

# **PART 5 - CODES AND PROTOCOLS**

## **SECTION D**

### **PLANNING CODE OF PRACTICE FOR COUNCILLORS AND OFFICERS**

#### **1. PURPOSE OF THE CODE OF PRACTICE**

- 1.1 This Code of Practice is intended to provide clear guidance to Councillors and officers about how they should carry out their duties in relating to planning matters so as to ensure openness, transparency and consistency in decision-making and to set standards of probity and conduct which the residents of Surrey Heath can expect.

#### **2. CONTEXT**

- 2.1 The town and country planning system involves the Council taking decisions about the development and use of land in the public interest. Planning law requires that all planning applications are determined in accordance with the approved Development Plan unless material planning considerations, such as the National Planning Policy Framework, indicate otherwise.
- 2.2 Planning is often highly contentious because its decisions affect the lives of everyone, be they applicant, objector, supporter or local resident. This is heightened by the system actively inviting public opinion on applications before decisions are taken. It is essential, therefore, that the planning process is characterised by transparent, consistent and open decision-making.

#### **3. GENERAL ROLES AND RESPONSIBILITIES**

- 3.1 Councillors and Officers have different, but complementary, roles in the planning process. Likewise members of the Planning Applications Committee have different roles from other Councillors when exercising the functions of the Local Planning Authority. All Councillors are, however, bound by the terms of the Council's Code of Conduct.

##### **Members of the Planning Applications Committee**

- 3.2 Whilst the determination of a planning application is not a 'quasi-judicial' process, it is a formal administrative process involving the application of national and local policies, reference to legislation and case law as well as rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly. All involved should remember the possibility that an aggrieved party may seek a Judicial Review and/or complain to the Ombudsman on grounds of maladministration or a breach of the authority's code.

- 3.3 Given the nature of decisions made at Committee meetings, Councillors will not be permitted to vote in relation to an application unless they have been present in the meeting throughout the consideration of the application in question.
- 3.4 In addition to complying with the Council's Code of Conduct, Councillors who sit on the Planning Applications Committee must: -
- (a) act fairly and openly
  - (b) avoid inappropriate social contact with applicants and their agents, objectors and other interested parties
  - (c) despite any views expressed publically, approach decision-making with an open mind, and have regard to all material planning considerations and be prepared to change their view if persuaded they should
  - (d) make decisions purely on planning grounds in the public interest and not favour, or appear to favour, any person, company, group or locality
  - (e) not decide how to vote on each application on the basis of any political "whip", but solely on the planning merits
  - (f) ensure that the reasons for their decisions are clearly stated at the meeting.

### **Other Councillors**

- 3.5 Councillors who do not sit on the Planning Applications Committee represent their wards and the Borough as a whole and may exercise their right to attend meetings of the Planning Applications Committee to speak, although not vote, on any planning matter.
- 3.6 Councillors should particularly note that they have the same duty as members of the Committee in respect of compliance with the Code of Conduct when they attend any meeting and should always declare any pecuniary or non-pecuniary interests at the appropriate stage in the proceedings.
- 3.7 In order to avoid confusion for the public attending meetings of the Planning Applications Committee, Councillors, who are not members of the Committee, must not sit with those who are and must sit in the area designated for non-members. The Chairman, at the beginning of the meeting will identify the members of the Committee and any other councillors present who are not members of the Committee.
- 3.8 Councillors who are not members of the Committee do not act in any decision making role, but shall nonetheless act fairly and openly.

- 3.9 In certain circumstances, the full Council carries out the functions of the Planning Applications Committee and Councillors should be aware that in those circumstances they should comply with the provisions of this Code of Practice.

### **Officers**

- 3.10 Officers are responsible to the Council as a whole. They must always act openly and impartially and provide consistent professional advice based on planning policies and procedures and planning law, ensuring that members of the Committee are aware of all relevant material planning considerations before decisions are made. Officers must comply with any professional codes of conduct that may be applicable; for Planning Officers this is the Royal Town Planning Institute's (RTPI) Code of Professional Conduct<sup>1</sup>. Officers must also conscientiously carry out the decisions of the Committee.

## **4. CODE OF CONDUCT**

- 4.1 The Council has adopted a Members' Code of Conduct at Part 5 of this Constitution. The Code of Conduct requires the open disclosure of any Disclosable Pecuniary Interest or non-pecuniary interest in issues being considered by the Council or its Committees.
- 4.2 Training and guidance on the Code has been provided to all Councillors and will be regularly updated. Members of the Planning Applications Committee must be particularly careful to ensure that they are familiar with the requirements of the Code. It is the personal responsibility of individual Councillors to ensure they comply with the Code and make all appropriate declarations. If in any doubt, Councillors should seek advice in advance of the meeting either from the Monitoring Officer or from the legal adviser to the Committee.
- 4.3 Although "Declaration of Interests" appears as a separate item on the Agenda for every meeting of the Planning Applications Committee, the Chairman normally asks whether any Councillor wishes to make a declaration of interest prior to the consideration of each individual planning application so that it is clear for which application interests are being declared. This does not, however, preclude a Councillor declaring any interest under the specific item on the Agenda.

## **5. LOBBYING OF COUNCILLORS**

- 5.1 It is a legitimate part of the planning application process for applicants, neighbours and other interested parties to approach Members. However, the rules of natural justice mean that planning applications should be determined in an open and fair manner and taking account of all relevant information and arguments. It is only at the meeting of the Committee that Members will have,

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<sup>1</sup> The RTPI Code of Professional Conduct requires that Planning Officers who are members of that institute do not make statements purporting to be their own, but which are contrary to their own professional opinion.

and be able to consider, all the relevant information and considerations pertaining to the application.

- 5.2 It is therefore important that to maintain the integrity both of individual Councillors and of the Council as a whole that all Members should: -
- (a) if lobbied, explain the potentially conflicting position they are in. When expressing an opinion, make clear that this opinion is provisional and that they will only be able to come to a final view at the Committee meeting after hearing all the relevant information and arguments
  - (b) avoid giving constituents planning advice, save in relation to general planning procedures, for example, how the constituent can make a representation on the application, how the decision will be made (delegated or Committee) etc.
- 5.3 Members of the Planning Applications Committee often receive correspondence from constituents, applicants and developers asking them to support or oppose a particular proposal. It is good practice for Councillors to forward a copy of the correspondence to the Head of Planning. Merely forwarding the correspondence in this way does not preclude the Councillor from being involved in the determination of the application.
- 5.4 Should a member of the Planning Applications Committee be directly lobbied by any third party, they should notify the Monitoring Officer if they feel they have been exposed to undue or excessive lobbying. They should also indicate at the appropriate stage of the Committee proceedings that they have notified the Monitoring Officer of this lobbying.

## **6. LOBBYING BY COUNCILLORS**

- 6.1 If a Councillor becomes a member of, leads or represents an organisation whose primary purpose is to lobby the promotion or opposition to planning proposals, they may have an interest and may have to withdraw from the meeting during consideration of that proposal.
- 6.2 A Councillor should not lobby fellow Councillors excessively regarding their concerns or views nor attempt to persuade them that they should decide how to vote in advance of a meeting at which any planning decision is to be taken.

## **7. MEETINGS**

- 7.1 Officers frequently hold meetings with applicants and objectors to discuss applications. These are part of the normal planning process but are, and must be clearly stated to be, without prejudice to the professional recommendation that may be made to the Committee and the decision of the Committee. Councillors will not normally attend such meetings.

- 7.2 If a Councillor wishes to arrange a meeting with Planning Officers for themselves and/or a small number of constituents about a planning application, this will be arranged at the Council Offices.
- 7.3 Officers will not normally attend public meetings unless their attendance has been agreed with the Head of Planning and representatives of both the applicant and objector are given the opportunity to be present. Members of the Committee and Ward Councillors will be advised of any public meeting either organised by Officers or which Officers have agreed to attend.

## **8. PRESENTATIONS ON LIKELY DEVELOPMENT PROPOSALS**

- 8.1 The Council may itself organise presentations to keep Councillors informed generally on matters which appear to have or are likely to have strategic importance for the Borough. At such presentations, Councillors should maintain an impartial role, listening to what is being said and asking questions but not expressing an opinion.
- 8.2 Councillors may sometimes be invited to attend presentations/open days etc on likely development proposals by developers. Councillors should consider the appropriateness of accepting such invitations and give consideration to how their attendance might be perceived. Councillors should notify the Monitoring Officer of attendance at any such event.

## **9. OFFICER REPORTS TO COMMITTEE**

- 9.1 All applications requiring a decision by the Planning Applications Committee will be the subject of full written reports from the Head of Planning or such other planning officer acting under delegated authority . The report will provide a clear outline of the site history, the relevant Development Plan policies, the response of consultees and the substance of objections. The report will include a clear recommendation with a technical appraisal justifying it. Any objections or other relevant issues arising after the Agenda has been published will be the subject of an oral report to the Committee at the meeting.

## **10. COMMITTEE SITE VISITS**

- 10.1 Committee site visits are fact-finding exercises which allow the Planning Applications Committee to make a more informed decision than would otherwise be possible from reading the Officer's report and considering the views expressed at the Committee meeting. They are not part of the formal consideration of any application and therefore public rights of attendance and speaking do not apply.
- 10.2 The Committee has adopted a procedure for site visits and this is set out at **APPENDIX A**.

## **11. PUBLIC PARTICIPATION AT THE PLANNING APPLICATIONS COMMITTEE**

- 11.1 Members of the Planning Applications Committee must not allow members of the public, applicants, agents or public speakers to communicate with them during the Committee meeting either orally or in writing, other than under the adopted public participation scheme, as this may give the appearance of bias to other observers.
- 11.2 The Public Speaking Rules at Part 4 of the Constitution provide the framework for public participation at the Planning Applications Committee.

## **12. PLANNING COMMITTEE DECISIONS CONTRARY TO OFFICER RECOMMENDATION**

- 12.1 From time to time, members of the Committee will disagree with the professional advice given by Officers and may determine an application contrary to that advice. When this happens Councillors must clearly express the planning reasons for their decision, such that a person observing the meeting would understand why the recommendation has not been followed. Officers will be given an opportunity to explain to the Committee any planning and / or legal implications arising from their intended decision before the decision is confirmed.
- 12.2 The reasons given by the Committee for the decision will be recorded in the minutes of the meeting and the Head of Planning will be asked to finalise the wording of the decision notice, normally after consultation with the Chairman and Vice Chairman of the Committee.

## **13. APPEALS AGAINST COUNCIL DECISIONS**

- 13.1 Generally, Officers will organise and appear as witnesses at planning appeals on behalf of the Council. Officers will have overall management and responsibility for the conduct of planning appeals. In giving evidence, Officers will present the best possible case on behalf of the Council, whilst complying with the RTPI Code of Professional Conduct\* and taking into account cost/benefit analysis. In some circumstances it may be necessary to appoint consultants to appear on behalf of the Council; for example, where the Committee has decided an application contrary to the Officer recommendation. Where the overall strategy for a planning appeal is contrary to, or unsupportive of, the Planning Application Committee's decision in the first instance, the Head of Planning must consult with the Chairman and the Vice Chairman of the Planning Applications Committee and relevant ward Councillors.
- 13.2 If a Councillor intends to make representations to the Planning Inspectorate on any appeal either in writing or in person at any hearing / public inquiry, they should advise the Head of Planning and indicate whether these representations will be in support of the Council's case.

## **14. COUNCILLOR AND OFFICERS AS APPLICANTS**

- 14.1 Where a Councillor is the (prospective) applicant for planning permission, he or she must appoint a professional agent to act on their behalf in dealing with Planning Officers. Whilst this might appear to place an undue financial burden on the Councillor, regard should be had to Members' Code of Conduct at Part 5 of this Constitution.
- 14.2 Any application submitted by a serving Councillor, or a partner as defined in the Members' Code of Conduct, or persons who were Councillors within the previous 4 years, will not be dealt with by Officers under delegated powers but will be the subject of a decision by the Planning Applications Committee. The Committee will be advised that that the application has been submitted by a Councillor, or former Councillor, and will also be advised whether the application is one that would normally have been dealt with under the Scheme of Delegation.
- 14.3 In the case of serving Councillors, the Monitoring Officer should be notified by the Councillor concerned in writing of the application no later than the date of its submission.
- 14.4 The same rules apply in respect of any officer, or a partner as defined in the Members' Code of Conduct, who is currently employed by the Council or who has been employed by the Council within the previous 4 years.

## **15. TRAINING**

- 15.1 Councillors may not sit on the Planning Applications Committee unless they have attended at least the annual mandatory planning training prescribed by the Council. Where the Full Council determines a major planning application, all Councillors must have attended the prescribed planning training as determined by the Head of Planning.
- 15.2 Suitable additional training opportunities will be arranged at regular intervals by the Head of Planning and/or the Monitoring Officer.

## **16.0 REVIEW**

- 16.1 It is important that decisions, and the decision-making process, are regularly reviewed to improve the quality and consistency of decision making, thereby strengthening public confidence. Arrangements will normally be made for Councillors to visit, on an annual basis, a sample of implemented planning permissions to assess the quality of the decision. These visits will include a range of developments (major, minor, departures, upheld appeals, listed building works etc). The Committee will also receive an annual review of appeal decisions from the Head of Planning.

## **APPENDIX A**

### **COMMITTEE SITE VISITS**

#### **General**

1. The purpose of a site visit is to ascertain facts and to ask questions of the planning officers, not to debate the merits of the planning application. Members, at the site visit, must not indicate which way they intend to vote at the Planning Applications Committee meeting.
2. The applicant will be notified in advance in writing of the time and date of the visit and of any requirements in respect of the site visit (such as the pegging out of the development proposal). If applicants, or their agents, attend for site access purposes they will be advised at the start of the site visit that the purpose of the visit is to gather information and that they may not address the meeting or individual councillors.
3. The public does not have a right of attendance at the site, other than from public vantage points, and cannot address the meeting or individual councillors.
4. A Planning Officer will accompany Councillors to explain the development proposal and to answer any questions. Councillors should only allow themselves to be addressed by Officers or by fellow Councillors. Where a Councillor is approached by any other person, they should inform the Planning Officer present.
5. The Chairman of the Committee, or his representative, must maintain control over the conduct of each site visit which, whilst not part of a formal meeting of the Committee, will be conducted as a single meeting and in an orderly fashion.
6. Councillors must not normally enter planning application sites except on the formal Committee Site Visit. If a Councillor considers that a personal site visit is essential, they should contact the Head of Planning, who may, in exceptional circumstances, make appropriate arrangements. Councillors must at all times remember that to enter any land without the consent of the landowner is a trespass. This does not preclude the Councillor from viewing the application site from any public vantage point.

#### **Site Visits Prior to Consideration of an Application by the Planning Applications Committee**

7. Members of the Planning Applications Committee and local ward members may make a request for a site visit upon receipt of the agenda. Requests must be made in writing, explaining the reason for the request, to the Development Manager with a copy forwarded to the Head of Planning and the Democratic Services Officer by 4 pm four clear working days before the Planning Applications Committee meeting.



### **Applications Deferred by the Planning Applications Committee for a Site Visit**

8. Only in exceptional circumstances will a request for a Committee Site Visit made at the Planning Applications Committee meeting, outside the above procedure, be entertained by the Committee.
9. Where the Planning Applications Committee has commenced the consideration of an item but decides to defer an application because it considers that a site visit is necessary in order for it to determine the application, only those members who have attended that site visit will be able to vote in relation to that application at the next meeting.
10. A site visit requested of the Planning Applications Committee will be arranged at a time to ensure that sufficient members are available to attend the site so that it is possible to achieve a quorum at the next meeting.