

## PART 5.2

# PLANNING CODE OF GOOD PRACTICE

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**Practice Notes referred to in this part of the Constitution**

These documents are not a part of the Code but provide additional guidance and interpretation and do not require the approval of Full Council

- i) December 2015 – Material Planning Considerations
- ii) October 2016 – Site Visits
- iii) October 2016 – Delegated Decisions
- iv) October 2016 – Councillor meetings with Developers, Applicants, supporters and Objectors

## **5.2.0 INTRODUCTION**

- 5.2.0.1 The Planning Code of Good Practice is primarily aimed at Planning Committee Members and provides practical advice to councillors when dealing with planning matters, keeping decisions sound and mitigating the risk of possible challenge. It should be read in conjunction with other Parts of the Constitution which covers all aspects of councillors' conduct. Cross references will be included where necessary.
- 5.2.0.2 The scheme of delegation in Part 3 of the Constitution provides that all planning applications are delegated to the Director of Sustainable Communities, with certain exceptions (see 3.4.2 (g) xix to xxvii). The Director of Sustainable Communities determines approximately 97% of all planning applications received under delegated powers. The main role of the Planning Committee is to make decisions on the other 3% of applications.
- 5.2.0.3 This Code must be read in conjunction with the Code of Conduct for Councillors in Part 5.1.1 of the Constitution. Any Complaints made in relation to a breach of this Code by councillors will be dealt with in accordance with the Complaints Procedure in Part 5.1.2 of the Constitution and as regards breaches by officers in accordance with the Council's Corporate Complaints Procedure which can be found at <http://www.chelmsford.gov.uk/complaintsprocedure>

## **5.2.1 ROLES AND RESPONSIBILITIES**

- 5.2.1.1 Councillors and officers have different but complementary roles in the planning process. Some councillors will have more than one role, with some acting as both Ward Councillors and Planning Committee Members. Cabinet Members may be members of the Planning Committee but when taking decisions on planning applications they are doing so as members of the Planning Committee and not as Cabinet Members.

### **Councillors who are on the Planning Committee**

- 5.2.1.2 In making decisions on planning applications, councillors will:
- a) Act reasonably.
  - b) Act honestly, fairly and openly.
  - c) Approach each application on its own merits.

- d) Weigh up all relevant material planning considerations and planning policies.
- e) Avoid undue contact with interested parties.
- f) Ensure that the reasons for the decisions are clearly stated and based on relevant planning policies and any other material considerations.

5.2.1.3 Officer reports to the Planning Committee will identify what Policies apply and what are material considerations and if councillors are unclear they should seek advice from officers. Decisions of the Planning Committee should never be made on political or personal grounds.

#### Material Planning Considerations Practice Note

5.2.1.4 The weight councillors attach to the relevant considerations is a matter of their planning judgement. Weight should not be given to non-planning related matters that may be raised by members of the public.

#### **Cabinet Member on the Planning Committee**

5.2.1.5 Under Part 3.2.3(f) of the Council's Constitution the Cabinet Member for Planning and Economic Development is specifically identified as a member of the Planning Committee. However, there may therefore be occasions when that councillor will want to press or promote a particular development, such as one on the Council's own land, because it is beneficial to the development of the City's area and may be so committed to the development as the result of their Cabinet responsibility that this is the determining factor for them.

- a) In these circumstances, the appropriate approach is to allow the Cabinet Member to address the Planning Committee for this item, but:
- b) Only from the area set aside for Ward Councillors and other statutory consultees; and
- c) Not take part in the vote on the relevant application.

### **Ward Councillors on the Planning Committee**

- 5.2.1.6 Ward Councillors who also sit on the Planning Committee wishing to campaign for or against a proposal could speak at a Planning Committee on behalf of their constituents but will have to declare their pre-determined position. The councillor can continue to represent those ward interests as a spokesperson for their local community but would have to declare their position and not take part in the vote to avoid accusations of bias.

### **Ward Councillors not on the Planning Committee**

- 5.2.1.7 Ward Councillors who are not on the Planning Committee are in a position to represent the interests of their Ward on planning related matters. They may:

- a) attend the Planning Committee as an observer;
- b) make a statement about applications at the Planning Committee meeting, but cannot vote or participate in the general discussion of the application by the Committee;
- c) speak at pre-application presentations to the Planning Committee; and
- d) request briefings from officers on applications.

- 5.2.1.8 Ward Councillors must not sit amongst the Committee members but in the specific area set aside for them and other statutory consultees such as the Parish or Town Council representatives.

### **All Councillors**

- 5.2.1.9 Councillors should not put pressure on officers for a particular recommendation or decision, and should not do anything which compromises, or is likely to compromise, the officers' impartiality or integrity. The rules related to this are set out in part 5.4 of the Constitution. Councillors must also not lobby Planning Committee members.

- 5.2.1.10 If Councillors wish to obtain any information on a particular application they should in the first instance contact the case officer by either telephone, email or in person. If in person, councillors are requested to phone in advance to check that the officer is in the office. If a meeting with a constituent and/or applicant is required this should be arranged through the case officer as there are no meeting rooms with unaccompanied public access in the planning offices.

5.2.1.11 In accordance with the Officer Scheme of Delegation in the Constitution:  
Where a representation has been received in respect of an application before the end of the 21 day consultation period which is contrary to the recommendation of the case officer, then the ward councillor(s) for the ward or wards in which the application site lies can request that the application be reported to the Planning Committee for determination.

5.2.1.12 In the event that a councillor has concerns over the way an application is progressing, they should contact the Development Management Manager, Development Manager or Strategic Development Manager in the first instance to discuss the matter.

### **Lobbying**

5.2.1.13 If a member of the Planning Committee is lobbied extra care is needed to avoid any perception of predetermination or bias. Therefore councillors should seek to:

- a) Restrict themselves to giving advice about the process and what can and cannot be taken into account and not express any views on the merits or otherwise of the application or objections.
- b) Make it clear that planning decisions cannot be made on a party political or personal basis in response to lobbying.
- c) Direct the person to make their representations to officers instead. However, where a Committee member decides to make representations as a Ward Councillor to raise issues which have been made by objectors or supporters, they must follow the procedures set out in the preceding paragraphs of this Code.

### **Officers**

5.2.1.14 The Director of Sustainable Communities has a dual role in the decision making process by:

- a) Using delegated powers to make decisions on the majority of planning applications. These can be found in the Officer Scheme of Delegation in Part 3.4 of the Constitution; and
- b) Making recommendations on planning matters which are determined by the Planning Committee. When making such recommendations the function of officers is to advise councillors. This ensures that any decision they make is lawful and identifies any possible consequence of taking that decision.

5.2.1.15 All planning officers shall follow the RTPI's Code of Professional Conduct. As with all other employees of the Council they have a duty to act impartially.

**5.2.2 DISCLOSABLE PECUNIARY INTERESTS AND OTHER PECUNIARY AND NON-PECUNIARY INTERESTS, PREDETERMINATION AND BIAS AND LOBBYING**

**Disclosable Pecuniary Interests (DPIs)**

5.2.2.1 If a member of the Planning Committee has a Disclosable Pecuniary Interest in any planning matter the councillor must declare that interest, in accordance with the Code of Conduct for Councillors in Part 5.1.1 of the Constitution and the Localism Act 2011. In particular they must:

- a) declare their interest and the nature of it as soon as they become aware that they have such an interest,
- b) withdraw from any meeting at which the matter is being considered, and
- c) not give the appearance of seeking to influence any decision on the application nor participate in the debate or voting on that application.

**Other Pecuniary and Non-Pecuniary Interests**

5.2.2.2 If a member of the Planning Committee has any other pecuniary or non – pecuniary interest in any planning matter the councillor must declare the interest and state the nature of the interest but can take part in the discussion and vote on any decision to be taken.

5.2.2.3 However, they should also consider whether in doing so they may be breaching any aspect of the Code of Conduct for Councillors, in which case they are advised to participate in the debate but not the vote. Advice on this can be obtained from the Monitoring Officer or the Legal and Democratic Service officers serving the Committee.

5.2.2.4 When a member of the Planning Committee is also a Parish Councillor and that Parish Council is a consultee on a planning application, that councillor should declare an interest and withdraw from consideration of that application if he or she has been involved in formulating the Parish's comments.

## **Predetermination and Bias**

- 5.2.2.5 Members of the Planning Committee should avoid any appearance of bias or having predetermined their views before taking a decision on a planning matter.
- 5.2.2.6 If a member of the Planning Committee is predetermined or biased on any item of business they should declare this and withdraw from the Committee during its consideration as otherwise the decision of the Committee could be challenged. Alternatively the Committee member can declare that they will not vote on the decision to be taken and address the Committee as a Ward Councillor from the seating are set aside as referred to in paragraph 5.2.1.6 above.
- 5.2.2.7 If a member of the Planning Committee is predisposed to vote in a certain way, even if they have made these views publicly known, Section 25 of the Localism Act 2011 allows that councillor to take part in the decision as long as they have retained an open mind before hearing all relevant information. A statement to that effect should be made by the councillor at the committee meeting before the item is discussed.

## **5.2.3 COUNCILLOR AND OFFICER CONTACT WITH APPLICANTS AND DEVELOPERS**

### **Officers**

- 5.2.3.1 The Government encourages applicants to enter into pre-application discussions. These discussions provide an opportunity for the applicant to receive advice and information and to seek to identify concerns with and possible solutions or improvements to the proposal. It should be made clear that any guidance given by an officer will not bind the local Planning Authority to making a particular decision.

### **Councillors**

- 5.2.3.2 Planning Committee members or substitutes should be accompanied by an officer when meeting with applicants or developers either before or after an application is submitted. It is accepted that this may not always be possible, for example where an applicant raises an issue at a meeting that is not specifically called to deal with the application.

Councillor meetings with Developers, Applicants, Objectors and Supporters

- 5.2.3.3 Councillors should refer applicants who approach them for advice to officers.

- 5.2.3.4 If Planning Committee members do take part in meetings with potential applicants, agents or objectors extra care is needed to avoid any perception of predetermination or bias.

**5.2.4 DEVELOPER PRESENTATIONS TO THE PLANNING COMMITTEE**

- 5.2.4.1 From time to time some proposals of a complex nature may require the developer to make a presentation to the Planning Committee in advance of its consideration. Any such developer presentations should be held in public with notes taken. It should be made clear at the beginning that only facts will be presented to the Committee and no decision taken.

**5.2.5 DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS AND OFFICERS**

- 5.2.5.1 Proposals submitted by or on behalf of City Councillors or officers including a member of their household shall be referred to the Planning Committee unless the Monitoring Officer has notified the Director of Sustainable Communities in writing that they are satisfied that the matter can be dealt with under delegated powers (see 3.4.2 (g)(xxiii) of the Officer Scheme of Delegation in the Constitution).

- 5.2.5.2 A Councillor or Officer submitting, or having submitted on their behalf or on behalf of another, a proposal or application to the Council, shall make it clear in writing at the time that they are a councillor of or employed by the Council. The Director of Sustainable Communities shall keep a record of all such applications and inform the Monitoring Officer.

**5.2.6 OFFICER REPORTS TO COMMITTEE**

- 5.2.6.1 All applications placed before the Planning Committee shall be accompanied by a written report of the officers together with a recommended course of action for the Committee.

- 5.2.6.2 Each report shall be accurate and shall fairly reflect the views of those consulted and the content of any objections.

- 5.2.6.3 Information on the application shall include details of the relevant policies in the development plan, the relevant planning history of the site and any other relevant information.

- 5.2.6.4 Recommendations shall be in writing and supported by existing policies, guidance and technical information together with all material planning considerations.

- 5.2.6.5 Any amendments and alterations to the printed agenda (the “green sheet”) will be tabled at the meeting and published on the Council’s website. The deadline for comments on the green sheet is midday on the day before the meeting.
- 5.2.6.6 If a material issue is raised at the meeting but not covered in the written report and could affect the decision, it may be necessary to defer the item unless the issue can be properly addressed at the meeting.
- 5.2.6.7 Presentation material from public speakers may be allowed at the discretion of the Chair. It must be provided in a specified form three working days before Committee so that officers can check that no new points have been included. The Chair has the discretion to allow new information raised under the public speaking section of the agenda to be considered at the meeting rather than be deferred. A deferral will still be needed where additional advice or investigations by officers was needed to properly advise members.

Delegated Decisions Practice Note

## **5.2.7 DECISIONS CONTRARY TO OFFICER RECOMMENDATION**

- 5.2.7.1 If the Planning Committee wants to make a decision contrary to the officer’s recommendation the material planning reasons for doing so shall be clearly stated, agreed and minuted. The application should be deferred to the next meeting of the Committee for consideration of appropriate conditions and reasons and the implications of such a decision clearly explained in the report back.
- 5.2.7.2 Only those Members of the Committee present at both meetings can vote on the reason for the decision. Exceptionally, the Committee may decide that circumstances prevent it from deferring the decision but its reasons must be clearly stated and recorded in the minutes. The Committee may be asked to nominate a ‘member witness’ at any subsequent appeal hearing in order to justify their decision.
- 5.2.7.3 Certain Council applications can be approved even if they are contrary to planning policy. However, they must be referred to the Secretary of State to consider whether the decision should be taken by the Government. This will only be where there is a major development proposed and a full justification and reasons for the recommendation is required

**5.2.8 CONDUCT AT THE MEETING**

5.2.8.1 The Chair of the Planning Committee is responsible for the conduct of the meeting in accordance with the relevant Council Procedure Rules and for the effective delivery of business. (See Parts 4.2 and 4.3 of the Constitution.)

5.2.8.2 The Planning Committee meetings are open to the public and are often well attended. It is important to demonstrate that decisions have been made fairly and transparently. Any debate should be confined to the merits of the matter and all speakers must be afforded due respect.

**5.2.9 PUBLIC QUESTION TIME AND CONTRIBUTIONS BY OTHER BODIES AT PLANNING COMMITTEE**

5.2.9.1 In accordance with paragraph 4.2.14.3 of the Constitution, members of the public may speak at Planning Committee and the following process will be followed:

- a) Each person is allocated two minutes to ask a question or make a statement on any item before the Committee. The Chair may in exceptional cases and at their discretion extend the 2 minutes time period for individual questions/statements, provided no unfairness will result.
- b) A total of fifteen minutes is allocated to each meeting for public questions although the Chair can extend this.
- c) These arrangements also apply to applicants and agents.
- d) No supplementary questions or statements will be allowed by the same person other than at the discretion of the Chair of the Committee as set out in paragraph 5.2.6.7 above.

5.2.9.2 In accordance with 4.2.23.1 of the Constitution, a representative of a Parish or Town Council may speak at a Planning Committee meeting for up to 5 minutes on any application to be decided by the Committee, provided it is a matter about which that Parish/Town Council has been consulted.

5.2.9.3 All those members of the public wishing to speak should be asked to:

- a) give their name and address
- b) confine their comments to planning merits, and
- c) not to repeat comments made by previous speakers on the same item.

- 5.2.9.4 Generally new documents cannot be circulated at the Committee meeting as Members of the Committee may not be able to give proper consideration to the new information and officers may not be able to check for accuracy or provide considered advice on any material considerations arising. The Chair may in exceptional circumstances, and at their discretion, allow documents to be circulated at the meeting if the alternative would be to defer the item and provided no unfairness results.
- 5.2.9.5 Messages should never be passed to individual Committee members, either from other councillors or from the public. This could be seen as seeking to influence that councillor improperly and could create a perception of bias.
- 5.2.9.6 Other City Councillors may attend and address the Committee and at the Chair's discretion follow up with any supplementary information if necessary but cannot vote.

#### **5.2.10 SITE VISITS**

- 5.2.10.1 Site visits by members of the Planning Committee will only usually be necessary if the impact of the proposed development is difficult to visualise from the plans and any supporting material including photographs taken by officers.
- 5.2.10.2 The Planning Committee, after having agreed the need for a site visit, shall clearly specify the reason(s) for the site visit and indicate those aspects which it would wish to consider on the application site or adjoining site and any other arrangements for the site visit. The application will be deferred to a future meeting once the site visit has taken place.

Site Visits Practice Note

#### **5.2.11 TRAINING**

- 5.2.11.1 Councillors involved in taking decisions should have undertaken appropriate training on planning matters. The subjects covered by the training will be decided by officers in consultation with councillors. Such training should include all aspects of probity in planning and the need not to put pressure on members of the Committee to vote in a particular way when determining applications.
- 5.2.11.2 No councillor should be appointed to the Planning Committee as a member or substitute without having agreed to undertake training in planning procedures as specified by the Council. Planning Committee members and substitutes who attend fewer than two training events in a year will be ineligible to serve on the Committee or act as a substitute for members of the Committee.

5.2.11.3 New Members of the Planning Committee are required to attend as many of the training sessions as they can and in any case at least two in the first six months following their appointment to the Committee.

5.2.11.4 All Planning Committee training presentations will be published on the Members' area on the Council's Intranet.

#### **5.2.12 REGULAR REVIEW OF DECISIONS**

5.2.12.1 From time to time arrangements will be made for members of the Planning Committee to visit a sample of implemented planning permissions, so that a regular review of the quality of decisions can be undertaken.

#### **5.2.13 PETITIONS**

5.2.13.1 Whilst petitions are generally covered by the Constitution at Part 4.3, those received in respect of planning applications are not subject to that procedure.

5.2.13.2 Any such petitions:

- a) will be summarised as to objections or support in the same manner as other consultation responses;
- b) will have the number of signatories reported and the chief signatory advised if the matter is being brought before the Planning Committee.

5.2.13.3 Whether the decision is taken by Committee or officers, the summary of the issues raised will be addressed in any report produced before the decision is taken.

#### **5.2.14 GIFTS AND HOSPITALITY**

5.2.14.1 The rule on the receipt of Gifts and hospitality received by councillors and officers is set out in Part 5.1.2 Annex 7 of the Constitution. However, in addition, Planning Committee members and substitutes must declare any Gifts or Hospitality from anyone, other than cups of tea or similar refreshment.