

## **PART 2 - MEMBERS' PLANNING CODE OF GOOD PRACTICE**

### **1. Introduction**

- 1.1 This code of good practice (the planning code) gives advice to members who:
- are members of a Planning Committee (the Committee);
  - sit in on a meeting of the Committee as a substitute member;
  - attend the Committee (whether or not they take part in a debate in the Committee on a planning application or other development management matter);
  - are involved outside the Committee on a planning application or other development management matter – including informal occasions such as meetings with officers or public and consultative meetings.
- 1.2 The aim of the planning code is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or is not well founded in any way. Members must make planning decisions openly, impartially with sound judgement and for justifiable reasons.
- 1.3 This is particularly important, as planning matters will be subject to close scrutiny both because large sums of money will be at stake for applicants for planning permission and because the quality of the built and natural environment in which local residents and the wider community live and work may be irrevocably affected.
- 1.4 The introduction of the Human Rights Act 1998 has had implications for the planning system and has created enhanced requirements for procedural fairness, transparency and accountability in determining planning applications.
- 1.5 The planning code is intended to minimise the prospect of legal or other challenge to planning decisions. However, non-compliance without good reason could be taken into account in investigations into possible maladministration or may have implications for the standing of Councillors and the Council as a whole.

### **2. Relationship with the members' code of conduct**

- 2.1 The members' code of conduct must always be complied with and the rules in that code must be applied before considering the planning code.
- 2.2 The planning code is not intended to form a part of the adopted members' code of conduct but is a separate document, which is both supportive of the members' code and the source of expanded guidance in the particular area of planning.
- 2.3 To distinguish it from the members' code, this document is referred to as the planning code.

### 3. Declaration of interests

- 3.1 The members' code places requirements on Councillors on the registration and declaration of their interests and participation in the business of the Council in light of those interests. These requirements must be followed scrupulously and Councillors should review their situation regularly. Whilst the Standards Board and Medway's Standards Committee produces guidance, and advice can be sought from the Monitoring Officer, ultimate responsibility for compliance rests with individual Councillors.
- 3.2 In general, as matters considered at the Committee relate to approvals, consents, licences, permissions or registrations a Councillor will have a prejudicial interest in a matter under consideration at the Committee if he or she has a personal interest and a member of the public with knowledge of the relevant facts would reasonably regard that interest as so significant that it is likely to prejudice the Councillor's judgement of the public interest. The list of personal interests is set out in paragraph 8(1) of the members' code.
- 3.3 A Councillor can have a personal and prejudicial interest in a planning application, which affects them, their employer, a member of their family or a person with whom they have a close association. Examples include but are not limited to
- applications for minor developments relating to a property in close proximity to one owned/occupied by the Councillor, his or her employer, a member of his or her family or a person with whom the Councillor has a close association;
  - applications for major developments a more substantial distance from properties owned or occupied by one of those persons;
  - applications made by a member or his or her employer, a member of his or her family or a person with whom the Councillor has a close association.
- 3.4 The exemptions in the Members' Code relating to speaking at a committee when a member has a prejudicial interest do not apply to Medway's Planning Committee, as public speaking is not permitted at the committee. Therefore if a Councillor has a prejudicial interest in an application then they
- must declare it as soon as they become aware of it. Wherever possible this should be done at the start of the meeting;
  - must leave the room when that item is being discussed and must not participate in or give the appearance of trying to participate in the making of a decision;
  - must not represent ward or local views – they will need to get another member to do so instead;
  - must not get involved in processing the planning application;
  - must not seek any preferential treatment. This includes using their position to discuss a proposal with officers when other members of the public would not have the same opportunity to do so.

- 3.5 A prejudicial interest should also be declared at informal meetings or discussions including those held with officers and other Councillors.
- 3.6 Whilst having a prejudicial interest does not prevent a Councillor from seeking to explain a proposal in which they have such an interest to an appropriate officer, the members' code and case law does mean there are greater limitations on Councillors than on a member of the public.
- 3.7 A personal interest must be declared as soon as a Councillor becomes aware of it. This should wherever possible be at the start of a meeting. A personal interest in itself does not prevent a member from speaking and voting. Where a Councillor does not have a prejudicial interest and his or her personal interest arises solely from membership of, or position of control or management on, any other body to which the Councillor was appointed by the Council or any other body exercising functions of a public nature, the personal interest need only be declared if the Councillor speaks on the matter.

#### **4. Fettering discretion**

- 4.1 If a Councillor has taken a firm view on the planning matter, or appears to have made up their mind before the formal consideration of a planning application, that Councillor is said to have fettered their discretion. A member who makes a statement in favour of or against the planning proposal in advance of the Committee which will decide that application will have fettered their discretion and will not be able to partake in the decision making process.
- 4.2 If a member who has fettered their discretion takes part in the decision that will put the Council at risk of a finding of maladministration. It could also lead to legal proceedings on grounds of there being a danger of bias or predetermination or a failure to take into account all factors enabling the proposal to be considered on its merits.
- 4.3 As long as a Councillor does not have a prejudicial interest, they can still make use of separate speaking rights granted to ward Councillors to address the Committee.
- 4.4 Areas which need particular attention, are set out below.
- 4.5 Membership of a Parish Council

A Councillor who is also a member of a Parish Council which has been consulted on a planning application is not automatically debarred from participating in a planning decision at Medway even when they may have sat on the relevant parish planning Committee. However the following key principles must be observed if a Councillor is to participate in the planning decision at Medway:

- The planning application must not substantially affect the well being or financial standing of the Parish Council.
- Careful consideration must be given to what a Councillor says at the parish meeting so that a reasonable and informed member of the public

would feel they were coming to the decision at Medway without a fixed view. Strong opposition or support to an application at the parish meeting will debar participation at the planning decision at Medway.

- If speaking at the parish meeting the Councillor must make it clear that what is said is based on the limited information available and will be reviewed at the Medway meeting.
- Medway Councillors who are members of a Parish Council should avoid voting when consulted on an application at parish level.

4.6 Even where a Parish Councillor who is also a Medway Councillor has fettered their discretion they will have the same right as any other ward Councillor to address the Planning Committee in that capacity.

4.7 Membership of a Parish Council constitutes a personal interest where the Planning Committee considers an application where that parish has been consulted and this must be declared in the usual way.

#### 4.8 Lobbying by Councillors

If you lead, represent or are a member of a group whose primary purpose is to lobby to promote or oppose a planning application you will have fettered your discretion. Depending on your involvement you will probably also have a prejudicial interest.

4.9 The position in 4.8 is distinct from membership of general interest groups, which reflect a Councillor's area of interest, for example the RSPB, the Ramblers' Association or a local historical society. However a personal interest should be disclosed where that body has made representations on an application (subject to the exception referred to in paragraph 3.7 of this code). If a Councillor at the time of declaring that interest is able to say that they were not involved in preparing that representation and have reserved their judgement, then the Councillor will not have fettered their discretion. If they cannot they will have fettered that discretion and may also, depending on the level of involvement, have a prejudicial interest.

4.10 Councillors should not excessively lobby other Councillors regarding their views on planning applications. Nor should they, outside of the planning meeting, try to persuade other Councillors how to vote.

4.11 Councillors should not decide or discuss how to vote on planning applications at political group meetings or lobby other members to do so. Political group meetings should never dictate how members should vote on planning applications.

#### 4.12 Lobbying of Councillors

Lobbying is a normal and perfectly proper part of the political process. Those who may be promoting or affected by a planning decision will often be seeking to influence it through an approach to their elected ward Councillor, another Councillor or a member of a Planning Committee. However lobbying can, where a member is a member of a Planning Committee which will determine

the application, lead to the integrity and impartiality of a Councillor being called into question. This can in turn affect the validity of a planning decision.

- 4.13 A Councillor who wishes to participate in the determination of a planning application should explain to persons lobbying or attempting to lobby that whilst they can listen to what is said it would prejudice their impartiality and ability to participate in the decision if they give a firm statement of how they intend to vote or express strong sympathies with a point of view in advance of the meeting. For the avoidance of doubt a Councillor will not have fettered their discretion
- by just listening to viewpoints from residents or interested parties;
  - making comments which fall short of prejudging the issue;
  - seeking information through appropriate channels;
  - acting as a vehicle for the expression of views as a ward Councillor providing they have not committed themselves to vote in accordance with those views or that they are not acting as an advocate for a particular viewpoint.
- 4.14 When a Councillor participates in a planning decision, their overriding duty is to the community as a whole and not just people in their ward. As decisions need to be taken impartially a Councillor should not improperly favour or appear to improperly favour any person, company, group or locality.
- 4.15 In addition to the requirement to declare the interests of any person from whom the Councillor has received a gift or hospitality with an estimated value of at least £25, Councillors should not accept gifts or hospitality from any person involved in or affected by a planning application. It is advisable to let the Monitoring Officer know if they feel they have been exposed to excessive lobbying or offers of gifts or hospitality linked to a planning application.
- 4.16 It is good practice for Councillors to
- forward copies of lobbying correspondence to the Director of Regeneration, Community and Culture;
  - advise the Director of Regeneration, Community and Culture of any offers of planning gain or constraint on development made to them;
  - comply with guidance on lobbying or attending presentations or discussions set out in section 5 of the planning code.

## **5. Contact with applicants, developers and objectors**

- 5.1 Councillors should refer those who approach for assistance on planning, procedural or technical matters to relevant officers.
- 5.2 Councillors should avoid agreeing to formal meetings with applicants, developers or groups of objectors. If in exceptional circumstances a formal meeting is considered necessary it should be organised by the relevant officers. All parties will be advised the meeting is not a decision-making meeting.

5.3 The following rules should be applied in respect of presentations by applicants or developers:

- Councillors should not attend planning presentations unless organised by an officer.
- Questions should be limited to those necessary to clarify a Councillor's understanding of proposals.
- It must be remembered that the presentation is not a part of the formal planning process.
- The presentation is a form of lobbying and Councillors who will be determining the application should not express views on how they will vote.

## **6. Site visits**

6.1 Site visits can be a valuable part of the planning process. However they should normally only be requested where there are definite benefits, for example:

- Particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection.
- There are significant policy or precedent implications and specific site factors need to be carefully addressed.

6.2 No hospitality should be accepted at site visits.

6.3 Councillors should endeavour to keep together as a group and not engage individually in discussions with any applicants, objectors or third parties who may be present.

6.4 Councillors who wish to take part in the planning decision should not express views to anyone present.

6.5 It is acceptable to ask officers at the site visit questions or to seek clarification on matters relevant to the site inspection.

6.6 The site visit should be properly recorded and report back to the Committee.

6.7 Councillors who wish to determine an application should not enter a site subject to a planning proposal other than as part of an official site visit even in response to an invitation.

6.8 The procedure for site visits is set out in the protocol for site visits attached as an appendix to this code .

## **7. Contact with officers**

7.1 General guidance is given in the protocol on member/employee relations in the constitution and that is not repeated here.

- 7.2 Councillors should not put pressure on officers to put forward a particular recommendation. However this does not prevent a Councillor asking questions or submitting views to a relevant officer.
- 7.3 Officers must act in accordance with the employee code of conduct and any relevant professional codes of conduct, for example the Royal Town Planning Institute's code of professional conduct. As a result planning officers views will be presented on the basis of their overriding professional obligation of professional independence which may on occasion be at odds with the views, opinions or decisions of the Committee or its members.

## **8. Planning applications by Councillors and officers; and Council development**

- 8.1 Proposals to the Council by serving and former Councillors and officers and members of their family or persons with whom they have a close association can easily give rise to suspicions of impropriety. So indeed can proposals for a Council's own development. Proposals can take the form of either planning applications or development plan proposals.
- 8.2 Councillors and officers who submit proposals should notify the Director of Regeneration, Community and Culture of the proposal and play no part in its processing or determination and avoid contact, whether direct or indirect with members of the Committee concerning the application.
- 8.3 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in such a way that gives no grounds for accusations of favouritism. Members should carefully consider using agents to submit and take forward their own applications.
- 8.4 Serving Councillors and officers should avoid acting as agents for people pursuing a planning matter and where they do should play no part in the decision making process for that proposal.
- 8.5 All such proposals shall be decided by the Committee and not dealt with by officers under delegated powers. Members considering an application must of course consider whether the nature of any relationship with the member submitting the planning application requires the declaration of a personal or a prejudicial interest.

## **9. Decision making**

- 9.1 Councillors making planning decisions must
- come to meetings with an open mind and demonstrate they are open minded;
  - comply with section s38 Planning & Compulsory Purchase Act 2004 and make decisions in accordance with the development plan unless material considerations indicate otherwise;

- not vote or take part in the meeting's discussions on a proposal unless present to hear the entire debate including any officer introduction/presentation;
- come to a decision only after due consideration of all information reasonably required upon which to base such a decision;
- request further information if it is felt there is insufficient information before the Committee to reach a decision;
- where proposing, seconding or supporting a decision contrary to officer recommendations or the development plan identify the planning reasons behind the decision before the vote is taken which may have to be justified in the event of an appeal or other challenge.

9.2 The Planning Committee has agreed that where the statutory consultation period for a planning application has expired prior to the date of the Planning Committee at which the application is to be considered, no representations shall be accepted for consideration by the Planning Committee unless they are received within the Development Management department before 12 noon on the day before the date of the Planning Committee at which the application is to be considered.

## **10. Training**

10.1 Councillors should not participate in decision-making meetings dealing with planning matters unless they have attended any prescribed training.

<b>PROTOCOL FOR MEMBER SITE VISITS</b>		<b>OP800</b>	Issue no 002
		Date :	04/01/2010
1.	<p><b><u>Purpose</u></b></p> <p>To ensure consistent and appropriate procedures are followed in the conduct of Member site visits arising as part of the consideration of a planning application, or other development by the Planning Committee.</p>		
2.	<p><b><u>Scope</u></b></p> <p>The conduct of any site visit to be undertaken by Members of the Planning Committee as part of the consideration leading to the determination made under the Planning Acts including the determination of any application for planning permission, Listed Building Consent, confirmation of a Tree Preservation Order etc. and the expediency of taking enforcement action.</p>		
3.	<p><b><u>Responsibilities</u></b></p> <p>Overall responsibility lies with the Development Manager (DM). Specific duties are carried out by Principal Planners (PP), Senior Planners (SP), Planners (PO), Committee Co-ordinators (CC) and the Committee Support Officers (CSO) in Democratic Services.</p>		
4.	<b><u>Procedure</u></b>	<b>Action</b>	<b>Doc</b>
4.1	<p>The Planning Committee will resolve to defer a decision on a planning application or other planning matter in order that a site visit (SV) can take place to assist the consideration. It should be noted that site visits should normally only be agreed where:</p> <ul style="list-style-type: none"> <li>• Particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection and/or</li> <li>• There are significant policy or precedent implications and specific site factors need to be carefully addressed (Medway Planning Code of Conduct April 2004)</li> </ul> <p>Members should note that the site visits are for fact-finding reasons to assist Member deliberations and are not for discussing the merits of the proposal which should only be done at Committee.</p> <p>The DM or officer attending the Committee and CC should note the reasons for the deferral for the minutes.</p>	DM/ CC	DCC minutes

<b>PROTOCOL FOR MEMBER SITE VISITS</b>	<b>OP800</b>	Issue no 002
	Date :	04/01/2010

	<b><u>Procedure</u></b>	<b>Action</b>	<b>Doc</b>
4.2	As soon as possible following the meeting, and at least within one working day, the DM should inform the case officer that the item has been deferred.	DM	
4.3	<p>The Case Officer (CO) should immediately</p> <ul style="list-style-type: none"> <li>▪ retrieve the file and ensure that a copy of the report to the Committee is added to it marked as “Deferred for a site visit” and the date of the meeting.</li> <li>▪ advise the Committee Support Officer (CSO) of the names and addresses of persons to be notified of the date and arrangements for the site visit.</li> <li>▪ carefully check both the computer (20/20) record and the application file. Persons to be notified are: <ul style="list-style-type: none"> <li>○ The applicant and/or agent</li> <li>○ Any person who has made representations including local residents, any Parish Council, any Amenity or Residents Society or representative group, and any consultee who has responded</li> <li>○ Any other officers of the Council from other sections/departments needed to advise Members on specialist aspects</li> </ul> </li> </ul> <p>Special provisions may need to be made such as pegging out a building, an area of the site to be cleared, or Members attending need to wear boots or other particular clothing. The CO should advise CSO of such factors to pass on to those attending.</p>	CO  CO/ CSO	
4.4	CSO to liaise with the Chairman and Planning Spokesperson to agree a date and time for the site visit (SV); then contact the agent/applicant by telephone to check that this is possible in terms of obtaining access to the site. The CSO should ensure that the agent/applicant (if not the landowner) has the landowner’s permission for the SV.	CSO	
4.5	The CSO should then write to all Councillors and the persons to be notified and the DM, PP and CO advising of the date and time of the SV. The letter should include advice that the purpose of the SV is for Members to understand the physical factors at the site although they will hear representations from interested parties. The visit is not a decision taking mechanism and there will be no vote or resolution at the SV.	CSO	

<b>PROTOCOL FOR MEMBER SITE VISITS</b>	<b>OP800</b>	Issue no 002
	Date :	04/01/2010

	<b><u>Procedure</u></b>	<b>Action</b>	<b>Doc</b>
4.6	The CSO will supply CO with an attendance sheet which the CO should ensure is signed by Members at the site visit	CSO/ CO	
4.7	The SV will be attended by the CO, PP or DM who should ensure that he/she takes the file, a scale rule, mobile phone and any necessary equipment needed to explain the proposal and is appropriately dressed.  The CO/PP/DM should ensure that he/she arrives at the site in good time. If it is the first SV of the day he/she should arrive 10 minutes before the official start time to be able to deal with any concerns from members of the public or non-Council attendees.	CO/ PP/ DM	
4.8	The site visit will be conducted by the Chairman of the Planning Committee or their nominated deputy but the CO/PP/DM will be there to advise on procedures and protocol. The visit will follow the following format: <ul style="list-style-type: none"> <li>• The Chairman will call the session to order and explain the reason for the visit and the procedure to be followed making it clear that no decision will be taken and the date of the meeting where the application will be re-considered.</li> <li>• The CO/PP/DM will explain the application proposal or the development under consideration; summarise the representations received; identify the planning issues and how the officer recommendation has been reached.</li> <li>• The Chairman will ask the applicant/agent if they wish to add any points; ask if any members of the public/other attendees wish to comment or ask questions, ask Committee Members if they wish to ask questions or seek points of clarification, then questions will be fielded either by the Chairman, the CO/PP/DM or the applicant/agent – to be decided by the Chairman</li> <li>• The Chairman will close that part of the visit, confirming that no decision will be taken and the date of the meeting when the application will be next considered but that no further comments will be heard at that time.</li> </ul> <p>Members of the Committee will look at the site visiting those parts deemed necessary including any vantage points from neighbouring property.</p>	CO/ PP/ DM	

<b>PROTOCOL FOR MEMBER SITE VISITS</b>	<b>OP800</b>	Issue no 002
	Date :	04/01/2010

	<b><u>Procedure</u></b>	<b>Action</b>	<b>Doc</b>
	<p>When the Chairman considers that the time is appropriate he/she will announce that the site visit is formally closed.</p> <p><b><u>Procedure</u></b></p> <p><b>During the SV Members must stay together as a group to ensure that there is no opportunity for individual lobbying and all are able to consider the development on the basis of the same information. If there are any further questions they should be addressed to the Chairman so that they can be answered in a proper manner so that all can hear. Members must be aware that they have no powers of entry and can only enter land or a building at the agreement of the owner/occupier. Members of the public have no rights to accompany the Councillors visiting the site and likewise may only enter land or a building with the permission of the owner/occupant.</b></p>		
4.9	The CO/PP/DM will make a note of the persons attending the SV. This note will be added to the supplementary agenda advice sheet for the next Committee meeting together with a brief summary of the issues raised at the SV.	CO/ PP/ DM	Supp. Agenda
4.10	The CO/PP/DM will send, email or fax the attendance sheet to Members Services.	CO/ PP/ DM	