their case, as is required by the rules of natural justice; chairs may, however deny a member the right to speak if the member continually repeats points previously made (the chair does, of course, need to hear enough of the speech to be able reasonably to reach that conclusion);
- (viii) indicate clearly if there is to be a question and answer session in advance of the debate and also indicate clearly when the debate is beginning; and
- (ix) act impartially in operating the "Opportunity to Speak" scheme and ensure those taking advantage of it identify the nature of their interest. (The Opportunity to Speak guidance note issued to Chairs is attached as Appendix C hereto)

These are all obligations on the chair, but members attending the committee also have obligations. They should not continually repeat what has been said before and there should be respect for the chair.

No person should serve as a chair whose business or other interests brings him or her into frequent contact with the planning system.

The Chair has two votes, the second of which he can use when the vote taken is evenly balanced. There is no convention as to how the Chair should use his/her "casting vote".

The Chair has control over the agenda of the Committee. By using this discretion the Chair can require any application delegated to the Head of Planning Services to be referred to the Planning Committee to be determined.

The chairs of Planning Committee and the District Development Sub-Committee should particularly be aware of the delegation scheme under which their committee works.

Role of the Cabinet Member (Planning) in the Committees:

This turns in part on whether the Cabinet Member (Planning) is a member of the Planning Committee or the District Development Sub-Committee as of right. Under the current constitution, the Cabinet Member (Planning) may attend the Planning Committee and the District Development Sub-Committee with the object of ensuring consistency in the application of policy and good practice and to monitor the standard of service and as an ex officio member, may speak to such issues. The Cabinet Member (Planning) clearly has a vote in respect of a committee of which he is a member, but has no vote in any other committees and has no veto at any committee.

The Cabinet Member (Planning) will consult when appropriate with the Environment Commission, Planning Committee and District Development Sub-Committee on policy formulation.

2.2 THE TERMS OF REFERENCE OF THE PLANNING COMMITTEE AND THE DISTRICT DEVELOPMENT SUB-COMMITTEE

The Planning and District Development Sub-Committees has its own delegation scheme with which members should be familiar. This is different from the normal scheme of delegation. A copy of the Scheme of delegation can be found in the Councils written Constitution or viewed at www.harrogate.gov.uk/planning.

2.3. SITE VISITS AND LOBBYING OF COUNCILLORS

2.3.1 SITE VISITS:

Members may make selective site visits before Planning Committee meetings, where officers believe it is essential for members to have a clear understanding of the physical nature of the site. However, the excessive use

of site visits detracts from their true value and criteria should be established for the circumstances in which they may be called. The District Auditor made this recommendation in his Probity in Planning report dated February 2002 and it is included in the LGAs guidance "Probity in Planning (Update): The Role of Councillors and Officers published in March 2002.

The Councils code of practice for site visits is attached as Appendix D. For individual visits to sites by members the following applies:

- As a general principle, members are encouraged to familiarise themselves with the site and surroundings of planning applications under consideration by a committee.

Site visits made by individual members should be conducted from the public highway or public open space. If a member believes that he/she cannot make a site visit without entering onto private land and the expected benefit is substantial then they should contact the case officer and request a pre-committee site visit or if the application is already on a committee agenda propose deferral for a committee site visit at the meeting.

- Invitations to members from applicants/agents or objectors or other groups to visit the sites or surroundings of planning applications or attend private meetings or briefings should generally be declined unless it is arranged by officers as an official committee visit/presentation. If a member does decide to accept such an invitation he/she should take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such situations, they should restrict themselves to giving procedural advice, including advising those who are lobbying that they should write to the case officer, in order that their opinions can be included in the officer's report to the committee. The public's expectation is that members taking the decision will take account of all the evidence presented before arriving at a decision and to commit themselves one way or the other before hearing all the arguments makes them vulnerable to an accusation of partiality.

2.3.2 LOBBYING OF COUNCILLORS

General Principles

The Members Code of Conduct states, "You must not use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage".

In terms of the planning process, lobbying of Councillors can lead to the impartiality and integrity of a Councillor being called into question. The acceptance of lobbying can cause public mistrust of Local Planning Authorities. Therefore, the actions and conduct of Councillors and Officers should be seen to be appropriate and above suspicion to an impartial outside observer.

Decisions should be taken in the interests of the Borough as a whole and should not be improperly influenced by or in favour of any person, company, group or locality. The key is to demonstrate that each Councillor's decision was taken on the material planning considerations alone without succumbing to any undue outside pressure.

Pre Application Lobbying

Members or substitutes of the Planning Committee or the District Development Sub-Committee should discourage applicants or agents from approaching them, should aim to minimise social contacts with known developers or agents, and refrain from such contacts when an application has been submitted.

If an approach is received from an applicant or agent in relation to a particular planning application or a matter which may give rise to a planning application, a Member of a Committee should :

- (a) where possible, refer the applicant or agent to the Case Officer or Ward Members who are not Members of the relevant Committee;
- (b) encourage the applicant to submit written information to the Head of Planning Services;
- (c) avoid giving any commitment or impression of a commitment; that they hold any particular view about the merits of the development or how they will vote;
- (d) where possible, provide information on the Council's general planning policies and procedures only.

Councillors, if they wish to be free to debate and vote on an application, should avoid organising support for or opposition to a planning matter to be determined by Committee and should not lobby other Councillors – such actions can easily be misunderstood by parties to the application and by the general public.

Members of Committee should not act as agents or advocates for planning applications, enforcement cases or Development Plan proposals to be determined by the Council. A Councillor who has acted as an agent for an application or otherwise has a prejudicial interest and would be in breach of the Code of Conduct (paras 5 & 12) if they sought to influence any other member of the determining committee.

Whenever a Member is approached or lobbied on any particular application Members should make clear the neutral stance which Members need to adopt to remain impartial pending consideration of all the material facts at the meeting.

At Committee

Decisions on planning applications can only be made following a full explanation of the material planning considerations and information on the relevance of, e.g. the development plan, national guidance and consultations, at Committee. It follows from this statement of principle that it would not be appropriate for a Member to debate or vote on a matter if they have not been present to hear the full presentation and debate on the matter including the officer update report. In such circumstances it would be appropriate for the Member to abstain when the vote is taken. To avoid members breaching this guidance inadvertently Chair's should be prepared to allow one or more comfort breaks during sittings of committee.

A Councillor should not express an opinion prior to Committee. They should make it clear at the time that they will only be in a position to make a final decision after hearing all the relevant evidence and information at Committee.

When any Member speaks at a meeting of the Committee, on the subject of a particular planning application, he/she shall disclose the fact that he/she has been in contact with the applicant or agent if this be the case. A Member should not speak on behalf of the applicant or agent.

Any written information received by a Member of the relevant Committee from the applicant, agent, supporter or objector cannot be taken into account unless it is in the public domain, therefore it should be passed or copied to the Head of Planning Services or declared at the start of the consideration of the particular application. An application may have to be deferred if adequate consideration of late information is not possible.

2.4 CONTROL OF REPRESENTATIONS MADE AT THE PLANNING COMMITTEE OR THE DISTRICT DEVELOPMENT SUB-COMMITTEE:

It is inevitable that members of the public will express their support or dissent when they attend to listen to a debate. There must, however, be limits to the "contribution" made by members of the public at the Committee meeting.

The Council is obliged to act as a quasi-judicial body and outbursts from the public are not tolerated in planning inquiries nor in courts of law and ought not to be tolerated, in planning committees.

Chairs should take a reasonably strong line in respect of outbursts by members of the public and, indeed, should take a similarly strong line with members who "persistently play to the gallery".

Councillors should not allow members of the public to communicate with them during the committee's proceedings (orally or in writing). Persons seeking to do this should be advised that they have a right to make representations under the Public Speaking Scheme. If the person is seeking to place a document/information before the committee then they should be advised to give the same to an officer.

2.5 MATERIAL CONSIDERATIONS:

Planning decisions are based on planning considerations and cannot be based on immaterial considerations. The Town and Country Planning Act 1990, together with Government guidance and cases decided by the courts, define what matters are material to planning decisions.

It is the responsibility of Officers in preparing reports and recommendations to Members, and in advising Committees, to identify the material planning considerations and to advise Members on those matters which are not material to planning considerations.

Section 70 of the Town and Country Planning Act 1990, provides that Members have a statutory duty when determining planning applications, to have regard to the provisions of the development plan where material to the application, and to any other material consideration. The starting point for decisions on planning applications is the development plan. Section 38(6) of the Planning & Compulsory Purchase Act 2004 says that planning decisions must be made in accordance with the development plan, unless material considerations indicate otherwise. For the purposes of Section 38 (3) of the Planning and Compulsory Purchase Act 2004, the development plan is:

Regional Spatial Strategy currently comprising the Regional Spatial Strategy for Yorkshire and the Humber to 2016 (based on selective Review of RPG 12)

The Development Plan documents in the Local Development Framework; Core Strategy Preferred Options Consultation Draft expected to be published in July 2006

For the purposes of Section 119 and Schedule 8 of the Planning & Compulsory Purchase Act 2004, the transitional arrangements are that the following plans:

North Yorkshire County Structure Plan (alteration No 3 adopted 6 October 1995)

Harrogate District Local Plan (Adopted February 2001) incorporating Selective Alteration (Adopted May 2004)

have effect for a transitional period as from 28 September 2004 and ending on whichever is the earlier of:-

- (a) the end of the period of three years;
- (b) the day when in relation to an old policy, a new policy which expressly replaces it is published, adopted or approved.

Other Material Planning considerations include:-

- Government guidance contained, for example, in Planning Policy Guidance notes (PPGs) Planning Policy Statements (PPS), Circulars and

Ministerial announcements;

- planning briefs, Supplementary Planning Documents and other 'supplementary planning guidance' approved by the Council following public consultation;
- statutory duties in relation to conservation areas and listed buildings; representations made by statutory consultees and other people making comments, to the extent that they relate to planning matters
- the environmental qualities of the surrounding area or the visual character of a street (this includes the scale, design and materials of buildings and the landscaping of a site);
- the amenity and privacy of dwellings;
- the character of an area in other senses (ie susceptibility to flooding or subject to noise or other forms of pollution);
- road safety (both directly as in the case of a dangerous access or indirectly in terms of car parking and traffic generation);
- public services, such as drainage;
- public proposals for using the same land; and
- legitimate planning gain/community benefit.

Attaching weight to material considerations

Members do have discretion as to the particular amount of weight to be accorded to material considerations and this will include the amount of weight to be accorded to relevant policies. However, it is not appropriate for members to seek to discount a relevant policy because they do not personally agree with it, or they were not personally involved in its approval. In particular, Members of Planning Committee must accept that all policies within the development plan are relevant and must be accorded some weight, when they are pertinent to a particular application. To seek to do otherwise could amount to maladministration.

Material planning considerations do not include:-

- private property rights and boundary disputes;
- covenants;
- effects on property and land values;
- developers' motives;

- public support or opposition, unless it is founded on valid planning matters;
- development at their own risk before getting permission and the Council has to judge development on its planning merits);
- the fact that an applicant has carried out unauthorised development in the past;
- "trade objections" from potential competitors;
- moral objections (such as activities likely to become addictive), for instance against betting shops, lottery kiosks or amusement arcades;
- the belief that an application is submitted by an owner with the intention of selling the property at an enhanced value;
- the loss of an attractive private view (for instance when development is proposed on the opposite side of the road to or at the rear of an objector's house);
- the fear that an objector's house or property might be devalued;
- the fact that the applicant does not own the land to which his application relates (this can be overcome by agreement with the owner and if it is not, the development cannot happen);
- the fact that an objector is a tenant of land where development is proposed; any consequences between landlord and tenant are unrelated to the application;
- allegations that a proposal might affect private rights, e.g. restrictive covenants; property maintenance; ownership and private rights of way disputes; boundary disputes; (such considerations are legal matters on which objectors should consult their own solicitor or adviser since it will not be possible for officers of the Council to advise as to such rights); and
- Arguments of a personal kind relating to the circumstances of the applicant. It is essential that members understand that planning permission goes with the land. Personal preferences are not reasons for granting planning permissions. Therefore, information about the applicant should not be material to the consideration of a planning application in the vast majority of cases and personal circumstances cannot therefore, in general, outweigh planning considerations. A planning permission goes with the land, not the person, and built development once permitted, will remain long after the original occupier of the building has moved on.

Planning Gain/Community Benefit: This may be a material consideration, if it meets the following criteria:-

- (i) Planning gain must serve a planning purpose.
- (ii) It must be fairly and reasonably related to the development proposed.
- (iii) No amount of planning gain is likely to persuade any court (in the event of challenge) that the Council was entitled to grant a planning permission which would otherwise have been clearly unacceptable in planning terms. Nor, therefore, should it persuade members!

2.6 THE NEED TO GIVE REASONS FOR DECISIONS CONTRARY TO RECOMMENDATIONS OR OBJECTIVE POLICIES APPROVED FOR DEVELOPMENT CONTROL PURPOSES:

Reasons for planning application determinations must be given by members at the time the decision is made where the determination is contrary to the officers recommendation or an objective policy approved for development control purposes or in the opinion of the legal officer is likely to give rise to a liability to pay compensation or an award of costs on appeal.

The reasons should be established, defined and described at the time; failure to do so increases the risk of a successful challenge in court or with the Ombudsman.

Reasons for decisions must be clear and convincing. Such reasons as "established local need" or "satisfy the personal need" are inadequate.

The reasons must be rooted in a clear and convincing statement of reasons for departures from policy or the officer's recommendation.

Members should also be aware of the difficulties faced by officers in the future, who will have to explain why they must continue to recommend refusal in circumstances where a similar application has been approved against policy.

PART 3: AFTER THE COMMITTEE

3.1 ENFORCEMENT:

Over 500 new reports of alleged breaches of planning control (including breaches of advertisement control) are received each year. Most are from the public, but a significant number are from Parish Councils and Members.

Each new report is acknowledged within 3 working days and written notice is given to the Chair of Planning Committee, Ward Member(s) and the Parish Council. This is followed up within 28 days with a "next steps" letter. Enforcement action is expedient – this means that just because a breach of control has occurred, enforcement is not automatic. The same considerations apply to the question whether to enforce against a breach of planning control as apply to a planning application. A balanced decision is required having regard to the provisions of the Development Plan and any other material

considerations. Only when it can be demonstrated that there is harm to planning interests of acknowledged importance, will it be expedient to serve an Enforcement Notice. Other options which may be appropriate depending on the case are:-

- To invite a retrospective application to regularise an acceptable development.
- No further action, where there is no breach of control to be found or the breach is so minor as not to matter.

In certain circumstances where it is proposed to take no further action the Enforcement Officer will prepare a formal report for authorisation by the Head of Planning Services in consultation with the Chair of the Planning Committee. The details of the procedure including Ward Member involvement are set out at Appendix E.

The Head of Planning Services and Solicitor to the Council have authority to serve Enforcement and Stop Notices subject to prior consultation with the Chair of the Planning Committee.

3.2 LEGAL AGREEMENTS BEFORE A DECISION IS ISSUED:

The Head of planning Services and the Solicitor to the Council carry out regular monitoring of proposed section 106 agreements with the objective of ensuring that delays and intractable problems are avoided and matters are brought back to the Head of Planning Services, or the Planning Committee for a further view at an early date if necessary.

From 1 July 2002 Section 106 and Section 278 Agreements (works in the Highway) are required to be entered on to the Planning Register. Concurrent with this requirement to give public access to this information a database has been established to monitor the implementation of Agreements and if requested the issuing of Closing Statements to developers when they have met their obligations in full.

PART 4: THE POTENTIAL FOR CHALLENGE

4.1 INTRODUCTION:

The planning system can be challenged in a variety of ways, both formal and informal and both before, during and after committee, and in planning appeals or in courts of law. There are therefore a number of issues that members must bear in mind through all the stages of the planning process.

The restrictions under which members operate, are described elsewhere in this Code but there are a number of other matters which members need to bear in mind.

4.2 BIAS AND DECLARATIONS OF INTEREST:

The Code of Conduct is discussed in section 4.5 below. The code is set out in Part 10 page 282 and members need to be familiar with its requirements. The following general comments may be helpful to members;

Once bias is imputed, it is too easily inferred from actions which are otherwise innocent. Members and officers therefore need to be careful about the implications which can arise from otherwise innocent activity.

Members who have an association with an applicant, should not be involved in decision-making. That is because it is not enough for members to be unbiased; they must be seen to be unbiased. Councillors should err on the side of declaring interests even when they are not sure.

Connections through any organisation, whether political, charitable, social or otherwise, can create an illusion of bias that does not exist. Members therefore who do have connections with applicants, ought to be quick to reveal them.

Equally, members should be slow to impute bias merely because applicants and members know one another.

Members and officers should equally be on their guard against becoming biased, particularly in the case of applicants and/or agents who might previously have made mischievous or inappropriate applications.

Members should remember that if they have an interest which is not prejudicial, they can still speak and vote, but must declare it first. Officers also should declare any relevant interests.

Councillors who are regularly involved in making applications, should consider whether it is appropriate to be members of a the Planning Committee or the District Development Sub-Committee. A Councillor making a single personal application, for example for a house extension, is entitled simply to declare an interest on that one occasion and withdraw without comment.

The rules on declaration of interest are highly complex and falling foul of them is very easy. Members may always seek advice from the committee legal officer but should do so before the day of the committee. Such advice cannot reasonably be given just before or during a meeting.

4.3 THE OMBUDSMAN:

The Local Government Ombudsman (more properly known as the Commissioner for Local Administration in England) has a variety of powers.

In essence, however, the Ombudsman cannot challenge the decision made by any planning committee but can challenge the way in which that decision was made. If a committee fails to address a number of issues properly, then the Ombudsman might decide that that amounted to "maladministration". If the

Ombudsman also considers that injustice has been done, he then has a variety of powers to call for a remedy.

However, that does not mean that the Ombudsman has the power to overturn planning decisions; only the courts of law and planning inspectors can do that and only in strictly defined circumstances.

The potential for maladministration, however, concerns the Council's monitoring officer as, amongst other things, this could result in an award of compensation.

4.4 ROLE OF MONITORING OFFICER:

This is set down in statute (the Local Government and Housing Act 1989 Section 5). Apart from a significant number of procedural requirements, the Act says that a monitoring officer has to prepare a report in any case where he or she thinks that the actions of a committee, sub-committee or officer has or would be likely to give rise to:-

- (i) contravention of statute, rule of law, code of practice; or
- (ii) maladministration; or injustice.

It is usually less difficult to identify contraventions of the law or of Codes of Practice.

It is more difficult to identify maladministration, particularly maladministration which is anticipated from the likely outcome of a decision if it were to go unchallenged by the monitoring officer.

The actions of individual members can constitute maladministration. The monitoring officer may therefore be called upon to consider the activities of an individual member. The monitoring officer is under a statutory duty to intervene and report whenever it appears right to do so and this inevitably sets the monitoring officer up apparently in opposition to members. Members should recognise this conflict and appreciate the monitoring officer is required to act where the wider interests of the council have to be protected.

Failure to act by the monitoring officer can make the monitoring officer vulnerable at law to a charge of maladministration or breach of statutory duty. Failure to act may even make the local authority itself vulnerable at law.

The monitoring officer, having identified weaknesses, will suggest remedies where appropriate, but the object of the report is to put right only the breach identified.

It should be stressed, however, that the Monitoring Officer is rarely called upon to intervene in the development control service, because the Council's established procedures are usually satisfactory.

4.5 THE MEMBERS CODE OF CONDUCT

Every member is bound by the Members Code of Conduct. This applies generally, and not just in relation to planning matters. The Code;

- (i) Sets out the circumstances in which members have a personal interest, which must be disclosed at the meeting, or a prejudicial interest, which requires the member to withdraw and take no part in the debate or vote.
- (ii) Specifies that certain interests have to be notified to the Director of Resources and kept on the public register
- (iii) Establishes general obligations of fairness objectivity and the proper use of Council powers resources and information.

Allegations that a member has breached the Code may be investigated by the Standards Board. The Standards Board is an independent national body which has the power to investigate or require the Monitoring Officer to investigate complaints. Failure to comply with the Code may in some cases lead to a member being suspended or disqualified.

APPENDIX A

SUGGESTED FORM OF WORDS FOR USE IF MEMBERS ARE CONTACTED BY AN APPLICANT OR OBJECTOR

This matter has yet to be decided by the Committee and I am obliged to keep an open mind on everything to do with applications until I have all the information at the time the decision is made. I will therefore listen to what you wish to say (bear in mind what you have said) when I come to decide how to vote. This does not mean that I disagree with you nor does it mean that I agree with you. I am not able to say either way at this time.

DRAFT LETTER

Dear Sir/Madam

The Role of a Councillor in Planning Applications

Thank you for seeking my advice on a planning application. I will do all I can to see that the matter is dealt with as fairly and as efficiently as possible. My role as a Borough Councillor is to listen to and assist you and others through the planning process. The process is complex and involves consulting a number of different people. The views of various people will not always coincide.

The Council has adopted policies on most planning matters and it is important that applications are dealt with fairly and in accordance with those policies so that decisions are consistent throughout the District.

A large number of applications are dealt with directly by Planning Officers under powers delegated to them. Other applications are dealt with by the Planning Committee or the District Development Sub Committee. If I am a member of the appropriate Committee I will have a vote on this application. If not, I may be able to attend the Committee if the application is within my Ward, but not vote. It is not possible for me to provide any commitment or support for an application or objection until I have heard all the facts presented at Committee. I may also be approached by others who take a different point of view to you and I will therefore need to weigh up all the conflicting considerations.

Any views that you have on an application should be sent directly to the Council's Head of Planning Services and any correspondence or information which I have received will also be passed onto the appropriate officer. To help you understand how to participate in the consideration of applications and how and on what basis decisions are made, the Council have published a series of leaflets: "Have Your Say", "The Opportunity to Speak Scheme" and "What Happens at Planning Committee", which are available on www.harrogate.gov.uk/harrogate-1086 or by visiting or calling Planning Enquiries (tel. 01423 556666)

I am required by the Council's Code of Practice not to lobby or attempt to influence Planning Officers or fellow Councillors. I therefore cannot act as an advocate or agent on your behalf.

If I am a Member of the appropriate Committee I may refer you to another Councillor who may help you make out your case.

I hope this clarifies my role as Councillor in the planning process.

PS Details of the application can be viewed at:

- Planning Enquiries
Department of Development Services
Knapping Mount
West Grove Road
Harrogate
HG1 2AE

(tel No 01423 556666 opening hours for visits 8.30 am to 4.00 pm Monday to Friday)

- www.harrogate.gov.uk/planning

APPENDIX B

PARTY POLITICAL CONSIDERATIONS

All councillors as members of political parties will inevitably give different weight to different considerations. Members of the same party might be expected to have broadly similar views on a number of issues and the fact that members of the same party vote in similar ways is not in itself any indication of an agreed party political stance. Nonetheless, the law is clear on the relevance of party politics and the position can be summed up as follows:-

1. The weight to be attached to each material consideration is a balance of judgement for each individual.
2. Political parties may not dictate to individual members how they may exercise their judgement.
3. Members must only weigh planning issues when making decisions on planning applications and must vote in accordance with their planning judgement, not in accordance with the party line or, indeed, the views of anyone else.

Therefore, the following statements of law are accurate:-

- (i) a party political stance upon a planning application is unlawful;
- (ii) a party whip upon a planning application is unlawful;
- (iii) it is for members as individuals to balance the proper planning considerations in order to reach their judgement;
- (iv) it is wrong for a member to vote for the motion on a planning application simply because it is moved by a member of his or her party;
- (v) it is wrong for a member to vote on a planning application with other members of his or her party simply because they are members of that party; and
- (vi) it is wrong for a member to vote on a planning application without coming to a properly balanced judgement on the basis of proper planning considerations.

APPENDIX C

'OPPORTUNITY TO SPEAK' CHAIRMEN'S GUIDE

1. Announce the Item – “List of Plans”
 - Plan number
 - Page
 - Proposal
 - Applicant
2. Call Planning Case Officer
to present and update the report
3. Who wishes to speak?
 - * Read out those on your list
 - * Are there any others? Amend list accordingly
 - * If >1 in a group wish to speak
 - have you decided a spokesperson?
 - if not, do you need time to select one?
 - If yes, defer item until later, ask them to get together outside the room and come back when they have a spokesperson
4. Time allowed
 - * Remind speakers that 3 minute limit applies, to each party (Ward member not sitting on Committee, p.c., objectors, applicant/supporters)
 - * Point out timer: green light comes on after they have introduced themselves
amber light comes on when 15 seconds left
when red light comes on they should draw quickly to a close
(chair may have to intervene)
- 5.(a) Call Ward Member not sitting on Committee
- 5 (b) Call any other member with a prejudicial interest
6. Call Parish Council representative
 - if on your list
 - * Introduce
7. Call Objectors if on your amended list
 - * Introduce
8. Call Applicant (or agent) if on your amended list
 - * Introduce
9. Call Planning Case Officer

to respond to any points made by speakers, if necessary

10. Invite Members' questions to officers and speakers on matters of fact: if the officers cannot reply adequately, put the question to the relevant speaker(s) on behalf of the committee. Keep responses short and to the point – do not allow a second bite at the cherry. Remind members of the time limits on members questions to public speakers (10 minutes) and officers (5 minutes). These time limits can be extended at the discretion of the Chairman.

The Chair will first seek movers and seconders of the officer recommendation. In the absence of a mover and seconder of the officer recommendation the Chair will invite motions from the floor without limitation.

11. Debate

12. Vote/Decision

Note need to record all motions and to record number of votes cast:

* Tell those present what has been decided

13. Next Plan on List

APPENDIX D

CODE OF PRACTICE FOR SITE VISITS BY THE PLANNING COMMITTEE AND THE DISTRICT DEVELOPMENT SUB-COMMITTEE CONCERNING PLANNING AND OTHER APPLICATIONS

1. Committee site visits can be useful to identify very important features of a proposal that may be impossible to convey in a written report or by photographs, video, plans and drawings. Site visits can cause delay and should only be used where the expected benefit is substantial.
2. Committee site visits will normally be arranged by the Head of Planning Services where in his judgement the substantial benefit test is met and if :
 - the impact of the proposed development is impossible to visualise from the officer's report, photographs, video, plans, drawings and any other supporting material.
 - Officers need to be on site with members because there is no other way to point out relevant features and material considerations or to answer members' questions. (The use, of digital photographs and video by officers will negate the need for the majority of site visits.)
 - Non-visual considerations such as noise and smell are key issues on which the application will be determined.

If members defer consideration of an application for a site visit this should only follow a formal proposal, the substantial benefit test and the vote being taken. The reason for deferral for a committee site visit shall be minuted.

The purpose of a committee site visit is a fact finding exercise which is not part of the formal consideration of the application and therefore public rights of attendance do not apply. It is **not** to make any decision on the application.

4. At the site visit, the merits of the application should not be discussed. The purpose of any discussion is to direct Members to the matters they have come to view. Neither the applicant nor objectors, supporters, the parish council or any other member of the public will be permitted to address members, either individually or as a group. It is a function principally of the chair of the committee but also of any officer present and the members themselves to make this clear at the visit or beforehand if a member of the public enquires. There are other arrangements (the Opportunity to Speak Scheme), which allow representations to be made in person at the meeting when the application is under consideration.

5. Before a site visit takes place, if it is expected that the members will need to enter on private land, the Planning Case Officer will contact the occupier(s) of the land or premises involved in order to secure agreement. It will be made clear by the case officer that the visit is not an opportunity to make representations.
6. Individual members have no rights to go on to private land (to view a site) and therefore the permission of the owner will be obtained beforehand by the case officer.
7. A formal minute of official site visits will be taken by the Senior Planning Officer present. This will record the date and time, who attended including any non-Councillor and where they went. The minute will be placed on the application file for record purposes.

APPENDIX E

ENFORCEMENT PROCEDURE NOTE

1. On receipt of information (whether from a written complaint or otherwise), indicating that a breach of development control has been perpetrated a new Enforcement Case will be created and input to the Uniform computer system for each new allegation of a breach of planning control.
2. Complainants, Ward Members, Chairman and Vice Chairman of the Planning Committee and Parish Councils will be given:-
 - (i) Written notification within 3 days of the receipt of new cases alleging a breach of planning control.
 - (ii) Written notification within 28 days of receipt of the outcome of the initial investigation into a new complaint and what the next steps will be.
 - (iii) Written notification when no further action is to be taken on the enforcement case and the reasons why.
3. It is the Council's policy to keep the identity of complainants confidential and the name and address of a complainant will not be given to Members or anyone else.
4. In order to assist the public in their understanding of what they can expect from the Planning Enforcement Service, there is a leaflet – "Guide to Planning Enforcement" that is available for distribution. The leaflet will be enclosed with the letter acknowledging receipt of each new complaint and also may be viewed on www.harrogate.gov.uk/planning.
5. The decision whether to close an Enforcement Case in the circumstances referred to in paragraphs (i) to (iv) below will be made by the Chief Planning Enforcement Officer and in his absence by the Chief Planner (Development Control).

Enforcement Cases will be closed when:-

- (i) No breach of planning control is identified following an appropriate investigation.
 - (ii) A breach of planning control has been identified but is subsequently remedied by a grant of planning permission.
 - (iii) A breach of planning control is identified but is subsequently remedied by actions agreed between the contravenor and the local planning authority.
 - (iv) A breach of planning control is identified but is subsequently remedied by compliance with an Enforcement Notice or other legal action.
6. The decision whether to close an Enforcement Case will be taken by the Head of Planning Services, in consultation with the Chairman or Vice Chairman of the Planning Committee in the following circumstances:-

- (i) Where the unauthorised development has been refused planning permission etc and the recommendation of the Chief Planning Enforcement Officer is that no further action (NFA) be taken.
- (ii) Where a Ward Member disagrees in writing with the decision of the Chief Planning Enforcement Officer or the Chief Planner (Development Control) to take NFA. (Ward Members are informed in writing when it is intended to take NFA and the reasons why under 2(iii) above).
- (iii) Where a complainant disagrees in writing with the decision of the Chief Planner Enforcement Officer or the Chief Planner (Development Control) to take NFA. (Complainants are informed in writing when it is intended to take NFA and the reasons why under 2(iii) above).

In respect of (ii) or (iii) above the decision will be taken after consideration of the written representations.

7. A decision to initiate or continue enforcement action will be taken by the Chief Planning Enforcement Officer and in his absence by the Chief Planner (Development Control) unless:-
 - (i) A Ward Member believes that although there is a breach of control, no further action should be taken (contrary to the notification sent under 2(ii) above that action is to be taken). In such circumstances the decision whether enforcement action will continue will be taken by the Head of Planning Services in consultation with the Chairman or Vice Chairman of the Planning Committee following consideration of the Member's written representations.
8. The display of an advertisement without requisite consent is a criminal offence and such a breach is dealt with by the enforcement team gathering appropriate evidence of the breach and reporting it to the Chief Solicitor for advice and where appropriate prosecution proceedings.

APPENDIX F

WHAT MEMBERS WITH PREJUDICIAL INTEREST CAN DO

A prejudicial interest is defined in the Members Code of Conduct. In summary it arises where a decision would:-

- a) Affect your financial interests or the financial interests of the person or body related to you.
- b) Relate to a planning or licensing or other regulatory decision affecting you or a person or body related to you.
- c) AND a reasonable member of the public who knew the facts would think that your judgement of the public interest might be prejudiced by the interest.

Please note that the actual provisions are complicated, and if you are in any doubt as to whether you have a prejudicial interest you should obtain advice from Legal or Member Services.

If you are at a Meeting and you have a prejudicial interest in a matter being discussed, you should declare you have a prejudicial interest as soon as it becomes apparent. Generally you should leave the room and take no part in the proceedings while that item is being discussed. If members of the public are allowed to make representations, give evidence or answer questions about the matter, you will usually be entitled to do so. In relation to planning applications, the Council's Opportunity to Speak scheme will enable a member of the public to make representations about an application. However, there are a number of planning matters where the Opportunity to Speak scheme does not apply. In those matters you will not be able to speak, or to be present in the room. Where you are entitled to address the committee as soon as you have done so you must leave the room. You cannot stay to listen to the debate.

Whether or not a matter is before the Committee, if you would have a prejudicial interest in it, you must not try to influence the decision improperly. This means you must not use your position or contacts within the Council to influence the decision. You should not make representations direct to other Councillors, either in writing or by word of mouth, except under the Opportunity to Speak scheme where public representations are permitted. You may make written representations to the case officer, and you may employ an agent to address the committee on your behalf.

APPENDIX G

PLANNING CODE OF GOOD PRACTICE DO'S AND DON'TS

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

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

(Introduction and Para 1.8 and 4.5 of the main Code)

Do apply the rules in the Members' Code of Conduct first (Page 276 onwards and schedule 1 to the Constitution)

Do then apply the rules in this Planning Code of Good Practice.

2. *Development Proposals and Interests under the Members' Code*

(Para 1.8 and 4.5 of main Code)

Do subject to the exception in paragraph 9 (2) of the Members Code of Conduct disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members.

Where your interest is personal AND prejudicial:-

Don't participate, or give the appearance of trying to participate save for where you are exercising the right to address the committee referred to in paragraph 1.5 (viii) of this code

-
- **Don't** get involved in the processing of the application.
- **Don't** seek or accept any preferential treatment.

Do notify the Monitoring Officer in writing of your own development proposals.

3. *Fettering Discretion in the Planning Process*

(Para 1.5(ii) and 4.2 of main Code)

Don't fetter your discretion by making up your mind, or clearly appearing to have made up your mind, prior to formal consideration of the matter at Committee.

Do be aware that you are likely to have fettered your discretion 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.

Do consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the Parish Council, for example, or both a district/borough and county councillor), provided:

- the proposal does not substantially effect the or financial standing of the consultee body;
- you make it clear to the consultee body that:-
 - You will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee; and
 - You disclose the personal interest regarding your membership or role when the Committee comes to consider the proposal if you wish to address the committee on the item.

Don't speak and vote on a proposal where you have fettered your discretion.

4. *Contact with Applicants, Developers and Objectors*

(Para 2.3.1 and 2.3.2 of the main Code)

Do refer those who approach you for planning, procedural or technical advice to officers;

Don't agree to any formal meeting with applicants developers or groups of objectors;

Do follow the rules on lobbying;

Do be aware that an applicant/developer presentation is a form of lobbying you must not express any strong view or state how you or other Members might voted. **(Para 2.3.1 3rd bullet point)**

5. *Lobbying of Councillors*

(Para 2.3.2 of main Code)

Do explain to those lobbying you that, whilst you can listen, it prejudices your ability to participate in the Committee's decision making to express an intention to vote one way or another or such a firm point of view that it amounts to the same thing;

Do remember that your overriding duty is to the whole community not just to the people in your ward;

Don't accept gifts or hospitality from any person involved in or affected by a planning proposal;

Do copy or pass on any lobbying correspondence you receive to the Head of Planning Services at the earliest opportunity;

Do promptly refer to the Head of Planning Services any offers made to you of planning gain or constraint of development (i.e S106 Planning Obligation);

Do inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying;

6. *Lobbying by Councillors*

(Para 1.5 (iv) and 2.3.2 of main Code)

Don't become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals;

Don't attempt to persuade fellow councillors that they should decide how to vote in advance of the meeting;

Don't decide or discuss how to vote on any application in advance of the meeting.

7. *Site Visits*

(Para 2.3.1 of main Code)

Do try to attend site visits organised by the Council where possible;

Don't request a site visit unless it satisfies the substantial benefit test in Appendix D to the Code;

Do treat the site visit only as an opportunity to seek information and to observe the characteristics of the site and its surroundings;

Don't hear representations from any other party;

Don't enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias.

8. *Public Speaking at Meetings*

(Para 2.4 main Code)

Don't allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias;

Do ensure that you comply with the Council's procedures in respect of public speaking.

9. Officers

(Para 1.2 of main Code)

Don't put pressure on officers to put forward a particular recommendation;

Do respect planning officers professional independence

10. Decision Making

(Para 2.5 and 2.6 of main Code)

Do come to meetings with an open mind;

Do make decisions in accordance with the Development Plan unless material considerations indicate otherwise;

Do decide only after due consideration of all of the relevant planning information;

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;

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 the planning reasons leading to this conclusion/decision;

Don't propose a deferral unless you are able to give good planning reason for it.

APPENDIX H

DUAL-HATTED MEMBERS

Some Councillors are Members of more than one public body or authority. Can they make decisions on the same issue at both authorities?

The position is complicated and currently the Code says only that Members “may” be able to do this. If you are not sure of the position, you should seek advice. The following is only general guidance.

1. Where the first body has a direct interest in the outcome of a decision of the second body, you will usually have a prejudicial interest in that decision. For example, if you are a Parish Councillor and the Parish Council is applying for planning permission or a licence or wishes to enter a contract with or receive a grant from the Borough Council, then you will usually have a prejudicial interest in the decision by the Borough Council.
2. Where the first body is a consultee in a decision by the second body, you will usually be able to declare a personal interest and take part at both meetings. For example, if the Parish Council is a consultee in respect of a planning application by someone else, and you sit on the Borough Council’s Planning Committee you should:-
 - At the Parish level, make it clear that you will reconsider the matter at district level, taking into account all relevant evidence and representations at the district tier;
 - At the district level, if you wish to address the committee on the item declare a personal (but not prejudicial) interest arising from your membership of the Parish Council which has already expressed a view on the matter, and make it clear that the Parish Council’s view does not bind you and that you are considering the matter afresh.
3. Even if you have no prejudicial interest arising from your membership of another body, you may be disqualified from making the decision if it can be shown that you do not have an open mind. Planning and licensing decisions, for example, can only be taken by Councillors who have not made up their minds beforehand. So if at Parish Council level you commit yourself to opposing or supporting an application, you will be unable to take part in the decision at Borough Council level. If you do, the decision may be reviewed and cancelled by the Court.
4. Whether or not you have a prejudicial interest arising from your membership of another body, you always need to check whether you have some other sort of interest – for example because the proposal would affect your family’s wellbeing or financial position.