

Members' Code of Conduct for Planning Applications Sub- Committee

PURPOSE OF THE CODE

1.01. This Code of Conduct has been adopted by Haringey Council's Planning Committee to ensure the highest standards in the performance of its planning function. It is a voluntary code, agreed by all Members of the Council Committee.

1.02. Consistency and fairness are important qualities in the public eye and they are vital to the conduct of a Planning Committee. Adherence to the Code is intended to build public confidence in the Council's planning system.

1.03. The purpose of the Code is:

- (a) to state how the Members of the Planning Applications Sub-Committee will exercise those functions, including behaviour in relation to applicants, residents and other third parties.
- (b) to ensure a consistent and proper approach by all Members to the exercise of planning functions
- (c) to ensure applicants and their agents, residents and other third parties are dealt with by Members consistently, openly and fairly
- (d) to ensure the probity of planning transactions and the high standards expected in public office
- (e) to ensure planning decisions are made openly, fairly and in the public interest, in accordance with legislation and guidance.

- 1.04. The Code does not remove the responsibility of Members to exercise their statutory discretion to determine the merits of individual applications or proposals.
- 1.05. This Code of Conduct relating to planning matters is intended to be supplementary to The Members' Code of Conduct under the Local Government Act 2000. The provisions of the Code of Conduct continue to have full force and affect the purpose of this Code is to provide more detailed guidance on the standards to be followed in relation to planning matters.
- 1.06. Copies of this Code will be made publicly available and be kept under review.

2. BACKGROUND TO THE COUNCIL'S PLANNING FUNCTIONS

Determination of Applications

- 2.01. The planning process is governed by the primary legislation, in particular the Town and Country Planning Act 1990, *the Planning and Compulsory Purchase Act 2004*, by case law and relevant Government guidance, principally in the form of Planning Policy Guidance Notes *or Planning Policy Statements* (PPGs *or PPSs*). *The London Plan is also a material consideration which must be taken into account when considering planning applications within the Borough of Haringey.*
- 2.02. Planning law requires Members of local planning authorities to determine all planning applications "in accordance with" the statutory development plan "unless material planning considerations indicate otherwise" (Section 54A 1990 Act). ~~"These deciding such planning applications should always take into account whether the proposed development would cause demonstrable harm to interests of acknowledged importance."~~ The statutory plan in Haringey is the Unitary Development Plan adopted in ~~March 1998~~ *July 2006. It is in the process of being replaced by the Local Development Framework.*

- 2.03 The responsibilities of the local planning authority must be performed without undue influence or personal interest and when determining planning applications Members must take into account planning matters only. The members of the authority "are elected to represent the interests of the whole community in planning matters" (PPG1 PPS1). Views expressed by neighbouring occupiers, local residents and any other third parties must be taken into account but "local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless that opposition is founded upon valid planning reasons which can be substantiated" (PPG1 PPS1).
- 2.04. The planning system also "does not exist to protect the private interests of one person against the activities of another..... The basic question is not whether owners and occupiers of neighbouring properties would experience financial or other loss from a particular development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest" (PPG1 PPS1).

Enforcement

- 2.05. The purpose of the planning enforcement provisions of the 1990 and 2004 Acts is to protect the integrity of the planning system and the development control process. Whether to take enforcement action in any particular case and what action to take in the circumstances are matters for the authority's discretion. The existence of a breach of planning control is not in itself grounds for the institution of enforcement action.

Appeals to the Secretary of State

- 2.06. An applicant who has been refused planning permission or other approval, and those responsible for developments the subject of enforcement action, have a right of appeal to the Secretary of State. If it is shown that the Council's

conduct in dealing with the matter was unreasonable, the appellant's costs may be awarded against the Council. The most frequent example of unreasonable behaviour is a failure to substantiate an authority's decision on the relevant planning grounds in the particular case.

Other Powers of the Secretary of State

- 2.07. The Secretary of State possesses a range of powers which could be exercised where a local planning authority appears to be making inconsistent decisions, or decisions which are seriously in conflict with national and development plan policies. This could involve use of the power to "call in" applications, so the application would be determined by the Secretary of State following a public inquiry. A permission granted by the Council can in special circumstances be revoked, modified or discontinued, but subject to compensation payable by the Council.

Powers of the Mayor of London

- 2.08. The Mayor of London possesses a range of planning powers with regards to developments taking place in London. The London Plan sets out the Mayor's policies and guidance for development taking place within London, in particular major developments or those with London wide significance. The Mayor can in certain circumstances prevent developments going ahead that are inconsistent with the London Plan.

Administration of Planning Functions in Haringey

- 2.09. The performance of the Council's planning function is largely delegated to the Planning Committee, and to officers of the Council pursuant to arrangements made under Section 101 of the Local Government Act 1972.
- 2.10. Many decisions are made under delegated powers by the Assistant Director, Planning and Development Management in accordance with a scheme of delegation approved by the Council.
- 2.11. The Assistant Director, Planning and Development Management is responsible and accountable to the Council for the Planning and Development Service which deals with the administration of all planning matters. The Heads of Development Control are responsible and accountable to the Assistant Director, Planning and

Development *Management* for the immediate management of the Council's development control function.

3. APPLICATION OF CODE

- 3.01. The Code applies to the conduct of Members in relation to all applications for permission / approval under the Planning Acts. ~~including applications for listed building consent, conservation area consent, and certificates of lawfulness.~~ The Code also applies to decisions to take or not to take enforcement action under the Acts. The principles would also be relevant where consideration was to be given to the inclusion or otherwise of specific proposals within the statutory local plan ~~(the UDP)~~ *even when the Committee was being consulted informally rather than making the final decision.*

In the following sections references to determination of planning applications should be taken as referring also to all these other matters.

4. THE MEMBERS' CODE OF CONDUCT

- 4.01. The Members' Code of Conduct applies to members of the Planning Committee as to all Members of the Council. The parts of the Code on personal and prejudicial interests, the register of those interests and receipt of gifts and hospitality are particularly relevant. Members of the Committee should also have regard to the general principles of conduct when exercising their Planning functions.

5. CONDUCT OF MEMBERS OF PLANNING COMMITTEE

Training

- 5.01. The Council will ensure that all Members of the Planning Committee have received appropriate training on planning legislation and relevant matters prior to ~~appointment or within three months of appointment~~ *their participation in the work of the Committee.* The Council will make available updating training for Planning Members, and will encourage all other Members of the Council to take part in planning training.

General Principles

- 5.02. This section of the Code of Conduct applies solely to Members of the Council's Planning Committee, ~~and to the General Purposes Committee~~ when determining planning applications or considering the inclusion of local plan proposals or resolving to take planning enforcement action. It is intended to ensure that the integrity of the decision making process is not impaired, either in reality or in perception, through a lack of openness in decision-making, or through the lobbying of those Members who will make decisions.
- 5.03. This part of the Code is also designed to ensure that, wherever possible, representations made to Members form part of the public information leading to any decision.
- 5.04. The conduct of Members of the Council who are not Members of the Planning Committee is governed by the next section of the Code, where greater flexibility is permitted, and where those Members are given greater freedom to discharge their role as representatives of the local community within a clear framework.
- 5.05. The Council's responsibility is to make decisions with knowledge of the relevant development plan policies, taking into account all other material considerations and any representations, applying the appropriate weight to each. In addition, it is "important that elected Members receive open and impartial professional advice from their Planning Officers. Members should make planning decisions on the basis of a written officers' report" ~~(PPG1)~~ (PPS1).
- 5.06. This can only be done at the Committee. Conclusions reached in advance of the Committee risk being on partial facts, without the relevant advice, and without the ability to view all the material considerations before applying appropriate weight. They are therefore open to misunderstanding, and possibly, to legal challenge on the grounds that the right things have not been taken into account, or immaterial things have been taken into account, or that the Members concerned have been subject to "bias" or "pre-determination".
- 5.07. For these reasons Members should not reach or express any firm conclusion on an application prior to the relevant Committee. If, for any reason a Member decides, in

advance of the Committee, to express a firm and final view on the development, he or she will not take part in the deliberations of the Committee but may exercise the rights in paragraph 5.13 below.

- 5.08. Where any Member makes representations to the Planning Department, in writing or orally, in relation to any application, those representations will be recorded for inclusion in the report. Where these representations constitute a firm and final view on the development, the Member will not take part in the deliberations of the Committee but may exercise the rights in paragraph 5.13 below.

Approaches by Applicants

- 5.09 Members of the Planning Committee will discourage any applicant or agent, or other interested party such as a landowner from approaching them in any way in relation to planning applications. If an approach is received, the Member will take care not to give any commitment, or the impression of a commitment that he or she holds any particular view on the matter.
- 5.10. If an approach is received by a Member of the Planning Committee from an applicant or agent or other interested party in relation to a particular planning application, then the Member will:
- (a) Inform such applicant that such an approach should only be made to Officers of the Council or to elected Members who are not Members of the Planning Committee.
 - (b) Keep an adequate written record so as to enable the Member to disclose the fact of such an approach if and when the application or proposals is considered by the Planning Committee; and
 - (c) Disclose the fact and nature of such an approach at any relevant meeting of the Planning Committee.

In this context an approach should be noted where the discussion extends beyond simple information to the merits or demerits of the particular proposals.

- 5.11. Where a Member of the Planning Committee receives written representations directly in relation to a planning application, the Member will pass the correspondence to the Assistant Director, Planning and Environmental Control in order that those representations may be taken into account in any report to the Planning Committee.

Personal Involvement

- 5.12. Where a Member of the Planning Committee has had any personal involvement with an applicant, agent or interested party, whether or not in connection with a particular application before the Planning Committee, or any other personal interest which an observer knowing the relevant facts would reasonably regard as so significant that it was likely to prejudice the member's judgement of the public interest ~~which could possibly leave an observer to suppose to suppose that there might be any possibility that the involvement could affect the Member's judgement in any way,~~ then the Member will declare a relevant prejudicial interest in accordance with the provisions of the Members' Code of Conduct (Part 5 Section A of the Council's Constitution) Council's Standing Orders. The Member must abstain from discussion and voting on the matter and leave the room while that application or other matter is under discussion except as provided in paragraph 5.13 below. The Member must also avoid any attempt to influence the decision improperly.
- 5.13. A Member declaring a prejudicial interest in an item may attend during that item but only for the purposes of making representations about the matter, answering questions or giving evidence about it and then only when the meeting is open to the public. Otherwise the Member must leave the room while that application or other matter is under consideration.

Social Contacts

- 5.14. Members of the Planning Committee will minimise their social contacts with known developers and agents and refrain altogether from such contacts when developments are known to be contemplated or applications are being proposed, or where controversial decisions are likely to be needed.

Hospitality

- 5.15. Members of the Planning Committee will reject any offers of gifts, hospitality or future favours made personally or by way of deals for the Council or the community, from lobbyists. Any such *improper* approach will be reported immediately to the Chief Executive. Outside the scope of this rule are proposals for community/public benefit to remedy problems connected with the development reported by officers as part of a proposed planning agreement.

Informal meetings with Chair / Vice Chair

- 5.16. To ensure a full understanding and accommodation of the Council's planning and economic objectives, there will be occasions when it will be for the Chair and Vice Chair of the Planning Committee to meet with potential developers and others. The following principles will be followed: -
- (a) The meeting will be pre-arranged and will be organised by or through the Assistant Director, Planning and Development Management.
 - (b) No meeting will occur without the presence throughout of Council Officers.
 - (c) A record of the meeting will be kept by the Council's Officers.
 - (d) In the event of a planning application being made in respect of the development proposals discussed at the meeting, the record will be made available for public inspection and will form a background paper to any Committee Report.
 - (e) Meetings will be conducted on the strict understanding that the purpose is to allow a full and frank exchange of views, any opinions expressed by Officers or Members will not be binding on the Council or fetter its discretion in the event that an application is made.

Residents/Local Groups/ Other Occupiers

- 5.17. If a Member of the Planning Committee is approached by local residents, business or other occupiers in relation to an application, which the residents or others wish to object to

or support, the Member will listen to the views but will take care not to give any commitment, or the impression of a commitment that they hold any particular final view on the application.

5.18. Members of the Planning Committee will:

- (a) Encourage the interested party to contact another Ward Member or other elected Member who is not a Member of the Planning Committee.
- (b) In the case of significant meetings on planning matters keep an adequate written record so as to enable the Member to disclose the fact of such an approach if and when the application or proposals is considered by the Planning Committee; and
- (c) Disclose the fact and nature of significant discussions at and relevant meeting of the Planning Committee.

In this context "significant" would include any meetings or discussions which consider the merits or demerits of the particular proposals extended beyond simple information.

5.19. Meetings and discussions with constituents are important part of a Ward Member's functions, and this Code is not intended to harm those contacts unnecessarily. Members of the Planning Committee ~~however~~ should avoid taking an active role in meetings to promote residents' objections to applications. Nothing in this Code prevents Members from listening to local concerns, giving factual information about an application or the planning process, or from directing residents to other sources of information or assistance.

5.20. Where a Member of the Planning Committee receives written representations directly in relation to a planning application, the Member will pass the correspondence to the Assistant Director, Planning and Environmental Control in order that those representations may be taken into account in any report to the Planning Committee.

At Committee

5.21. The responsibilities of Members of the Planning Committee in considering planning matters are set out in paragraph 5.05 above. At the Committee, Members will, in particular, avoid

expressing any view on the matters under consideration until the report has been presented, any other relevant advice is given, and all oral representations have been heard.

Council Owned Land

- 5.22. The Planning Committee from time to time considers applications involving land owned or recently owned by the Council. Members will consider carefully whether they should take part in the deliberations of the Committee on an application, involving that land, where they took part in any decision of the Executive Cabinet or other Council body in relation to the land. They will take into account whether an observer with knowledge of all the relevant facts would suppose that there might be any possibility that the involvement in the decision on the land could amount to reaching prior conclusions on the planning issues, or other-wise affect the Member's judgement in any way.
- 5.23. Any Member, whether or not a Member of the Cabinet, will take great care in the consideration of applications, or local plan proposals, affecting land owned or recently owned by the Council to ensure that the planning decision is made and seen to be made solely on planning grounds.

6. MEMBERS NOT ON PLANNING COMMITTEE

- 6.01. The Members' Code of Conduct applies to all Members of Council. The parts of the Code which will be particularly kept in mind as a general context for the exercise of planning functions are set out in paragraph 4.01 above.
- 6.02. Where any Member submits representations in writing or orally in relation to any application, local plan proposal, or enforcement decision those representations will be recorded for inclusion in the officers' report.
- 6.03. Councillors who are not Members of the Planning Committee may attend meetings of the Committee, and at the discretion of the Chair address the Committee. In that case paragraph 46 of the Committee Procedure Rules (Part 4 Section B of the Council's Constitution) will apply. This requires the Member to give written notice to the Chair of his/her attendance, preferably before the meeting but in

any event as soon as the Member arrives at the meeting. Members of the Council are not required to complete any form used by the public to request permission to speak.

- 6.04. ~~Members will not seek to address the Committee where personal involvement with an applicant, agent or interested party could possibly lead an observer to suppose that there might be any possibility that the involvement could affect the Member's judgement in any way.~~ Where a Councillor who is not a Member of the Planning Committee has had any personal involvement with an applicant, agent or interested party, whether or not in connection with a particular application before the Planning Committee, or has any other personal interest which an observer knowing the relevant facts would reasonably regard as so significant that it was likely to prejudice the Member's judgement of the public interest then the Member will declare a prejudicial interest in accordance with the provisions of the Members' Code of Conduct. The Member may only attend the meeting as provided in paragraph 6.05 below. The Member must also avoid any attempt to influence the decision improperly.
- 6.05. A Member declaring a prejudicial interest may attend the meeting but only for the purposes of making representations for or against the relevant application, answering questions or giving evidence about it and only when the meeting is open to the public. Otherwise the Member must leave the room while that application or other matter is under consideration.
- 6.06. Where an approach has been received by an elected Member (not being a Member of Planning Committee) from an applicant, agent or other interested party in relation to a planning application, that Member will, in any informal discussions with any Member of the Planning Committee, disclose the fact and nature of such an approach and have regard to the matters set out at paragraph 7.01 below.

7 OTHER CONDUCT OUTSIDE COMMITTEES

- 7.01. In discussions between Members generally and Members of the Planning Committee (at party group meetings or other informal occasions) Members will have regard to: -

- (a) the principles governing the conduct of Members set out in the ~~National Code of Local Government Conduct~~, Members' Code of Conduct.
- ~~(b)~~ the principles governing the conduct of Members of Planning Committee set out in this Code and the Protocol for Hearing Representations at Planning Committee ~~as set out in Part C~~
- (c) the obligations placed on Members of the Planning Committee not to give commitments in relation to any planning application prior to consideration of the full Officer report, advice and representations at Committee.
- ~~(d) the principles governing the conduct of Members set out in the Members' Code of Conduct.~~

8. SANCTIONS

- 8.01. The Council will seek to ensure adherence to this code by all Members.
- 8.02. Complaints about failure to adhere to the Code should be made to the Chief Executive of the Council.
- 8.03. A failure to adhere to the Code gives rise to a range of potential consequences to the Council, and individual Members, especially if this results in inconsistency. The normal sanction of the democratic process is through the ballot box. Councillors may make a reputation in their community not only for their beliefs but also for their general conduct. Beyond the normal democratic process, a number of specific consequences can be identified.

Judicial Review

- 8.04. If applicants or objectors are convinced that the Council, in determining an application, did not observe their statutory obligations to carry out all necessary procedures, for example the Council did not base their decision on the Development Plan and or did not take into account all representations or all material considerations, or took into account irrelevant considerations, they may apply for Judicial Review of the decision, which might result in it being

quashed. In such circumstances it would be normal for the costs of an applicant to be awarded against the Council.

The Local Government Ombudsman

- 8.05. Although the Local Government Ombudsman (LGO) will not investigate the balance of argument or merits in any planning decision, ~~s/he~~ the LGO may agree to investigate a planning complaint if it concerns the manner in which a decision was taken. If it is found that injustice has been caused by maladministration in the light of statutory or established Council policy or procedures, ~~s/he~~ the LGO will recommend redress, which may take the form of compensation.
- 8.06. Where the LGO makes a finding of maladministration on the basis of a breach of the Members Code of Conduct then the report may name the individual Member and give particulars of the breach.

District Auditor

- 8.07. Each of the above courses of action, and other actions such as unreasonable behaviour as part of an appeal, could result in significant extraordinary costs to the Council. These costs will be closely examined by the District Auditor. Where it appears that a loss has been incurred, or deficiency caused, in the Council's accounts by the wilful misconduct of any Persons, ~~s/he~~ the District Auditor is required to certify that the loss or deficiency is due to that person(s). This can lead to surcharging of such persons and possible disqualification from office.

Standards Board

- 8.08. Breaches of the Planning Code which are also breaches of the Members' Code of Conduct will be subject to report to the Council's Standards Committee and potentially to investigation by the Standards Board for England or the Council's Standards Committee. Following an adjudication, a Member found not to have complied with the Code of Conduct may be suspended or disqualified from membership of the Council.

9. OFFICERS OF THE COUNCIL

- 9.01. In common with Members generally, all Members of the Planning Applications Sub-Committee may at any time contact the relevant Planning Officer to seek information in relation to any planning application.
- 9.02. Members of Planning Committee will not attempt in any way to influence the contents of the Officer's report or the recommendation made on any matter. Representations made by Members whether or not in writing will be recorded by the relevant officer and included in the report
- 9.01. Any criticism of Planning Officers by Members of the Planning Committee shall be made in writing, to the ~~Chief Executive,~~ Director of Urban Environment or Assistant Director, Planning and Development Management and not to the Officer concerned. Members will endeavour to avoid any public criticism of officers but this does not prevent Members asking officers proper questions.

