

# CONSTITUTION OF THE LONDON BOROUGH OF CROYDON

## Part 5D – Planning Code of Good Practice

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### **1 INTRODUCTION**

- 1.1 This code has been prepared using the advice in the Local Government Association’s revised guidance note on good planning practice for Members and officers dealing with planning matters – *Probity in Planning: the Role of Councillors and Officers* (May 2009).
- 1.2 **The aim of this code:** To ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.
- 1.3 **The key purpose of planning:** To manage development in the public interest.
- 1.4 **Your role as a Member of the Planning Committee:** To make planning decisions openly, impartially, with sound judgement and for justifiable planning reasons.
- 1.5 **When the Code applies:** This code applies to Members at all times they are involved in the planning process. This includes, where applicable, when part of decision making meetings of the Council, in exercising the functions of the planning authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings. It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications. If you have any doubts about the application of this code to your own circumstances you should seek advice early, and preferably well before any meeting takes place, from the Monitoring Officer.
- 1.6 In this Code when the term “Councillor” or “Member” is used it means that the advice is applicable to all Members of the Council. The term “Planning” means a Member or a substitute Member of any of the Council’s Planning Committees or sub-committees.
- 1.7 **Relationship to the Members' Code of Conduct:** Members are reminded that the Planning Code of Good Practice is designed primarily for Members of the Council’s Planning

Committees and Members who, for whatever reason, find themselves involved in the planning process. Whilst the planning code interprets the Members' code of conduct with respect to planning matters it is subordinate to the Members' Code of Conduct and in the event of any inconsistencies arising between this Code and the Members' Code of Conduct, the Members' Code of Conduct shall prevail.

## **2 GENERAL ROLE AND CONDUCT OF MEMBERS AND OFFICERS**

### **General roles of Members and officers**

- 2.1 Members and officers have different, but complementary roles. Both serve the public. Officers are responsible to the Council as a whole, whilst Members are responsible to the electorate.
- 2.2 Officers are not appointed to serve any political group and therefore advise all Members and the Council. Officers carry out the daily functions of the Council's business in accordance with Council, Cabinet or Committee decisions or under powers delegated to them pursuant to the constitution. Officers are governed by the Employees Code of Conduct contained in the constitution. In addition, planning officers, who are Members of the Royal Town Planning Institute (RTPI), are subject to a professional code of conduct and breaches may be subject to disciplinary action by the RTPI. Similarly, officers who are solicitors are subject to regulation by The Solicitors Regulation Authority. Officers in other professions will have corresponding codes.

### **Relationship between Members and officers**

- 2.3 Mutual trust, respect and understanding between Members and officers are the keys to achieving effective local government. A successful relationship between Members and officers can only be based upon mutual trust and understanding of each other's positions. This relationship, and the trust that underpins it, must never be abused or compromised.
- 2.4 Planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.
- 2.5 Members must not put pressure on officers to put forward a particular recommendation or deal with a planning matter in a particular way. This does not prevent a Member from asking questions or submitting views to the officer. These views, when received in written form, will be placed on the planning file and considered together with other material planning considerations.

## **3 INTERESTS: DISCLOSABLE PECUNIARY INTERESTS**

- 3.1 A Member should refer to the Members' Code of Conduct for assistance in identifying Disclosable Pecuniary Interests or seek advice from the Monitoring Officer prior to attending a meeting.
- 3.2 Members should have regard to the Members' Code of Conduct in relation to actions required where a Disclosable Pecuniary Interest exists.

- 3.3 Under the Members' Code of Conduct a Member who has a disclosable pecuniary interest must, if the interest is not one which is already on the register of interests or subject to a pending notification to the Monitoring Officer, disclose the existence of that interest to the meeting and thereafter notify the Monitoring Officer of that interest within 28 days of this disclosure.
- 3.4 Where a Member has a disclosable pecuniary interest, the Member may not participate or participate further in any discussion of the matter at the meeting or participate in any vote or further vote on the matter although there is no obligation for that Member to withdraw from the Chamber. This means that a Member with a disclosable pecuniary interest is precluded from making representations orally to the Committee or from making representations on behalf of a party to the hearing.
- 3.5 A Member with a disclosable pecuniary interest can still present their views to the Committee through other means. For example, the Member can:
- make written Representations in their private capacity in accordance with Committee Consideration Criteria as set out in the Planning and Planning SubCommittee Rules The existence and nature of the interest should be disclosed in such representations and the Member should not seek preferential consideration for their representations. Such written representations should be addressed to officers rather than other Members of the Authority;
  - use a professional representative to make a representation on the Members' behalf in circumstances where the Members' planning application is under consideration; and
  - arrange for another Member of the Authority to represent the views of the Member's constituents on matters in which their ward Member has a disclosable pecuniary interest.

#### **4 PREDISPOSITION, PREDETERMINATION AND BIAS**

- 4.1 In addition to being aware and taking appropriate action in relation to Disclosable Pecuniary Interests, Planning Committee Members need to avoid bias or predetermination or any appearance of bias or predetermination before taking a decision on a planning application.
- 4.2 Avoidance of bias or predetermination or the appearance of bias or predetermination is a principle of natural justice that the decision maker is expected to adhere to. The determination of a planning application is a formal administrative process involving the application of national, regional and local policies, reference to legislation and case law as well as rules of procedure. Members of the Committee should not decide or declare which way they will vote in advance of the planning meeting, or before hearing evidence and arguments on both sides. However, Members will often form an initial impression or view; this is not necessarily predetermination or bias. A distinction is drawn by the courts between having clearly expressed an intention to vote in a particular way before a meeting (predetermination), and a predisposition to an initial view (such as supporting the policies in the Development Plan) where the Member is clear they are willing to listen to all the material considerations presented at the Committee and keep an open mind before deciding on how to exercise their vote. In the latter case there would be no predetermination or bias, just a

legitimate predisposition.

- 4.3 This distinction is particularly important in the context of the Council's practice of facilitating presentations by developers of schemes at the pre-application stage. After these presentations, the Committee Members question details of the development so that they have the opportunity to input into the design development of these strategic developments. They will therefore express views on aspects of the development (such as its external appearance, impact on neighbours or transport network implications) which will often display predisposition around these elements. What the Members of the Committee should not do at this stage is to express a firm view on the development as a whole, as this could amount to predetermination. Such a view should only be formed at the end of the process when all the material considerations are available to the Members of the Committee to consider and weigh up before finalising their view.
- 4.4 A useful test to determine whether a position or view could be considered to be biased is to think about whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias. Predetermination goes beyond predisposition and essentially evades the process of weighing and balancing relevant factors and taking into account other viewpoints.
- 4.5 If a Planning Committee Member has been lobbied and wishes to promote or oppose a planning application, they will need to consider whether this is likely to be regarded as amounting to bias and going against the fair determination of the planning application. If they have predetermined their position or have given that impression, they should avoid being part of the decision-making body for that application.
- 4.6 A Planning Committee Member who is also a ward Member and wishes to campaign for or against a proposal, could speak at the Planning Committee (in accordance with the Council's public speaking procedures) on behalf of their constituents, having declared their predetermined position. The Member can continue to represent those ward interests as a spokesperson for their local community, notwithstanding their normal Planning Committee Membership provided that if the Member has a Disclosable Pecuniary Interest, they may not participate in any discussion of the matter unless they have received a dispensation to do so.
- 4.7 Participation in a Planning Committee where a Member is or may be perceived to be biased, in addition to the risk of a complaint against the individual Member, also places the decision of the Committee at risk from legal challenge. As such, if a Planning Committee Member considers that they are or have given the impression that they are biased or predetermined it is advisable that they carefully consider whether it is appropriate for them to participate in the matter.

## **5 APPLICATIONS SUBMITTED BY THE COUNCIL, MEMBERS OR OFFICERS**

### **Applications submitted by the Council**

- 5.1 Proposals for a Council's own development can give rise to suspicions of impropriety. It is perfectly legitimate for such proposals to be submitted to and determined by the Council. Proposals for a Council's own development will be treated no differently from any other

application.

- 5.2 Certain Members, such as Cabinet Members, may through their other roles outside of a Planning Committee, have been heavily committed to or involved in a Council's own development proposal. In such circumstances, when an item comes to be considered at Committee the Member concerned, if they sit on the Committee, must consider whether they have an interest or degree of involvement with the proposals that could give the impression of bias. If in doubt, they are encouraged to seek advice from the Monitoring Officer. The most appropriate course of action if that is the case, is that the Member concerned may address the Committee in the applicant's speaking slot (see part 4K of the constitution: Planning and Planning Sub-Committee Procedure Rules) but does not take part in its consideration and determination and therefore withdraws before the debate by Members commences. It is important that the Member should restrict their address to the Committee to relevant planning considerations rather than wider non-planning issues that are not material to the determination of the application.

#### **Applications submitted by Members or officers**

- 5.3 It is perfectly legitimate for planning applications to be submitted by Members and officers. However, it is vital to ensure that they are handled in a way that gives no grounds for accusations of bias or pre-determination
- 5.4 If a Member or an officer submits their own proposal to the Council which they serve, they should take no part in its processing. A Member who acts as an agent or representative for someone pursuing a planning matter with the authority should also take no part in its processing. The 1APP planning application form requires applicants to indicate whether they are members of staff or an elected Member or partners/spouses of a Member or Officer of the Council. Where decisions relate to applications made by members of staff or an elected Member these should be reported to Committee where they relate to the following:
- Members of the Council
  - Senior officers of the Council (Service Head and above)
  - Officers of the Local Planning Authority.
- 5.5 The term "Officers of the Local Planning Authority" means officers within the Council who are closely involved in the day-to-day work of the Council's planning function.
- 5.6 The procedures to be followed in Committee in such circumstances are as follows:
- The consideration in Committee of an application from a Member may be considered a disclosable pecuniary interest for that Member and Members need to be mindful of their obligations in relation to Disclosable Pecuniary Interests as set out in the Members' Code of Conduct.
  - If such a Member does not have a Disclosable Pecuniary interest they may address the Committee as the applicant in accordance with the Council's public speaking procedures. If however, such a Member has a Disclosable Pecuniary Interest they may not participate in the consideration of the matter and may therefore not speak on the matter. They would need to have a representative speak on their behalf.

- The Members of the Committee must consider whether the nature of any relationship means that they have a Disclosable Pecuniary Interest in relation to the matter and if so, they may not participate in the consideration of that matter.

5.7 The principle in the final bullet point also applies to applications submitted by officers when they are considered in Committee.

## **6 LOBBYING OF AND BY COUNCILLORS**

6.1 Lobbying is a normal and perfectly proper part of the political process. Members of the public, applicants or local interest groups will often seek to influence a decision through an approach to their ward Member. In the case of a Planning Committee Member, care needs to be taken to avoid the perception of bias or predetermination of any planning matter.

### **Lobbying of Members**

6.2 A Planning Committee Member should explain to those lobbying or attempting to lobby them that, whilst they can listen to what is said, it may prejudice their impartiality and ability to participate in the Committee's decision making if they are asked to express either an intention to vote one way or another or such a firm point of view that it amounts to the same thing. Planning Committee Members should ensure that it is made clear to any lobbyists that they will only be in a position to reach a final decision on any planning matter after they have heard all of the relevant arguments and looked at the relevant information during the sitting of the determining Committee.

6.3 Planning Committee Members should therefore

- suggest to lobbyists that they write to the Head of Development Management in order that their views can be included in the officer reports prepared for determination under delegated powers or by Committee;
- pass on any lobbying correspondence received (including plans, data, correspondence etc in respect of an application) to the Head of Development Management as soon as practicably possible so that it can be taken into account and included in the report on the application;
- remember that their overriding duty is to the whole community not just to the residents and businesses within their ward and that they have a duty to make decisions impartially, and should not improperly favour, or appear to improperly favour, any person, company, group or locality;
- not accept gifts or hospitality from any person involved in or affected by a planning proposal, but if a degree of hospitality is entirely unavoidable, ensure that they comply with the provisions in the Members' Code of Conduct on gifts and hospitality; and
- inform the Monitoring Officer where they feel that they have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up where necessary.

6.4 Planning Committee Members should note that, subject to the requirements to ensure that Members comply with the Members' Code of Conduct and the rules regarding bias and pre-determination and ensure that they take appropriate action in relation to Disclosable

Pecuniary Interests, they are not precluded from:

- listening or receiving viewpoints from residents or other interested parties;
- making comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to predetermination and they make clear they are keeping an open mind;
- seeking information through appropriate channels; or
- being a vehicle for the expression of opinion or speaking at the meeting as a ward Member, provided they explain their actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, they have not committed themselves to vote in accordance with those views and will make up their own mind having heard all the facts and listened to the debate.

6.5 In the interest of openness, it is recommended that Planning Committee Members declare any lobbying to which they have been subject.

### **Lobbying by Members**

6.6 Planning Committee Members should not become a member of, lead or represent a national or local organisation whose primary purpose is to lobby to promote or oppose planning proposals. If a Member does, he/she may appear to be biased. Whilst they may be able to address the Committee as a ward Member or an objector, Members are not able to participate or vote on any matter in respect of which they have a disclosable pecuniary interest unless they have received a dispensation for this purpose.

6.7 Members can join general groups which reflect their areas of interest and which concentrate on issues beyond particular planning proposals, but they should disclose a personal interest where that organisation has made representations on a particular proposal. A Member should make it clear to that organisation and the Committee that they have reserved judgement and the independence to make up their own mind on each separate proposal.

6.8 Members should not excessively lobby Planning Committee Members regarding their concerns or views on a planning application, nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.

6.9 Members should not decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so.

## **7 PRE-APPLICATION DISCUSSIONS**

7.1 Discussions between a potential applicant and the Council prior to the submission of an application can be of considerable benefit to both parties. However, it would be easy for such discussions to become, or to be seen by objectors to become, part of a lobbying process on the part of the applicant. For this reason the Council have developed pre-application processes that enable Member engagement at the pre-application stage.

7.2 Members should try to attend meetings which may be organised for them by officers as part of the Council's pre-application process. All Members are encouraged to participate in these pre-application discussions, but particularly ward Members, Planning Committee Members

and relevant Cabinet Members. Please remember that both this Code and the Members' Code of Conduct will apply when attending such meetings.

7.3 In all cases these meetings will be subject to the following procedures:

- No meeting shall be convened without the presence of a Council planning officer for the entire duration of the meeting.
- Any Planning Committee Members involved in such a meeting, who sit on the Committee that subsequently considers any resulting application, should declare their attendance at the meeting in the same way as lobbying would be declared.
- Officers (and any Member, if present) should make it clear from the outset that the discussion will not bind the Council to making a particular decision and that any views expressed are personal and provisional.
- Any advice given should be consistent and in accordance with the Development Plan and officers should agree, prior to any meeting, on a consistent interpretation of Development Plan policies as applied to the particular proposal.
- A contemporaneous note of the meeting should be prepared by the planning officer attending wherever possible and a copy sent to all parties for their agreement.
- The final version of the note of the meeting will form part of the planning file and should a planning application subsequently be received, it will thereby be open to public inspection.

7.4 Planning Committee Members should not attend pre-application meetings that are not organised through officers.

## **8 POST-SUBMISSION DISCUSSIONS**

8.1 A Planning Committee Member should not usually be involved in discussions with a developer or agent when a planning application has been submitted and remains to be determined. Potentially, these discussions could be interpreted, particularly by objectors to a proposal, as an indicator of predetermination or bias.

8.2 In limited circumstances Planning Committee Members may legitimately engage in post-submission discussions. An example would be in the case of a large-scale development, where it is desirable for there to be a full understanding of the Council's planning and economic objectives. Such meetings will be organised by officers and run under the same procedural rules as pre-application discussions.

8.3 If a Planning Committee Member is contacted by the applicant, their agent or objectors, they should follow the rules on lobbying and consider whether or not it would be prudent in the circumstances to make notes when contacted. A Member should report to the Head of Development Management any significant contact with the applicant or other parties, explaining the nature and purpose of the contacts and their involvement in them, so that it can be recorded on the planning file.

8.4 Planning Committee Members should not attend post-submission meetings that are not organised through officers.



## **9 PLANNING APPEALS**

- 9.1 Appeals into the planning decisions of the Council are heard by a Planning Inspector appointed by the Secretary of State. Any hearing or inquiry will be open to the public and Members are able to attend. Members are encouraged to attend such hearings, as they can be a good learning experience. This part of the code is concerned with Members who wish to actively participate in these appeals.
- 9.2 If a Member wishes to attend a public inquiry or informal hearing as a ward Member or as a member of the public, they are free to do so. It is strongly recommended that they discuss their participation with the Director of Planning & Sustainable Regeneration or the Head of Development Management to ensure that they are aware of the process and that they do not act in a manner which compromises their position as a Member of the Council or brings the Council into disrepute or puts the decision made at risk of challenge
- 9.3 A Member cannot attend an appeal on behalf of the Council's Planning Committee, even if they sat on that Committee, unless this is as part of the Council's case as decided by the Director of Planning & Sustainable Regeneration or the Head of Development Management. The decision of the Committee will be documented in the minute and set out in the decision notice. The planning officer will present the Council's case on its planning merits, in accordance with the Committee's decision. The inspector is required to determine the appeal omits planning merits and therefore all representations should be so directed.
- 9.4 Where the appealed decision was contrary to the officer's recommendation, officers are generally able to present the Council's case in a satisfactory manner. Where this may not be possible, the case will be presented by a planning consultant employed by the Council.

## **10 PLANNING ENFORCEMENT**

- 10.1 It is perfectly legitimate for Members to bring to the attention of the planning service suspected breaches of planning control so that they may be investigated to see whether any action is possible or necessary. They should bring these to the attention of the Head of Development Management.
- 10.2 The Council's planning enforcement service operates to a priority system so that those breaches that cause the most harm are dealt with first. This priority system is designed to produce a fair and responsive enforcement service.

## **11 MEMBER TRAINING**

- 11.1 Members may not participate in decision making at meetings of the Council's Planning Committees unless they have attended mandatory planning training. This will be provided by the Council's planning and legal services and will cover the principles of planning and probity in planning.
- 11.2 Whilst all new Members and new substitute Members have to attend this training before they can participate in the Council's Planning Committees, all other Planning Committee Members and substitute Members are encouraged to attend the training so that they can ensure that

they keep up-to-date on these matters.

- 11.3 All Planning Committee Members should endeavour to attend any other specialised training sessions provided, since these will be designed to extend their knowledge of planning law, policy, procedures, and good practice, which will assist them in carrying out their role properly and effectively.
- 11.4 Training provided on planning related matters is aimed at Planning Committee Members but is always open to any Member with an interest to attend.

## **12 AMENDMENTS/VARIATION**

- 12.1 Where amendments to this Code are necessary due to legislative changes, the Council Solicitor may make such consequential changes to this Code as are necessary to take such changes into account.