

Cambridge City Council Planning Code of Good Practice

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1. Introduction

1.1 This Code offers guidance to councillors about good practice in the planning process. It supplements the Council's Code of Conduct for Members and aims to ensure that the Council is seen to make planning decisions properly, openly, impartially, and for justifiable reasons.

1.2 This Code applies to Members at all times when involving themselves in the planning process. It applies to formal decision-making and to less formal occasions, such as meetings with officers or the public and consultative meetings. It applies, for instance, to planning enforcement matters or site-specific policy issues as well as to the consideration of planning applications. It also applies to area committees and to development control forums.

1.3 **If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Head of Legal and Democratic Services, preferably well in advance of any meeting.**

2. Relationship to the Members' Code of Conduct

2.1 This Code is intended to supplement the Members' Code of Conduct adopted by the City Council. It is unlikely that there will be any conflict between the two codes but, if there is, the provisions of the general Code will take precedence.

2.2 It is very important that members are careful to apply both the general Code of Conduct and this Code in dealing with planning issues. Failure to do this may place the Council at risk of legal challenge or a finding of maladministration. It may also place you at risk of a complaint to the Standards Board for England.

3. Development Proposals and Interests under the Members' Code

3.1 If you have a Code of Conduct interest in any matter, you must disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. It is best to disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter. The Members' Code of Conduct sets out the circumstances which give rise to a personal interest.

3.2 If your interest is personal and prejudicial you may not participate in making the decision, either formally or informally. You should also avoid giving any impression of participation, as it is important to maintain public confidence in the impartiality of councillors in decision-making. (A personal interest is classed as "prejudicial" if it is "one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest.")

3.3 There are other things you should avoid if you have a personal and prejudicial interest. These include the following:

- You should not try to represent ward or local views on a matter in which you have a prejudicial interest. In these circumstances it is appropriate to ask another ward councillor to take on this role;
- You should not get involved in the processing of the application by using your position as a councillor to get access to officers or papers;
- You should not lobby other members of the Council, including the circulation of letters or emails, or by raising the matter in group or similar meetings;
- You should withdraw from meetings (formal or informal) at which the matter is under consideration. You may not sit in at the meeting, even as a member of the public, and you may not vote. This is the position even if you are not a member of the committee which is making the decision;

- If you are submitting your own planning application, or have a personal and prejudicial interest in a planning application, you should be particularly careful to avoid any impression of either seeking or receiving special treatment. You should also make sure that the Head of Development Services is aware of the interest. You may wish to consider employing an agent to act on your behalf in dealing with officers and/or addressing the committee.

4. Making decisions with a “closed mind” and the issue of bias.

4.1 It is important that councillors approach planning applications with an open mind and are able to weigh all the arguments right up to the point at which a decision is made. If you make it clear that you have made up your mind to vote for or against an application before the meeting, regardless of the officer’s presentation and evidence and arguments on both sides, this could well leave the eventual decision open to legal challenge and/or a finding of maladministration.

4.2 You should be careful to avoid the following, where you are likely to be a decision-maker:

- Making statements in advance of the meeting of how you are going to vote;
- Taking up a campaigning role for or against an application;
- Acting as an advocate for groups opposed to or supporting the application;
- Taking part in prior consideration of the application, for instance through membership of civic societies which are consulted on the application.

4.3 This does not mean that you have to remain silent about applications before a decision is made. You are entitled to express a legitimate concerns about an application, for instance when approached by constituents. Although care needs to be taken, you will not be approaching a decision with a closed mind if you express concerns about the application but make it clear that you will decide how you will vote when you have considered all the evidence at the Planning Committee/Area Committee.

4.4 If you have made a firm commitment to support or to oppose a planning application, you should not speak as a member of the committee or vote. However, provided that you do not also have a prejudicial interest, you

may address the committee as a ward councillor if you have the consent of the chair or of the committee to do so.

4.5 You should not participate in the consideration of a planning application if to do so would give the appearance of bias. The test for bias is: "Would the fair-minded observer, knowing the background, consider that there was a real possibility of bias?" If you believe that your participation would lead a fair-minded observer to consider that there is a real possibility of bias, you should not participate in making the decision and should withdraw. The crucial point is to avoid the danger of an appearance of bias and not whether, in practice, you would approach the decision in a fair-minded manner.

4.6 In practice, there will often be an overlap between the circumstances in which bias is an issue and a member having a prejudicial interest. But the bias rule will apply, even where you do not have a prejudicial interest. It is difficult to advise on all circumstances in which bias may be an issue but they might include the following:

- Where you are associated in the public mind with an organisation which is ~~expressing a view on an application. Mere membership of,~~ say, a campaigning group which is objecting to an application may not be sufficient to give rise to an appearance of bias. ~~But the position may well be different if you are the chair or secretary of the group.~~
- Where you are associated in the public mind with promoting a development which leads to a planning application. This could, for instance, arise through a community campaign for facilities, or a strong association with a club or society which is developing its facilities. It could also arise in respect of applications submitted by the Council. ~~Mere membership of a committee which is associated with an~~ application is unlikely to give rise to an appearance of bias but you should avoid considering an application if you are the executive councillor who has approved its submission or have some other strong personal association with the proposal which is the subject of the application.

4.7 Issues around bias are difficult and getting it wrong can lead to legal challenge and/or reference to the Ombudsman. Each case needs to be considered on its facts and if you are in any doubt you should seek advice from the Head of Legal and Democratic Services.

5. Contact with Applicants, Developers and Objectors

5.1 It is important to recognise that lobbying is a normal and perfectly proper part of the political process and is important to local democracy; those

who may be affected by a planning decision will often seek to influence it through an approach to their elected ward member or a member of the Planning Committee. However, unless care is taken, lobbying can lead to the impartiality of a member being called into question and to difficulties in the member participating in the decision.

5.2 When being lobbied, members should pay heed to the advice in Section 4 about the dangers of appearing to approach a decision with a “closed mind”. However, unless you have a personal and prejudicial interest, you can:

- Listen to/receive viewpoints from residents or other interested parties
- Make comments to residents, interested parties, other members or appropriate officers, provided this does not indicate that you are approaching the merits of the application with a “closed mind”.
- Give non-technical advice on planning procedures, including suggesting to those who are lobbying, that they should speak or write to the relevant officer, in order that their opinions can be included in the officers report to Committee

- Seek information through appropriate channels
- Alert the decision-making committee to issues and concerns that have been drawn to your attention.

5.3 If you are approached by applicants or others seeking planning, procedural or technical advice, they should be referred to officers.

5.4 If you are invited to, or asked to arrange, a formal meeting with applicants, developers or groups of objectors, you should inform the case officer dealing with the application. It is generally better to put formal meetings on an official basis, with Planning Department representation and a note taken of the meeting. This applies to all stages of the planning process, including the pre-application stage.

5.5 If you receive any approaches which raise new issues or bring new information to light, you should let the case officer know what these are as soon as possible. Please let the case officer have a copy of any correspondence or other written material you receive. If a developer offers any planning gain, or offers to accept any conditions on development in return for consent, be sure to let the case officer know as soon as possible.

- 5.6 If any approach by a developer or anyone else gives you cause to feel uneasy, please approach the Head of Legal and Democratic Services.
- 5.7 In addition, if you consider any issue or fact to be a relevant consideration, and other members may not be aware of it, be sure to raise it when the application is considered. You should not rely on information which is not in the public arena in reaching a decision.
- 5.8 In personal dealings with applicants, objectors etc, you should be mindful of the need to avoid giving a firm commitment to support/oppose the application if you are to participate in the decision. You should also bear in mind that your overriding duty is to the whole community not just to the people in your ward, that planning decisions need to be taken on planning grounds and that you should avoid the appearance of improperly favouring any person, company, group or locality
- 5.9 You should not accept gifts or hospitality from developers or from any person involved in or affected by a planning proposal including pre-application proposals. If acceptance of some hospitality is unavoidable, it should be kept to a minimum and should be declared and recorded in the Council's hospitality register. The Council's policy is that all hospitality beyond the trivial (tea and biscuits or similar) should be entered in the register. This is more stringent than the £25 minimum value referred to in the Code of Conduct. If significant hospitality is offered, you should seek advice from the Head of Legal and Democratic Services before accepting.

6. Site Visits

- 6.1 Individual Planning Committee and Area Committee members will be assumed to have familiarised themselves with a site on which they have been asked to determine an application.
- 6.2 In familiarising yourself with a site, you should avoid putting yourself in a position where you could be accused of partiality by any interested party to the application. It is best to visit a site unaccompanied by the applicant or by objectors. However, if a site visit is carried out in the presence of the applicant and/or their agent, or of residents/objectors, you should bear in mind the advice given in paragraphs 4.2 and 4.3 of this Code. You should only seek factual information to help familiarise yourself with the site and its surroundings. You should avoid being put under undue pressure from any interested party to visit a site.
- 6.3 You should not enter onto private land without first obtaining the permission of the owner. Where possible, you should seek to familiarise yourself with the site from a public viewpoint. If you go onto a site, you should only do so if satisfied that it is quite safe to do so. You should not,

for instance, enter a site where excavations or building works are in progress unless guided by a responsible site manager. If you anticipate a need to ask to enter onto land, you should attempt to make arrangements in advance and should carry (and produce) your Council identity card.

- 6.4 You should ensure that any information which you gained from the site visit is reported back to the Committee, so that all Members have the same information.
- 6.5 Formal Committee site visits may be arranged at the request of members, but this is likely to be practical only where there is a clear and substantial benefit. When they occur a record will be kept of why the visit is being held and who attended. An officer, who will point out any relevant factors and issues concerning the site and its surroundings, will accompany committee members. A site visit is not a meeting to discuss the planning merits of the scheme or to make decisions.

7. Public Speaking at Meetings

7.1 You should not 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 an appearance of bias or special access to councillors.

7.2 All planning matters will be considered in public session, unless there are specific reasons for dealing with an item as confidential under the provisions of the Local Government Act, 1972, in which case the public will be asked to leave the room.

7.3 Applicants, agents and members of the public who have made written representations on an application will be allowed to speak at Planning Committee meetings, but only in accordance with the agreed Council procedures.

7.4 You should avoid overfamiliarity with applicants, objectors and other members of the public when attending meetings, as this is open to misinterpretation.

8. Officers

8.1 You should not put pressure on officers to make a particular recommendation.

8.2 All members should pay particular attention to the professional advice and recommendations from officers. You are not bound to follow officers' advice or recommendations, but you should only depart from advice or

recommendations where you have good reason to do so, based on clear and legitimate planning grounds.

- 8.3 Planning officers must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct; primarily the Royal Town Planning Institute's Code of Professional Conduct. The views, opinions and recommendations of planning officers will be based on 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.

9. Decision Making

- 9.1 If you ask for a proposal to go before the Planning Committee or an Area Committee, rather than be determined through officer delegation, make sure that your reasons are recorded and repeated in the report to the Committee. Any such request must state the planning grounds on which it is based. A guidance note on member requests for referral of decisions to the appropriate committee is attached to this code¹.

- 9.2 You should come to meetings with an open mind and should demonstrate through your conduct at the meeting that you are giving careful, fair and balanced consideration to the issues under discussion. It is particularly important that applicants and members of the public have confidence in the way in which decisions are reached. The conduct of members can be important in ensuring that faith in the planning process is maintained.

- 9.3 You should keep in mind your obligation to make decisions in accordance with the Development Plan unless material considerations indicate otherwise, as required by section 54A of the Town and Country Planning Act 1990².

- 9.4 The Council's own proposals for development must be dealt with on exactly the same basis as applications submitted by members of the public. You should be particularly careful to ensure that any decision on a Council application is based purely on relevant planning considerations.

- 9.5 You should make a decision only after you have considered all the relevant information needed to make a decision. If you feel you have had insufficient time to digest new information or that you need further information, you should say so and, if necessary, ask for a deferral or abstain.

¹ The guidance note referred to is being revised and will be attached when the Code is issued.

² "Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise."

- 9.6 You should not 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 to the matter.
- 9.7 If you are expressing a view contrary to officer recommendations or the development plan, you should identify clearly the planning reasons leading you to take a different view.
- 9.8 Where any members are proposing to vote against the officer recommendations, the Chair shall make sure that their reasons are apparent before a vote is taken. These reasons must be recorded in the minutes if the officer recommendations are not agreed.

10. Development Control Forums

10.1 The provisions of this Code apply equally to member participation in Development Control Forums. In particular:

- You should declare any personal interest;
- You should not participate in a Development Control Forum if you have a personal and prejudicial interest;
- Member decisions are not made at Development Control Forums and you should be careful to avoid giving the impression that you are approaching the merits of the application with a closed mind.

11. Training

11.1 Planning decisions are often complex and differ in nature from some of the other decisions taken by the Council. It is crucial that planning decisions are based on legitimate planning grounds and that appropriate weight is given to possibly competing factors. The Council offers training to councillors on planning law and procedure and all members are strongly urged to participate.