

## ITEM NUMBER: 8

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| <b>Title of Report</b> | Amendments to the Planning Code of Practice          |
| <b>Report Author</b>   | Simon Rowberry, Interim Assistant Director, Planning |

### 1. Background

1.1 The Planning Code of Practice was adopted by Council on 15<sup>th</sup> November 2017. It forms Part 5 of the Council's Constitution. A copy of this document is attached as Appendix 1.

1.2 Given the length of time since it was adopted, it has been fully reviewed by the Interim Assistant Director – Planning. The proposed minor changes set out in this report update the Code of Practice and add some additional elements to make the Code more robust.

### 2. Issue/Proposal

2.1 The following changes and additions are proposed:

(1) Reference to the Assistant Director (Planning, Development and Regeneration) be replaced by Assistant Director – Planning.

(2) Reference to the Group Manager (Development Management and Planning) be replaced by Head of Development Management.

(3) A new Section 3.4 be added, which states:

*“If Members are approached by developers asking to meet regarding pre-application or application proposals, such meetings must always take place with Officer support. Members must not meet with developers on their own.”*

(4) A new Section 8.4.1 be added (with subsequent sections re-numbered accordingly) which states:

*“Fully read the agenda and any addendum prior to attending the Committee meeting”*

### 3. Options

3.1 The alternative option is not to make the proposed changes.

### 4. Risks

4.1 No risks are identified.

### 5. Next steps

5.1 The Assistant Director – Legal and Democratic Services is content that the changes are minor in nature and do not require the approval of Cabinet and Full Council.

5.2 It is, however, important that the changes be presented to Development Management Committee for their views.

## **6. Recommendation**

6.1 That the report be noted.

## **APPENDIX 1**

### **PLANNING CODE OF PRACTICE**

(Adopted by the Council 15th November 2017)

(online at: [Part 5 - PLANNING CODE OF PRACTICE.pdf \(dacorum.gov.uk\)](http://dacorum.gov.uk/Part%205%20-%20PLANNING%20CODE%20OF%20PRACTICE.pdf))

#### **1. Purpose of this Code**

1.1 The main objectives of this Code are to guide Members, (and in what follows, Councillors will for the most part be referred to as "Members"), and Officers of the Council in dealing with planning-related matters and to inform potential developers and the public generally of the standards adopted by the Council in the exercise of its planning powers. The Planning Code of Practice is, in addition to the Code of Conduct for Members, adopted by the Council under the provisions of the Local Government Act 2000. The purpose of the Code is to provide more detailed guidance on the standards to be applied specifically in relation to planning matters and to ensure that Officers carry out their responsibilities professionally and Members of the Development Management Committee are, and are perceived as being, impartial and accountable.

1.2 This code takes into account the Seven Principles of Public Life (the 'Nolan principles') and commentary from the Committee on standards in public life, the changes in the approach to codes of conduct and also the standards arrangements introduced by the Localism Act 2011 and the guide on 'Openness and transparency on personal interests' published by the Department for Communities and Local Government 2013.

1.3 Reference will need to be made to other parts of the Council's Constitution, as appropriate, as it is not the purpose of this Code to duplicate extensively provisions in the Code of Conduct for Members, Code of Conduct for Employees, Protocol for Member/Officer Relations, Scheme of Delegation to Officers and Rules of Public Participation.

1.4 Relationship to the Members' Code of Conduct

1.4.1 Members should apply the rules in the Members' Code of Conduct first, which must always be complied with, including the rules on personal and prejudicial interests, Disclosable Pecuniary Interests and the general rules giving effect to the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

1.4.2 Members should then apply the rules in this Planning Code of Practice, which seek to explain and supplement the Members' Code of Conduct and the law on decision-making for the purposes of planning control. If you do not abide by this Planning Code of Practice, you may:

1.4.3.1 Risk the council being challenged in the law courts on the legality of the related decision or maladministration; and

1.4.3.2 Put yourself at risk of a complaint being made to the Monitoring Officer/Standards Committee for breach of the Code of Conduct for Members, or a complaint being made to the police to consider criminal proceedings in relation to failure to disclose a Disclosable Pecuniary Interest.

## **2. The Role of Officers**

2.1 In reporting to Committee on non-delegated applications, Officers shall:

2.1.1 provide professional and impartial advice;

2.1.2 make sure that all information necessary for a decision to be made is given;

2.1.3 set the application in the context of the Development Plan and all other material planning considerations;

2.1.4 include the substance of objections and the views of people who have been consulted;

2.1.5 provide a clear and accurate written analysis of the issues;

2.1.6 give a clear recommendation.

2.2 In making delegated decisions on applications, Officers shall:

2.2.1 act fairly and openly;

2.2.2 approach each application with an open mind;

2.2.3 carefully weigh up all the material planning considerations;

2.2.4 determine each application on its own merits in accordance with the provisions of the Development Plan and other material planning considerations;

2.2.5 ensure that the relevant report demonstrates that all the above requirements have been fulfilled;

2.2.6 state valid reasons for decisions.

2.3 The Council endorses the Royal Town Planning Institute Code of Professional Conduct, particularly the provision that Chartered Town Planners shall not make, nor subscribe to, any statement or report which is contrary to their own professional opinions. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

2.4 Subject to the rules for employees undertaking work for third parties, if an Officer who deals with any aspect of planning work has, or has had, any involvement with an Applicant, Agent or

Interested Party on a personal basis, the Officer shall take no part in any work connected with the Applicant, Agent or Interested Party concerned.

2.5 Officers are also bound by rules relating to offers of gifts and hospitality contained in the Code of Conduct for Employees.

### **3. Discussions with Applicants/Representatives and Presentations**

3.1 Local Authorities are encouraged by the Local Government Association and the National Planning Forum to enter into pre-application discussions with potential Applicants. In addition, negotiations and discussions are likely to be ongoing after an application has been submitted. Such discussions can often be interpreted by the public, and especially by objectors, as prejudicing the planning decision-making process. In order to ensure transparency and propriety, pre-application discussions shall normally be conducted between an Officer and a prospective Applicant without any Member being present, and in accordance with the following strictures:-

3.1.1 The Officer shall make it clear that the advice and discussions will not bind the Council and that any view expressed is provisional, on the basis that at that stage no formal consultation will have taken place in respect of the application;

3.1.2 The Officer shall give advice in a reasoned and impartial way based on the Development Plan and other material planning considerations;

3.1.3 The Officer shall indicate whether or not s/he will make the decision if an application is submitted;

3.1.4 The Officer shall make notes of any meeting and/or substantive telephone calls and keep them on file together with any documentation and correspondence, including emails, supplied by the prospective Applicant;

#### **3.2 Pre-Application briefings involving members**

3.2.1 The Assistant Director (Planning, Development and Regeneration) or the Group Manager (Development Management and Planning), in consultation with Member Support and the Chair or Vice Chair of Development Management Committee, will determine which applications will be considered suitable for pre-application briefings involving Members.

3.2.2 As a guide applications which have one or more of the following characteristics will be considered suitable:

- 50+ dwellings or more
- 10,000 sqm of industrial, commercial or retail floor space
- Wider corporate involvement by, or significance to, the Council
- Development of strategic significance e.g. wider regeneration benefits or transport infrastructure

3.2.3 These criteria could be reduced for development in villages, neighbourhoods or the rural area for 'locally significant or controversial' schemes, such as small housing development (under 50 dwellings) or a wind farm. Or in instances where the Assistant Director (Planning, Development and Regeneration), the Group Manager (Development

Management and Planning) or Chair/Vice Chair of the Development Management Committee consider a pre-application briefings to be useful on a site.

3.2.4 All ward Members will be invited, along with the Development Management Committee, in addition to the officers of the Development Management and Planning team. A minimum of 7 days' notice will be given to all Members.

3.2.5 The briefing will be conducted as follows:

- The briefing will be chaired by a senior Officer such as the Assistant Director (Planning, Development and Regeneration) the Group Manager (Development Management and Planning) or Team Leader (Development Management) who will introduce the purpose of the briefing and advise how it will be conducted.
- Officers will confirm that the discussions will not bind the Council to make a particular decision and that views/opinions expressed are made 'without prejudice' to the future consideration of any application.
- Members will be advised as to the confidentiality status of the proposal.
- The developer will present their proposal (which will first have been viewed and approved by the relevant Officer(s)).
- The Officers will be given the opportunity to provide comments.
- Members will then be given the opportunity to ask questions and seek clarification, but care will need to be taken that personal views are not expressed.
- The chair of the briefing will summarise the key points and close the briefing.

3.2.6 Once the developer has left the briefing Members may advise Officers of any concern they have with the proposal and any elements they feel would benefit from negotiation. They will be guided by Officers on the scope of negotiation in accordance with Local Plan policy and other material considerations. Negotiations will be undertaken by Officers only.

3.2.7 The Case Officer will record the briefing and co-ordinate a minute of the briefing and/or formal pre-app response letter for the developer normally within 14 days. Members will receive a draft copy of the response in advance for any suggested amendments.

3.2.8 The note of the briefing and letter will be placed on the file at the earliest possible opportunity (taking account of the need for commercial confidentiality). The involvement of Members will be recorded in any subsequent Committee Report.

3.2.9 Members are at the briefing to learn about the proposals and process, to help identify issues to be dealt with by further submission and negotiation, but not to express any initial view for or against the proposal which may pre-determine their position to the extent that they will not be able to vote on the application should they be a Member of the Development Management Committee. Members may alert the applicant/developer to what they perceive as the likely (or actual) views of their constituents but should be careful not to fetter their discretion.

3.2.11 Members should be aware of the confidentiality status of the proposal and to have regard to this in conducting further discussions with others, including constituents and other Members.

3.2.12 Members should avoid giving separate advice on the development plan or material considerations, as all the issues and relevant information may not be available at this early stage. Any advice should be given by Officers only.

3.2.13 Members should not be drawn into any negotiations. This should be done by Officers only.

3.2.14 Members attending pre-application briefings shall have undertaken such training as is felt appropriate in consultation with the Assistant Director (Planning, Development and Regeneration) or the Group Manager (Development Management and Planning)

3.3 In an exceptional case it may be appropriate for Members to receive a special presentation on a particular planning proposal or wider planning issues. It shall be made clear at the outset that no Member present whose role in the Council's decision-making structure is such that he or she would potentially be liable to make a decision subsequently on the proposal or issues concerned will offer any view or comment: such Member will be limited to asking questions of clarification. Subject to the relevant provisions of 8. below, other Members will be at liberty to express opinions as they will not be potentially liable to make any decision subsequently. An Officer shall be present at the presentation and shall make notes detailing Members' views, comments and questions and keep such notes on file. Those present at the meeting should be advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.

#### **4. Exclusions from the Scheme of Delegation to Officers**

4.1 Decisions relating to certain proposals for development by the Council, or affecting land or buildings in which the Council has an interest, or relating to certain proposals submitted by or on behalf of Members or Officers, are required to be reported to the Development Management Committee. Such proposals shall be subjected to the same rigorous examination as proposals submitted by other parties.

#### **5. The Role of Councillors**

5.1 In making decisions on planning matters, Members shall:

5.1.1 act fairly, openly and impartially;

5.1.2 avoid inappropriate contact with interested parties;

5.1.3 approach each application with an open mind;

5.1.4 carefully weigh up all the material planning considerations;

5.1.5 determine each application on its own merits in accordance with the provisions of the Development Plan and other material planning considerations;

5.1.6 demonstrate sound judgement and ensure that valid, evidenced and justifiable reasons for decisions are clearly stated;

5.1.7 vote as they consider appropriate and not along party lines.

5.2 Members shall refrain from personal abuse and bullying and party political considerations shall play no part in their deliberations. Members shall at all times be respectful to the Chairman of the Committee and to each other and to Officers and members of the public including Applicants, Agents, Objectors and Members of other Councils.

5.3 Members shall not give instructions to Officers nor place any pressure on Officers in order to influence the terms of a report and/or secure a particular recommendation on any planning matter.

5.4 Members shall ensure that all correspondence (including emails) with Officers, Applicants and Objectors are written using language which is professional and respectful. Members are reminded that all correspondence is potentially disclosable to the public pursuant to a freedom of information request.

5.5 If any Officer has grounds to consider that pressure is being exerted upon him or her by any Member in relation to any particular planning matter, he or she shall forthwith notify the Monitoring Officer and the Assistant Director (Planning, Development and Regeneration) of the details of such matter and the Member's conduct.

5.6 Any criticism by any Member of any Officer in relation to the handling of any planning matter shall be made to the Assistant Director (Planning, Development and Regeneration) and shall not be raised in public.

5.7 Members shall not use, or attempt to use, their position improperly to the advantage or disadvantage of themselves or anyone else.

## **6. Lobbying**

6.1 Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, a site allocation in a development plan or an emerging policy, will often seek to influence it through an approach to their ward member or to a member of the planning committee. As the Nolan Committee's 1997 report stated: "It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the councillors themselves". Lobbying, however, can lead to the impartiality and integrity of a councillor being called into question, unless care and common sense is exercised by all the parties involved.

6.2 It remains good practice that, when being lobbied, councillors (members of the Development Management Committee in particular) should take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the relevant evidence and arguments.

6.3 Planning applications will be processed and determined in a transparently open and fair manner, in which Members taking the decision will take account of all the evidence presented before arriving at a decision. Members need to be mindful that to commit themselves one way or the other before hearing all the arguments and evidence makes them vulnerable to an accusation of partiality.

6.4 To avoid compromising their position before receiving all the relevant information and hearing all the relevant evidence and arguments, Members shall:

6.4.1 not determine in advance of the consideration of the application by Committee whether they support or oppose a proposal unless they accept that this will mean that they may not take part in the decision (see paragraph 8 below);

6.4.2 restrict themselves to giving procedural advice, such as advising lobbyists to write to the relevant case officer and/or avail themselves of the public participation process;

6.4.3 explain they will only be in a position to make a final decision after having received all the relevant information and having heard all the relevant evidence and arguments at the Committee meeting itself;

6.4.4 advise the Monitoring Officer promptly of the existence of any lobbying activities or approaches which are felt by the Member to be undue or excessive

6.4.5 explain to those lobbying or attempting to lobby that, whilst they can listen to what is said, it may subsequently prejudice their impartiality, and therefore their ability to participate in the Committee's decision making, to make any sort of promise to vote one way or another or confirm a clear point of view.

6.4.6 not accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible, including its addition to your register of interests where relevant.

6.4.7 copy or pass on any lobbying correspondence you receive to the Group Manager (Development Management) at the earliest opportunity, including any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.

#### 6.5 Lobbying by Councillors:

6.5.1 Members shall not become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals unless it is your intention to openly campaign on the matter and will therefore step away from the Committee when it comes to make its decision.

6.5.2 Members may join general interest groups which reflect their areas of interest and which concentrate on issues beyond particular planning proposals (such as the Victorian Society, CPRE, Ramblers Association or a local civic society), but should normally seek to disclose that interest on the grounds of transparency where the organisation has made representations on a particular proposal.

6.5.3 Member shall not lobby fellow councillors regarding their concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.

6.5.4 Members shall not decide or discuss how to vote on any application at any political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue.



## **7. Material Submitted to Members by Applicants and Others**

7.1 If a Member receives information or material from or on behalf of any party in connection with any planning matter s/he must establish with the Planning Officers whether the information or material has also been received by them. If it has not, the Member shall make it available as soon as possible to the Group Manager (Development Management).

7.2 Members shall otherwise report to the Group Manager (Development Management) any significant contact with the applicant and other parties, explaining the nature and purpose of the contact and their involvement in them, and ensure that this is recorded on the planning file.

## **8. Committee Meetings**

When approaching a decision Members shall be mindful that the Principle of Integrity is defined in terms that:

“Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships”.

### **8.1 Declaration of Interests**

8.1.1 The responsibility for declaring an interest lies with the individual Member.

8.1.2 Members of the Development Management Committee shall declare disclosable pecuniary interests and personal and prejudicial interests in planning matters in accordance with the Members’ Code of Conduct.

8.1.3 Where a personal interest arises because a Member is a member of, or is in a position of control or management in, a body to which s/he was appointed or nominated by the Council or which exercises functions of a public nature, s/he need only declare the personal interest if and when s/he addresses the Committee on that item (unless s/he also has a prejudicial interest).

8.1.4 A Member with a disclosable pecuniary interest or a prejudicial interest shall declare it and move to the public seating area Provided the Member has registered to make representations under the rules applicable to public participation, the Member shall be entitled to take a seat in the place set aside for public participation and shall then follow the rules for such participation.

8.1.5 In addition, a Member shall not seek improperly to influence a decision in which s/he has a disclosable pecuniary interest or a prejudicial interest.

8.1.6 If a Member has a disclosable pecuniary interest or a prejudicial interest in a planning matter which would normally be dealt with by Officers under the Scheme of Delegation, s/he shall not request that the matter be referred to the Committee for consideration.

8.1.7 Members who have business or other interests which may bring them into contact with the Council's planning system on a regular basis should not be considered for membership of the Development Management Committee.

## 8.2 Predisposition, Predetermination and Bias.

8.2.1 A Member is entitled to be predisposed about a particular matter. Predisposition is where a Member holds what may be termed a preliminary, or provisional, view and may have expressed such view publicly and, indeed, been elected upon the strength of it. Such comments have an added measure of protection under the Localism Act 2011. The critical point is that the Development Management Committee Member must have an open mind in relation to all the relevant information, evidence and arguments when participating in the decision-making process and be prepared to reconsider their position in the light of all the relevant information, evidence and arguments.

8.2.2 If a Development Management Committee Member is not prepared to be open-minded and to consider all the relevant information, evidence and arguments relating to a particular matter, or in any way gives the appearance of having decided in advance what stance to take at the meeting, that Member may be considered to have predetermined the matter or to be biased in relation to it. If that Member then participates in the decision-making process the Committee's decision may be ruled as invalid.

8.2.3 If a Member of the Committee has compromised his or her position by expressing views which indicate that he or she has already made up his or her mind on an issue before receiving all the relevant information and hearing all the relevant evidence and arguments, that Member shall make a declaration to that effect and take no part in the discussion, voting or decision. In such a case, the Member may speak as a member of the public or, where the Member represents the Ward affected, as Ward Member, subject to compliance with the public participation rules.

8.3 Any Member in any doubt about the declaration of interests or predetermination should seek the advice of the Council's Monitoring Officer or Deputy Monitoring Officer.

### 8.4 Members shall:

8.4.1 come to their decision only after due consideration of all of the information reasonably required upon which to base a decision. If they feel there is insufficient time to digest new information or that there is simply insufficient information before them, request that further information. If necessary, defer or refuse.

8.4.2 not vote or take part in the meeting's discussion on a proposal unless they have been present to hear the entire debate, including the officer's introduction to the matter.

8.4.3 not allow members of the public to communicate with them during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking or through the Chair, as this may give the appearance of bias.

8.4.4 ensure that they comply with the Council's procedures in respect of public speaking.

## **9. Development Management Committee Members who serve on Parish and Town Councils**

9.1 Some Borough Councillors will also be Members of Parish or Town Councils. This situation can present problems where the Parish or Town Council is consulted on planning applications. This is often the stage when Borough Councillors come under pressure to indicate their support or objection in respect of a particular proposal. Of particular concern is the potential for a conflict of

interest arising when a Member of both Councils votes on an application at a Parish or Town meeting prior to the relevant Borough Development Management Committee meeting. It would be quite conceivable that a Councillor in this position could end up voting in a different way when all the relevant information, evidence and arguments are made available at the Borough Committee meeting.

9.2 In order to avoid any potential conflict, it would be preferable for Borough Councillors not to serve on a Parish or Town Council's Planning Committee. If they cannot avoid that, and if they wish to participate in the Borough Committee's deliberations, they shall not vote or say anything which would create the impression that they have already made up their minds prior to the relevant Borough Committee meeting. In this way they will avoid being part of the formal process of submitting representations on planning applications to the Borough Council and so demonstrate their impartiality. To avoid any challenge, those Members who have expressed a definite view on an application and/or have voted shall act as indicated under paragraph 8 above.

## **10. Formal Site Visits**

10.1 Formal site visits can be helpful in identifying features of a proposal which may be difficult to convey in a written report. Site visits may delay the decision on an application but, where there is a clearly identified benefit from holding one, they will be authorised by the Development Management Committee. The reason why a formal site visit was authorised will be recorded in the minutes.

10.2 Where a formal site visit is held, all Members of the Development Management Committee will be invited to attend. The local Member, if not serving on the Development Management Committee, will also be invited to attend. The relevant Town or Parish Council will be notified of any formal site visit and invited to send a representative. At least one Officer will be present at all formal site visits to conduct the proceedings and a record will be kept of attendance.

10.3 All those who attend a formal site visit do so on the understanding that such visits:

10.3.1 are fact finding exercises;

10.3.2 are not part of the formal consideration of an application and public rights of attendance and participation do not apply;

10.3.3 enable Officers to point out relevant features;

10.3.4 enable questions to be asked for clarification;

10.3.4 No discussion of the merits of an application shall take place on site and no lobbying/objection shall be permitted;

10.3.5 No opinions or views should be expressed as to the merits or demerits of the application.

10.4 Any Member wishing to see any particular site on an individual, informal basis prior to a Committee meeting shall have due regard to the other provisions of this Code, for example paragraphs 5, 6 and 8. and such Member should seek to view the site from a public vantage point in the first instance.

10.5 Members should ensure that they report back to the Committee any information gained from the site visit that they feel would benefit all Members of the Committee.

## **11. Decisions Contrary to Officer Recommendations**

11.1 There will be occasions when the Committee disagrees with the professional advice given by Officers. In such cases reasons shall be given for overturning Officer recommendations and, in the case of approval of a planning application recommended for refusal, the conditions to be imposed shall be specified.

11.2 When making a decision contrary to Officer recommendations, the reasons given by Members must engage with the recommendations and reasons of the Officer and explain the reasons for departure from those recommendations.

11.3 Members must be mindful that they are only entitled to take account of material planning considerations and must disregard considerations irrelevant to the question and legal context at hand and are to come to a decision after giving what they feel is the right weight to those material planning considerations.

11.4 Members shall make sure that if they are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that they clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded and must be supported by objective analysis and substantive evidence.

11.5 Members shall be aware that they are likely to have to justify any decision by giving evidence at a planning inquiry, appeal or other forum in the event of any challenge.

## **12. Training**

12.1 Members of Development Management Committee shall undergo induction training and attend refresher training at regular intervals thereafter. Failure by a Member to attend formal induction training will disqualify that Member from sitting on the Committee. Failure to attend formal refresher training may result in a recommendation to full Council for the removal of a Member or Members from Development Management Committee. The Group Manager (Development Management), in consultation with the Chairman of Development Management Committee, shall formally review Members' training needs and monitor whether all training requirements have been met on an annual basis