

## **SECTION 2 – PLANNING CODE OF PRACTICE**

### **A. The Purpose of this Code**

Planning requires the exercise of judgment when applying policies to circumstances, evaluating evidence and weighing competing considerations. Planning decisions are contentious because they affect the daily lives of individuals and can have profound economic, social and environmental consequences. These decisions are well publicised, often complex and constrained by sometimes arcane procedures.

It is important, therefore, that the council should make planning decisions openly, impartially, with sound judgment and for justifiable reasons. The processes should leave no grounds for suggesting that a decision has been partial, unfair or not well-founded in any way. This code aims to assist in achieving these objectives and thus to protect human rights and promote public confidence in the planning system.

### **B. The Application of this Code**

This code applies to any member or officer who is involved at any stage in the process of making a planning decision. Whilst much of it concerns only members who are members of the Regulatory Committee, important parts concern all members. In addition, all members need to be aware of this code in its entirety so that they can understand and respect the obligations of the committee members.

### **C. Relationship with Other Codes**

This code extends and applies the principles of the Members' Code of Conduct and is intended to be consistent with the expected contents of the statutory Officers' Code of Conduct. However, it is a supplement to and not a substitute for those codes and in the event of conflict those codes must prevail.

The main thrust of the Members' Code of Conduct and the Officers' Code of Conduct is the separation of private interests and public duties. This code is also concerned with reinforcing that separation, so that decisions are made and seen to be made in the interests of the community as a whole but is equally concerned to encourage high quality in decision-making.

### **D. The Consequences of Breaching this Code**

A breach of this code may also constitute a breach of the Members' Code of Conduct and its underlying general principles, the Officers' Code of Conduct and the professional ethical codes of officers. Breaches may be taken into account when a political group or the council decides on membership of the Regulatory Committee or in disciplinary procedures.

A breach does not only have consequences for the perpetrator. Any breach damages the reputation of the authority and may do an injustice to a person affected by the planning decision concerned. A breach might also:

- be the subject of an investigation into a complaint of maladministration by the Ombudsman or under the council's complaints procedure;
- lead to action by the monitoring officer; and/or
- expose the council to legal challenge in the courts or prejudice the council's prospects at an inquiry.

Because misconduct or irresponsibility on the part of one member might have these consequences and might even taint the decision of the whole committee so as to invalidate it, the chair of the Regulatory Committee is entitled to intervene in a meeting to prevent or end a breach.

#### **E. Departure from this Code**

The strategic director for resources may sanction a departure from this code and shall keep a written record of any such sanctions.

### **The Code**

#### **1. *The Overriding Principle***

To make planning decisions which are in the interests of the whole community and which earn its confidence.

#### **2. *Training for Members***

Planning is a complex and constantly changing field inhabited by trained and experienced practitioners and characterised by the very high expectations of the courts and other stakeholders. In order that members can deliver sound and fair decisions and test the advice of their officer in an effective way, it is essential that they have certain competencies and an up to date working knowledge of the planning system.

With effect from the start of the municipal year 2005-06, any new member of the Regulatory Committee must undergo or have undergone an induction course approved by the strategic director for resources.

With effect from the start of the municipal year 2006-07, no member may be re-appointed to the Regulatory Committee unless they have in the previous 24 months undertaken at least 12 hours of training recognised as eligible for this purpose by the strategic director for resources or training provided by other authorities or external providers which the strategic director for resources has recognised as being of equivalent relevance and value.

It shall be the responsibility of the strategic director for resources to deliver a programme of reports, briefings and seminars which enable members to comply with this requirement. These reports, briefings and seminars shall inform members about new legal and policy developments as well as addressing established principles of decision-making and aspects of the planning system of particular relevance to county

planning authorities. So far as practicable, these learning opportunities shall be made available to all members of the council.

### **3. *The Relationship between Officers and Members***

The integrity of the planning process depends on mutual trust and respect between officers and members. Officers and members have different but complementary roles.

Officers advise members and implement their decisions. However, they are responsible to the council as a whole and not to any individual member or group of members. It is their duty to ensure that applications are properly processed, that the law is observed and that members are equipped with the advice and information they need to arrive at sound and fair decisions which pay regard to relevant council policies.

Officers should be ready to give unwelcome advice when necessary, whether or not solicited, and members should accept that the officers are duty bound to do so.

Although officers should wherever possible make a recommendation as to the decision to be made by the Regulatory Committee, they should recognise and give even-handed advice on any alternatives reasonably open to the committee. Where the committee properly reach a lawful decision other than that recommended, the officers should give the committee their unstinting support in refining, explaining, defending and implementing that decision.

For their part, members should respect the impartiality and the professional obligations and expertise of officers. Members should also be mindful, particularly when communicating with officers outside committee meetings, of the seniority of the officer with whom they are dealing and avoid any risk of creating the impression of misusing their authority. Whilst members may express their views on an application robustly in writing, they should when speaking to a case officer confine themselves to seeking information or reporting concerns.

Members and officers should treat each other with courtesy on all occasions and in all circumstances.

### **4. *Applications in which Members are Interested***

A member who make or has a prejudicial interest in an application for any other reason shall notify the strategic director for resources. The member shall play no part in the processing of the application and the application shall be decided by the Regulatory Committee.

Because the member will be excluded from the committee meeting, he/she can use the public speaking scheme only through a representative. In addition, the member should not use his/her position as a member improperly to influence the decision. He/she can make written representations to the officers in the usual way, provided that the existence and nature of the interest is disclosed. However, to limit the scope for suspicion, the member should not communicate directly with any other member about the application and should confine oral communications with officers to dealing with the administration of the application and answering questions.

5. *Applications in which Officers are Interested*

Applications by or in which the following officers are interested:

- a strategic director;
- a planning officer or the manager of a planning officer;
- a legal officer responsible for planning matters;

shall be notified to the strategic director for resources and decided by the Regulatory Committee. The officer shall play no part in the processing of the application.

An officer shall be regarded as interested in an application for this purpose if he/she would have a prejudicial interest under the Members' Code of Conduct were he/she a member.

If an officer who is a senior manager, or who works regularly with development control officers, makes or is interested in an application the strategic director responsible for development control shall be notified.

6. *Applications in which the Council is Interested*

An application on behalf of or for the development of land in which the council or the police and crime commissioner or a district or borough council within Warwickshire have an interest shall be decided by the Regulatory Committee if there are any objections.

7. *Members and Officers Acting as Agents or Advisers*

Any member or officer acting as an agent or adviser, other than in his/her capacity as a member or officer, for an applicant or objector or other person interested in a planning application shall always regards himself/herself as having a prejudicial interest.

Planning and legal officers shall not accept any remuneration for acting as an agent for or adviser to a person making a planning application to the council.

8. *Membership of the Regulatory Committee*

A member whose professional occupation regularly involves acting as an agent for or an adviser to people making or objecting to planning applications in Warwickshire should not be a member of the Regulatory Committee.

A member whose business or property interests would require him/her to make frequent declarations of interest should not be a member of the Regulatory Committee.

A member of the cabinet should accept membership of the Regulatory Committee only after careful consideration of the potential for apparent conflict with the demands of his/her particular portfolio.

## 9. **Officers' Ethics**

All planning officers shall observe the Code of Professional Conduct of the Royal Town Planning Institute, whether or not they are members of the institute, and legal and other professional officers shall observe their respective professional ethical codes at all times.

## 10. **Interests, Bias and Predetermination**

The Standards Board advises that members who make planning decisions should adopt a particularly cautious approach when deciding whether they have a prejudicial interest under the code of conduct. In its view, a reasonable member of the public is more likely to think that the judgment of a member is prejudiced when dealing with regulatory matters than when carrying out executive and scrutiny functions. In other words, a member of the Regulatory Committee may be required to treat an interest as prejudicial even though he/she would not be required to do so when acting as a member of another council body.

The Standards Board also advises that a prejudicial interest in a planning decision might arise through membership of a campaign, or other behaviour which closely identifies a member with a desired outcome, even though he/she might have no financial or other personal interest.

This approach seeks to align the code of conduct with the law on bias as developed by the courts, and in most cases compliance with the code will ensure compliance with the law. However, the requirements of the law on bias are wider and stricter than the code and bias may exist even though a member has no personal interest to declare under the code and even though he/she acts selflessly or for reasons of public duty. Bias can take two forms, which are capable of overlapping.

The first form of bias is **prejudice** against a particular point of view for a reason unconnected with the planning merits of the issue. This might be because a member has a financial interest (however small) or some other direct or indirect personal stake in the outcome. However, a member might also be prejudiced because of a strong moral conviction or by forming bonds of personal allegiance with a party or indicating partisanship in some other way.

The second form of bias is where a member has **predetermined** an issue by surrendering independent judgment, or by adopting an inflexible policy or by closing his/her mind to further debate. This might arise where a member makes a commitment as to their voting intentions, or defers to the opinion of another body, or has formed a judgment about an issue which is so firm that they are no longer receptive to information and argument.

The test applied by the courts is whether there is a real danger of bias. This means that a member must not only avoid *actual* prejudice or predetermination but also avoid its *appearance*. Bias may be perceived to exist even where it does not. Members of the Regulatory Committee who make statements or engage in conduct capable of giving rise to a reasonable perception of bias by the public should not

participate in deciding a planning application even if they are personally satisfied that they could do so in a proper manner.

It is natural and permissible for a member of the Regulatory Committee to begin to form a view about an application or certain aspects of it before the meeting at which they vote upon it. It is also expected and accepted that members will hold views on general matters of political and public interest that might predispose them towards a particular point of view. However, they are expected to maintain their impartiality and to avoid reaching any final conclusion until they have heard all evidence and argument and are called upon to vote. It is equally important that the member is seen to be so acting.

A member of the Regulatory Committee will not automatically be regarded as biased because they have supported a proposal when carrying out executive or scrutiny functions. However, members in this position should consider carefully whether their other responsibilities, and the way in which they have carried them out and expressed themselves, would lead a reasonable observer to doubt whether they can approach the application fairly and impartially.

Breaching the law on bias does not only have personal consequences for a member but can taint the whole committee so that the high court cancels its decision. A member of the Regulatory Committee who may reasonably be perceived as biased in relation to a matter should neither speak nor vote on it at a meeting. In addition, the member should normally withdraw from the meeting room whilst the matter is being considered. The only exception to this is where a member wishes to use the public speaking scheme in a case where they are disqualified solely because of predetermination. In such a case, provided that the strategic director for resources agrees in advance that there is no other objection to doing so, the member may address the committee in accordance with the public speaking scheme. However, they should explain why they are disabled and physically withdraw from the part of the room occupied by the committee.

Further advice on avoiding bias and its appearance is given in sections 4, 11, 12, 14, 17, 25 and 26.

## **11. *Lobbying of Members***

Lobbying is a normal and proper part of the political process. However, such lobbying can, unless care and common sense is exercised by all the parties involved, lead to the impartiality and integrity of officer and members being called into question.

Members of the Regulatory Committee cannot avoid receiving both written and oral representations from supporters and opponents of applications and it is legitimate to enter into dialogue with interested parties. However, caution must be exercised to avoid bias or predetermination or their appearance.

It is not possible to set out firm rules governing all the situations which can arise before an application is decided but the following guidelines should generally be observed by a member who wishes to participate in deciding the application:

- meet applicants or their representatives only at meetings arranged and attended by officers (see section 26 below);

- keep copies of written representations and make a written note of any significant oral contacts;
- resist meetings with lobby groups if the sole or main purpose is to discuss planning applications;
- confine advice to procedural information;
- encourage a lobbyist to make representations direct to officers or through the public speaking scheme;
- refuse to endorse the viewpoint of any faction or to engage in campaigning or lobbying activity of any kind;
- avoid statements which suggest a closed mind on any issue;
- qualify any expression of opinion as a preliminary view; and
- avoid social contacts with developers and their agents when an application is imminent or has been submitted but not finally decided.

## **12. *Lobbying by Members***

No member should put improper pressure on an officer for a particular recommendation and a member who is actively supporting or opposing an application should not seek to persuade a member of the Regulatory Committee towards a particular viewpoint through private channels of communication.

A member of the Regulatory Committee who lobbies for or against an application will almost inevitably be excluded for bias. A member of the committee may identify concerns and ask questions in communications with planning officers prior to a meeting but should, if they wish to participate in the decision, avoid statements which indicate that they support or object to the application.

## **13. *Contacts***

It is not necessary and frequently not practicable for a member of the Regulatory Committee to declare at a meeting all the contacts which they have had concerning a planning application. However, openness helps to allay suspicion, and any consideration which might influence how a member votes, and which is not already before the committee, should be shared and exposed to comment.

A member should disclose at the meeting any contacts with the applicant or their representatives. Whether to disclose other contacts is a matter for his/her decision.

Members of the committee should not allow anyone who is not a member of the committee or an officer to communicate with them privately by any means during a committee meeting.

Planning officers will keep a full written note of any contact from a member about an application on the planning file and report all such contacts to the meeting of the Regulatory Committee considering the application.

## **14. *The Divisional Member***

Whilst a member of the Regulatory Committee might report local views on an application, they cannot act as an advocate for any particular interest and claim with credibility to be able to participate with impartiality in making the decision. As a result,

members of the Regulatory Committee will sometimes be presented with a choice between participating in a decision and freeing themselves to campaign for or against an application, particularly when they feel that the interests of their constituents cannot otherwise be effectively represented.

They are in these circumstances entitled to choose to campaign if they are satisfied that this best serves the public interest. To avoid any misunderstanding, they may wish to notify the strategic director for resources of their decision before beginning to campaign.

Any member who joins a campaign should remain alert to the possibility that the nature and extent of their involvement might give rise to a prejudicial interest affecting the ways in which they can lobby on behalf of the campaign.

#### **15. *Political Group Expectations***

Political meetings should not be used to discuss how a member of the Regulatory Committee should vote and political groups should not use the whip or seek to exert any other group discipline to influence a decision. Deference to the expectations of political colleagues both fetters the discretion of a member of the committee and introduces an immaterial consideration. Political group pre-meetings to discuss applications should be avoided.

#### **16. *Declaring Interests***

Any member who has a prejudicial interest in an application should, whether or not he/she is a member of the Regulatory Committee, withdraw from a meeting of the committee when the application is considered. They can use the public speaking system only through a representative and should not use avenues of influence, which are not equally open to the general public (see also sections 4 and 10 above).

#### **17. *Members with Dual Public Roles***

Paragraph 10 of the Members' Code of Conduct allows a member to regard himself/herself as not having a prejudicial interest in certain cases where an interest arises from their involvement in another body as part of their public duties. Members should not take advantage of these exemptions automatically but should always exercise their discretion according to the particular circumstances of the case.

The exemption cannot be relied upon where the body with which a member is involved is the applicant or stands to benefit or suffer in some significant way from a development proposal (e.g. when a member is the governor of a school where the development will take place).

On the other hand, it is permissible for a "double-hatted" member of the Regulatory Committee to rely upon the exemption where the other council is merely a consultee, or spokesperson for its community, provided that he/she:

- made it clear at any meeting in which he/she participated that he/she had not formed a final opinion and would decide the application independently on its merits alone;
- has no other reason for declaring a prejudicial interest; and
- is satisfied that they are free of bias or predetermination or its appearance.

## **18. *Officer Reports***

Whilst each report should be appropriate to the nature of the decision to be taken, a report on an application to be considered by the Regulatory Committee can normally be expected to include:

- a description of the site and surroundings;
- the proposals and any relevant planning history;
- extracts from application plans and drawings;
- a location plan;
- relevant national and local policies;
- material considerations;
- the views of consultees and the substance of objections;
- evaluation of key issues setting out the pros and cons of the development;
- a reasoned statement whether or not the proposal is in accordance with the local development documents;
- a conclusion and a clear recommendation;
- the substance of conditions and legal agreements; and the text of any reasons required by statute.

Reports should, so far as is practicable, include details of all consultation responses received before the publication of the agenda.

## **19. *Meetings of the Regulatory Committee***

Full scale copies of application plans and drawings will be displayed at the meeting and visual projections will be used to show plans, drawings and photographs of the site.

Members will be given copies or summaries of representations received after the reports were finalised and any late material will be noted in the minutes.

Copies of any documents provided for members will be available to members of the public.

Where the committee is required to identify conditions or obligations or give reasons required by statutes that are not set out in the relevant report, the conditions/obligations and reasons shall either be agreed in substance at the meeting or submitted in writing to a subsequent meeting for approval.

Members of the Regulatory Committee should not vote unless and until they have heard all the evidence, advice and argument presented at the meeting. Therefore, a member who leaves the room during the consideration of an application should not vote on it.

## **20. Public Speaking**

A public speaking scheme will operate. The initial scheme is set out in the appendix to this code, but the details of its operation may be amended by the Regulatory Committee.

## **21. Officer Support**

Pre-meeting briefings between officers and the chair and group spokespersons will take place, to anticipate and consider procedural matters.

All meetings of the Regulatory Committee (including site visits) shall be attended by a solicitor or barrister of suitable seniority on behalf of the strategic director for resources and also by the development manager or another suitable planning officer nominated by the development manager.

## **22. Officer Advice**

The Regulatory Committee should never decide an application without giving the officers an opportunity to provide information and advice additional to that in the report and to respond to any representations from the public. If new issues or evidence are mentioned in discussion, the officers should be invited to comment. The chair should check whether the legal and planning officers wish to offer any further advice immediately before proceeding to a vote.

Where the committee disagree with professional advice, particularly advice on a technical matter, they should not reject it unless they can identify clear and cogent reasons for doing so.

If the committee are minded to make a decision in conflict with that recommended by the officers, they should first seek specific advice from the officers as to the implications. Having made such a decision, the committee should articulate their reasons in order that they can be minuted before proceeding to the next agenda item. Officers may advise on but should not be asked to devise reasons for the committee.

## **23. Deferrals**

Applicants are entitled to prompt decisions and delay can be costly and harmful. Therefore, an application should not be deferred unless it is:

- a procedural requirement;
- demanded by the duty of fairness;
- for a site visit; or
- to obtain important information.

In all cases, an application should be deferred only if it is necessary to do so in order to reach a properly informed and lawful decision.

A site visit is only likely to be necessary if the impact of the development is difficult to visualise from the presentation materials available at the meeting or if there is good reason why the comments of interested parties cannot be expressed adequately in writing.

A deferral must take place where potentially significant new evidence or issues have emerged at the meeting which require verification and analysis.

The reasons for a deferral must be agreed before proceeding to the next agenda item and minuted.

## **24. Site Visits**

A site visit is for fact finding purposes only. They must be carefully managed in order to dispel any suspicion they have been used as an opportunity for covert lobbying and to ensure that any significant information obtained on the visit is available to all.

Site visits will be conducted in accordance with the following rules:

- the visit is for the purpose of visual inspection only;
- representations will not be entertained from any party;
- applicants and objectors will accompany the committee only in order to facilitate access, point out physical features and answer factual questions; and
- members of the committee will communicate with interested parties only through their officers.

Members should not make private inspections of sites unless they can do so unaccompanied and without making contact with applicants or other interested parties.

A site visit may exceptionally be followed by a factual presentation on behalf of the applicant (see section 26). At least one representative of any objectors should be invited to observe the presentation.

Members should avoid expressing opinions on the application during a site visit.

## **25. Discussions with Applicants**

In exceptional cases, and with the approval of the Regulatory Committee, a meeting might be arranged with applicants (or prospective applicants) to enable members to improve their understanding of major, complex or contentious applications. Although this might also give applicants an insight into the concerns of members, discussions must not slide into negotiation. Such a meeting might be combined with a site visit.

The following rules should be observed:

- presentations should be limited to the development proposal and factual questions and answers;
- the meeting should be organised and attended by officers of appropriate seniority, including a legal officer;

- members from each political group should be invited;
- members should adopt an impartial listening role and avoid expressing views on the proposal;
- if requested, preliminary views on the proposal may be supplied by the officers in writing after the meeting;
- the legal officer shall make a note of the presentation, which will be appended to the written report on the application;
- objectors should be given a proper opportunity to express their views on any information obtained at the meeting; and
- no gifts or hospitality shall be accepted from an applicant other than modest refreshments.

## **26. *Reviewing Decisions***

The Regulatory Committee will review a selection of decisions by visiting sites where development has taken place.

## **27. *Hospitality and Gifts***

Members should not accept any hospitality or a gift of any value from anyone with an interest in a development proposal, other than modest refreshments on a site visit.

Any offer to fund a fact-finding trip will also be rejected.

## **28. *Complaints***

Complaints concerning the conduct of officers will be dealt with under our complaints procedure whilst complaints concerning members will be dealt with by the strategic director for resources as monitoring officer.

In neither case should complaints be used as a means to challenge the merits of decisions properly taken.

The chief executive and the strategic director for communities shall submit an annual report to the Audit and Standards Committee and the Regulatory Committee summarising complaints received and any lessons to be learned.