



To: Executive Councillor for Planning Policy and Transport: Councillor Kevin Blencowe
Report by: Head of Planning Services
Relevant scrutiny committee: Civic Affairs Committee 28/1/2015
Planning Committee 4/2/2015
Council 16/4/2015
Wards affected: All

PLANNING CODE OF GOOD PRACTICE UPDATE

Not a Key Decision

1. Executive summary

1.1 The Council's Planning Code of Good Practice has been rewritten to reflect recent changes in legislation and best practice.

2. Recommendations

2.1 Civic Affairs Committee is recommended:
To endorse the approval of the updated Planning Code of Good Practice

3. Background

3.1 The planning code is the council's guidance for Members and officers about operating good practice in the planning process. It supplements the code of conduct for Members and aims to ensure that the council makes, and is seen to make planning decisions properly, openly, impartially and for sound and justifiable reasons.

3.2 The attached document is the updated version of the Council's planning code of best practice and it has been drawn up using the model guidance provided by the Local Government Association and the Planning Advisory Service.

4. Implications

(a) **Financial Implications** – none but adoption of a best practice code would be considered an appropriate risk management approach.

- (b) **Staffing Implications** - none
- (c) **Equalities and poverty Implications** – there are no adverse implications, an EQIA assessment has not been considered necessary to support the update of the code of good practice document. Openness, equity and fairness in the operation of the planning process are enshrined within the code.
- (d) **Environmental Implications** – there are nil climate change implications. Making good planning decisions is a fundamental part of delivering sustainable development.
- (e) **Procurement** – there are no procurement implications
- (f) **Consultation and communication** – the revised document will be circulated to all Members and relevant officers. Copies will be placed upon the council website. The Executive Councillor for Planning Policy and Transport, Opposition Spokes, Chair and Vice-Chair of Planning Committee, Democratic Services Manager and the Head of Legal Services were consulted during the updating of the revised document.
- (g) **Community Safety** – there are no direct community safety implications

5. Background papers

These background papers were used in the preparation of this report:

Local Government Association/Planning Advisory Service: Probity in Planning for Councillors and Officers Guidance November 2013
(<http://www.pas.gov.uk/documents/332612/6482760/Probity+guide+for+cllrs+revised/25ed9243-0850-49fa-8e1a-4eb3935084a2>)

6. Appendices

Appendix A: Cambridge City Council Planning Code of Good Practice 2015

7. Inspection of papers

To inspect the background papers or if you have a query on the report please contact:

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Appendix A:

Cambridge City Council Planning Code of Good Practice 2015

1. Introduction
2. Relationship to the Members' Code of Conduct
3. Development Proposals and Interests under the Members' Code
4. Open and Fair Decision Making
5. Contact with Applicants, Developers and Objectors
6. Site Visits
7. Public Speaking at Meetings
8. The role of Officers
9. Decision Making
10. Development Control Forums
11. Training

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 makes and is seen to make planning decisions properly, openly, impartially, and for justifiable reasons.
- 1.2 This Code applies to Members involved in the planning process. It applies to formal decision-making and to less formal occasions, such as development control forum meetings, meetings with officers or the public and consultative meetings, planning enforcement matters or site-specific policy issues as well as to the consideration of planning applications.
- 1.3 The purpose of the planning system is to consider development proposals in the public interest. To be successful the planning system relies on Councillors and officers acting in a way that is fair and clearly seen to be fair and even handed. Councillors have a special duty to their constituents but a wider duty to the community of the City of Cambridge. Where planning matters are concerned the interests of the wider public have to be considered as well as the Development Plan and all other relevant material considerations.

2. Relationship to the Members' Code of Conduct

- 2.1 This Code is intended to supplement the adopted Member Code of Conduct. 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 and for individual Members the potential for complaint about them to the Monitoring Officer.

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 disclosable pecuniary interest or a personal interest.
- 3.2 If you have a disclosable pecuniary interest, or a personal and prejudicial interest, 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 disclosable pecuniary interest or a personal and prejudicial interest. These include the following:
- You try to avoid representing ward or local views on a matter in which you have such an interest. In these circumstances it is appropriate to ask another ward councillor to take on this role;
 - You should avoid getting 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 may address the meeting that considers the application or other matter in the same way that members of the public may address the meeting. However you should then withdraw from the meeting (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 disclosable pecuniary interest or 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 Planning 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. However, as mentioned above, you may exercise the same speaking rights as are afforded to members of the public, provided that you then withdraw from the meeting when the item is considered.

4. Open and Fair decision making

- 4.1 Cambridge City Council Planning Committee takes decisions on planning matters openly and in public. For a decision to be open and fair:

- Those taking the decision should not be biased or have pre-determined how they will decide;
- Those taking the decision should not have a prejudicial interest in the outcome;
- The decision should be consistent with others taken previously unless there are good reasons to decide otherwise; and
- The reasons for the decisions should be clearly set out

Avoiding Bias or Pre-determination

- 4.2 It is entirely permissible for Committee Members who are democratically accountable decision makers, to be pre-disposed towards a particular outcome. Nonetheless they must address the planning issues before them fairly and on their merits. That means they can have a view on the application but must not make up their mind on how to vote before formally considering the application and any representations. Committee Members must have an open mind on the merits of a proposal before it is formally considered at the committee meeting. They must be prepared to be persuaded by a different view in the light of any detailed arguments or representations concerning the particular matter under consideration.
- 4.3 If the committee's decision on a planning application is challenged in the High Court by way of judicial review on the grounds that some of the committee members were biased, or had pre-determined the application, the court will assess the case on the basis of what a fair-minded observer, knowing the relevant facts would think.
- 4.4 Section 25 of the Localism Act 2011 came into effect on January 15 2012 and provides that a decision maker is not to be taken to have had, or appeared to have had, a closed mind when making the decision just because;
- (a) The decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take in relation to a matter; and
- (b) The matter was relevant to the decision.
- 4.5 The position remains the same that Councillors should 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. The safest course is to avoid statements as to support or opposition for an application (that may leave the impression that minds have been made up). If a Member has made such a statement they must be satisfied they can still consider the application with an open mind and be prepared to take into account any matters in favour or against the proposed development until the decision is made.
- 4.6 Care should be taken with the following, where you are likely to be a decision-maker:
- Making statements in advance of the meeting that you have made up your mind 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;

4.7 Issues around bias and predetermination are difficult and getting it wrong can lead to legal challenge and/or reference to the Local Government 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 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 for the member participating in the decision.

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

- Listen to/receive viewpoints from residents or other interested parties
- Make comments and express views to residents, interested parties, other members or appropriate officers
- 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 (for instance, residents’ associations) or supporters, 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 support 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. 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 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. 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 insignificant (tea and biscuits or similar) should be entered in the register. If significant hospitality is offered, you should seek advice from the Head of Legal Services before accepting.

6. Site Visits

- 6.1 Individual Planning Committee members may wish to visit a site on which they have been asked to determine an application. If you decide to visit 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 avoid being put under undue pressure from any interested party to visit a site.
- 6.3 You should not enter onto private land or premises 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. The role of Officers

- 8.1 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 may on occasion differ from the views, opinions or decisions of the Committee or its Members. Officers are there to give professional and impartial advice, to make sure that members have all the information they need for decision making. They are there to advise on the context of the planning application in terms of the development plan and all other relevant material planning considerations. Officers will give a clear, accurate written analysis of the issues and a recommendation with reasons for the decision they are suggesting. Officers are there to advise (other than where the decision has been delegated to them) and to carry out the decisions of the planning committee.
- 8.2 It is critical to the openness and transparency of the planning service that mutual trust between members and their officers is demonstrated and that there is clear understanding of and respect for the other's role.
- 8.3 All members should pay particular attention to the professional advice and recommendations from officers. Planning decisions are not an exact science so interpretations may vary from time to time. 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. These will need to be voted on and recorded. The Council has adopted an 'Adjourned Decision Protocol (ADP) procedure that will apply in major application cases where a decision contrary to the advice of officers is being considered.

9. Decision Making

- 9.1 If you ask for a proposal to go before the Planning Committee rather than be determined through officer delegation, make sure that your reasons are recorded and repeated in the report to the Committee and that wherever possible you attend the meeting to speak to the item. Any such request must state the planning grounds on which it is based.
- 9.2 You 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 38(c) of the Planning and Compulsory Purchase Act 2004.
- 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.
- 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. The use of the Adjourned Decision Protocol will be considered in appropriate cases.

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 disclosable pecuniary or personal interest;
 - You should not participate in a Development Control Forum if you have a disclosable pecuniary or 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 and Development

- 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 and development to councillors on planning law and procedure and Members who sit on regulatory committees will need to have had at least minimum planning familiarisation training before they attend their first meeting.
- 11.2 Post hoc review of new development by the Planning or Joint Development Control Committees will be arranged on a bi-annual or more frequent basis to aid ongoing development of Members and officers. Bite sized updates and briefing sessions will be provided on committee days along with thematic training sessions on specific topics each municipal year.

APPENDIX TO PLANNING CODE OF GOOD PRACTICE

MEMBER GUIDANCE REQUESTS TO REFER PLANNING APPLICATIONS TO COMMITTEE

1. The scheme of delegation for planning, allows any Member of the City Council and any County Member representing a City Ward to request that an application be referred to the Planning Committee for determination, provided the request is made within the timescales set out, that it is in writing, and that it states the planning grounds on which the request is made. Late requests should be avoided.
2. Members are advised to check the progress of the application with the case officer before making a request and also to inspect the application file. This may avoid the need for a referral.
3. It is important that the planning grounds for referral are stated in the written request. An information leaflet entitled 'How to Comment' explains what factors can typically be considered in assessing planning applications, depending on the circumstances of the case. This leaflet is sent out with neighbour notification letters. Planning grounds can include: whether the development accords with planning policy; whether the development is appropriate for the area; whether the development would cause harm to neighbouring amenity; whether the proposal would cause traffic congestion or be a danger to highway safety. Loss of property value, loss of trade to businesses and moral objections are not planning grounds. The case officer can give further advice if required.
4. Members may feel that a particular planning application raises planning issues of the kind described above that ought to be discussed and determined at Committee, rather than being determined under delegated powers. However, in deciding whether to make such a request, it is important that Members consider their role and responsibility in the decision making process.
5. On receipt of a written request by a Member for an application to be determined by Committee, the case officer will acknowledge the request in writing or by telephone. The case officer will also check with the Member that it is necessary for the application to be determined by Committee, rather than under delegated powers. There may be particular circumstances, depending upon the officer recommendation where a committee decision is not necessary, this should be discussed with the planning case officer.
7. Members' representations are summarised in the officer report.
8. It is not appropriate for a Member to request that Committee determines an application if they have a disclosable pecuniary or personal and 'prejudicial' interest in it under the Council's