

Members' Planning Code of Practice

Introduction

1. This code of practice has been prepared for all members who may attend planning meetings, whether as members of the planning committee or a sub-committee, or in any other capacity, including making representations to such a committee as a ward member, or as an applicant, or an interested party. The code of practice applies at all times when members are involving themselves in the planning process and not just at the committee meetings.

Planning decisions

2. Decisions that the council makes about planning applications can be quite controversial. Any development is likely to have significant impact on the neighbourhoods where people live and therefore may be subject to close public scrutiny.

Considerations when making planning decisions

3. When members are making planning decisions, they must be:
 - a) open-minded: Members should base their decisions mainly on the written report submitted to the planning committee and the advice of officers although they should of course, also hear what objectors, supporters, the applicants and ward members, if any, have to say. As such, a member may turn up at a meeting and say that on the basis of what they have read in the committee report, **so far**, they are minded to vote in a certain way. Members must however make it clear that they are still open-minded.
 - b) open and transparent: it is very important that, in relation to each matter, members consider whether they have an interest which should be explained to the public, or which might prevent them from participating in the committee's deliberations and the decision. A member must seek advice from the monitoring officer as soon as s/he thinks that there may be any doubt about this.
 - c) aware of the Public Sector Equality Duty under the Equality Act 2010 and when making decisions to have regard to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct and to advance equality of opportunity and to foster good relations between persons who share a relevant protected characteristic as defined in the Equality Act.
 - d) reasonable: the council needs to give clear and accurate reasons for any decision that has been taken. This applies to all decisions, but the need is greatest where:
 - permission is refused, or
 - where an application is approved which appears to be contrary to the council's policies or

- a decision to approve, which appears similar to an application that has recently been refused or
- a decision is contrary to officer's recommendations.

Committee members to be present for duration of presentation of application

4. Committee members must make decisions on planning applications only after due consideration of all the information and after the presentation of the application at the committee. A committee member must therefore be present for the duration of the presentation, any oral representations, debate and other deliberations upon an item in order to be able to vote on that item.

Relationship to the code of conduct for members

5. This code of practice is supplementary to the code of conduct for members, which can be found in Part 5 of Southwark Council's constitution. A breach of this code may be a breach of the code of conduct for members.

Introduction in planning committee reports

6. Committee members must consider this code at the introduction to each planning committee/sub-committee report where reference is made to the legal basis for planning decisions and the relevant legislation.

General advice to members

7. The following general advice should be considered by all members likely to become involved in the planning process:
 - a) an application relating to a premises in the vicinity where a member, (or their close associate) lives so that s/he is affected more than the majority of inhabitants of the ward may involve a non-pecuniary/non-disclosable pecuniary interest and potentially a disclosable pecuniary interest.
 - b) a member being a frequent visitor to the premises in a personal capacity is likely to involve a non-pecuniary/non-disclosable pecuniary interest and potentially a disclosable pecuniary interest.
 - c) a member belonging to a lobby or campaign group that may be directly impacted by the outcome of an application is likely to have a non-pecuniary/non-disclosable pecuniary interest and potentially a disclosable pecuniary interest (see also sections 25 to 28 on dealing with lobbying and sections 29 and 30 on predisposition and predetermination).
 - d) a member having any doubts as to how this code of practice applies should seek advice from the monitoring officer or their representative as early as possible.
 - e) the council's member and officer protocols must be abided by at all times.

Committee members compromising their discretion to consider an application

8. Decisions should be taken in the interests of the council as a whole and should not be improperly influenced by, or, in favour of any person, company, group or locality. The key is to demonstrate that each member's decision was taken on relevant considerations alone.

9. A member will not have compromised his/her discretion by:
- a) receiving or listening to viewpoints from applicants or objectors;
 - b) making comments to applicants, interested parties, other members, or officers provided the comments do not amount to predetermination and the member makes it clear that s/he is keeping an open mind;
 - c) simply being a member of a group or organisation that may make representations on a particular matter before a committee where there is no direct impact on the member and s/he is not otherwise compromised by any actions or comments made in relation to the group's representations. However the member should make it clear to both the group or organisation and the committee that s/he has kept an open mind on the matter prior to its consideration at committee.

Planning appeals and court cases

10. The planning system can be challenged in a variety of ways, both formal and informal, and before, during and after committee. This includes in planning appeals or a legal challenge by way of a judicial review . Therefore members must bear the contents of this code in mind through all the stages of the planning process.

Ward members

11. Ward members are inevitably in a difficult position where development is proposed in the locality that they represent. Ward members are particularly likely to be subject to lobbying by local residents, and to single issue pressure groups. On the other hand, they have been elected to speak for the people in that ward and they have often canvassed on particular issues which are relevant to a planning application. Their opinions therefore are valuable and influential.
12. Ward members have a special duty to their constituents. It is clearly appropriate for ward members to listen to a constituent and it is perfectly proper to be influenced by what a constituent has to say but it is not appropriate to "advocate" on behalf of a constituent. That may make a member seem not to be open-minded. In such a case, a committee member should consider allowing another ward member to carry out the role as advocate.
13. Committees should respect the views of the ward member but those views should not necessarily prevail; they have to be weighed in the balance with all the other issues.
14. A ward member not sitting on the committee and members of the public enjoy speaking rights in accordance with the council's constitution and the process approved by the planning committee for hearing applications.

Member training

15. Members must attend all training relevant to their role as planning committee members offered by the council. This training is mandatory and members must complete the training prior to considering planning applications.

Officer advice

16. Committee members should determine applications in accordance with the advice given to them by their professional officers unless they have good planning reasons, in knowledge of all material considerations, to take a different decision.
17. Officers' reports should contain clear, evidence-based advice as to why a course of action is being recommended. The report should lay out all relevant factors for the committee members as decision makers. Planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence.

Duty to give reasons when determining applications

18. Committee members are to give clear and accurate reasons for any decision that has been taken. This applies to all decisions, but the need is greatest where:
 - permission is refused, or
 - where an application is approved which appears to be contrary to the council's policies or
 - a decision to approve which appears similar to an application that has recently been refused or
 - an application is contrary to officer's recommendations. In such cases, the Committee may consider taking a short adjournment in order to allow officer's advice to be given in a closed session
19. It is necessary to give reasons for planning application determinations at the time the decision is made especially where the determination is contrary to the officers recommendation, or, to an objective policy approved for development management purposes, or, that in the opinion of the legal officer is likely to give rise to a liability to pay compensation or an award of costs on appeal. These reasons should be:
 - a) established, defined and described at the time;
 - b) clear and convincing and thus such reasons as "established local need" or "satisfy the personal need" are inadequate;
 - c) clearly state the specific grounds and/or policy being used as a basis for refusal;
 - d) rooted in a clear and convincing statement of reasons for departures from policy or the officer's recommendation;
 - e) given with an awareness of the difficulties which will be faced in the future by officers who will have to explain why they must continue to recommend refusal in circumstances where a similar application has been approved against policy;
 - f) given with awareness that members may be asked to appear as a witness for the council, should an appeal be lodged against the decision and that the appeal is to be heard by way of a planning inquiry.
20. When a motion is commenced to refuse an application and a discussion ensues around the specific reasons for refusal, the Proposer of the motion must be allowed to complete their framing of the motion before any other motion can be considered

Declaration of interests

20. When declaring an interest at a planning committee meeting, taking the recommended cautious approach, the member should consider the following factors:
 - a) it is often not enough for a member to be unbiased; s/he must also be seen to be unbiased;

- b) connections through any organisation, whether political, charitable, social or otherwise, can create an illusion of bias, even where it does not exist; thus members who have connections with applicants need to be transparent and quick to reveal them;
- c) it may be prudent to be on one's guard against accusations of bias particularly in the case of applicants and/or agents who might previously have made mischievous or inappropriate applications;
- d) ultimately, the decision as to whether or not to declare an interest must be the member's own.

Committee members with a disclosable pecuniary interest

21. Where a planning committee member is personally affected by an application and has a disclosable pecuniary interest, s/he may make written representations to the committee and may attend the meeting to make representations and answer questions in the same way that the public are allowed to attend the meeting for the same purpose. Unlike the public, such members must withdraw from the committee room immediately afterwards. The member must conform to the usual deadlines for representations.

Dealing with lobbying

22. Members are frequently approached by applicants and objectors who wish either to 'lobby' members or to ask advice. It is very important that no member fetters his/her discretion and therefore his/her ability to participate in decision-making by making up his/her mind, or appearing to have done so, prior to the matter's formal consideration and the hearing of the officer's presentation and the evidence and arguments from applicants and interested parties at the committee meeting.
23. If a member of a committee is approached by any means by persons wanting to lobby them regarding a planning application to be heard by that committee, then the member is strongly advised to:
- a) refer the person to his/her ward member and/or planning officer;
 - b) make and keep a written record of these instances in case the matter proceeds to an appeal;
 - c) pass any correspondence to the director of planning at the earliest opportunity and encourage the applicant to submit written information to the planning officer.
24. Committee members, if they wish to be free to debate and vote on an application, should avoid organising support for or opposition to a planning matter to be determined by the committee and should not lobby other members as such actions can easily be misunderstood by parties to the application and by the general public.

Gifts and hospitality

25. No member should accept any gifts or hospitality from an applicant or objector in a planning matter. Members should be wary of any direct contact particularly from an applicant and if a degree of hospitality is entirely unavoidable then the member should ensure it is of a minimum, its acceptance is declared as soon as possible and it must be recorded within 28 days of its receipt in the member's register of interests if its value is over £50.

Predisposition and predetermination

26. A member is not to be regarded as being unable to act fairly or without bias if they participate in a decision on a matter simply because they have previously expressed a view or campaigned on it. A distinction can be drawn between predetermination or bias and predisposition. Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a member makes it clear they are willing to listen to all considerations presented at the committee before deciding on how to vote (predisposition).
27. Predetermined views are vulnerable to successful legal challenge. Members, at the point of making a decision, must carefully consider all the evidence that is put before them and be prepared to modify or change their initial view in the light of the arguments and evidence presented. Then they must make their final decision at the meeting with an open mind based on all the evidence.

Undue Pressure

28. There may be occasions when a member feels under considerable pressure from an applicant or an objector to take a particular approach to an application or to withdraw from a committee on the basis of alleged bias. This may even be escalated to the level of a complaint against the relevant member. If such a complaint is brought in the future, then this will be considered by the Monitoring Officer but also referred to the Chair of the planning committee and, if appropriate, the chair of the relevant sub- committee.

Site visits

29. Site visits can be helpful and appropriate for the planning committee at different stages and for different purposes in relation to planning decisions. Site visits will be arranged by the planning department. The purpose of the visit is for members to view the site accompanied by an officer who will ensure that the issues raised by the application are drawn to the member's attention.
30. Invitations to individual members from applicants/agents or objectors or other groups to visit the sites or surroundings of planning applications or attend private meetings or briefings should generally be declined unless it is arranged by officers as an official committee visit/presentation. If a member does decide to accept such an invitation s/he should advise the Director of Planning well before the visit takes place and take particular care about expressing an opinion that may be taken as indicating that s/he has already made up his/her mind on the issue before s/he has been exposed to all the evidence and arguments.

Members referring applications to committee

31. Members should send requests referring applications to committee to officers for them to be considered in consultation with the chair of the planning committee. Requests should be sent by email to: Members.Planningreferrals@southwark.gov.uk Requests for referral need to be made by two members, not necessarily from the same ward, and there is no restriction on who can make a request based on prior involvement or members having an interest in the case as long as these are properly declared.

Sources:

This Code takes into account a number of statutory requirements including:

- The Local Authorities (Model Code of Conduct) Order 2007
- Local Government Association Probity in Planning (2013 Update)
- The Relevant Authorities (General Principles) Order 2001

- Localism Act 2011

Local Sources

- Southwark code of conduct for members
- Member and officer protocol

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