

## Part Eight – Protocols

### Section Seven – Code of Conduct on Planning

#### 1 INTRODUCTION TO THE CODE

1.1 The Council recognises the need to attain the highest ethical standards in its governance and management. This means that the Council expects its councillors and officers to display the highest standards of ethical conduct over and above adherence to the seven Nolan principles of conduct in public life, and to encompass and promote the twelve ‘good governance’ principles adopted by the Council following the *Change at the Council* independent review of governance. The twelve good governance principles are:

- connecting with residents;
- focusing on what matters;
- listening to many voices;
- acting with integrity;
- involving before deciding;
- communicating what we’re doing;
- inviting residents to take part;
- being clearly accountable;
- responding fairly to everyone’s needs;
- working as a team;
- managing responsibly; and
- having the support we need.

1.2 This Code relates and applies to both councillors and officers involved in the planning process. The Code supports, interprets and supplements the Members’ Code of Conduct and the Code of Conduct for Employees. It also forms part of the Council’s Constitution. This Code is a policy of best practice, however, for the avoidance of doubt it shall not prevent the Council from exercising its discretion to depart from the policy in exceptional circumstances. This Code is consistent with advice in the Local Government Association’s revised guidance note on good planning practice for councillors and officers dealing with planning matters *Probity in Planning: The Role of Councillors and Officers* (May 2009).

1.3 The aim of this Code:

- To ensure there are no grounds for suggesting that a planning decision has been biased, partial or not well founded in any way; and
- To promote and support the highest standards of conduct.

The key purpose of planning:

- To manage development in the public interest.

1.4 The Code is presented in a table to identify clearly which parts of the Code apply to councillors and which parts apply to officers. For the avoidance of doubt where there is no division or express statement indicating that the

Code shall apply to one group but not the other (or where context otherwise requires) it shall apply to both.

1.5 When does this Code apply:

**Councillors**

To councillors at all times they are involved in the planning process including site specific policy issues, planning applications, planning appeals or planning enforcement matters. Generally, it will apply where a councillor is:

- part of decision making meetings of the Council;
- undertaking the functions of the Council as planning authority; and
- involved in less formal occasions such as meetings with officers, the community and consultation meetings.

For the avoidance of doubt in this Code:

- “councillor” means that the advice applies to all RBKC councillors, not just planning councillors;
- “planning councillor” means a councillor or a substitute councillor on any of the Council’s Planning Committees, a Lead Member deciding planning matters and councillors holding another Council appointed role making decisions on planning matters; and
- “Planning Committee” means the Planning Committee, Planning Applications Committee and any equivalent committee should governance arrangements change.

**Officers**

To planning officers and other officers involved in planning matters. This includes, but is not limited to officers involved with:

- gathering evidence to inform and write our planning policies;
- working with residents, businesses, communities and many others to develop the Council’s planning policies;
- engaging with government, Mayor of London and other organisations as they prepare policies and plans;
- using knowledge of planning legislation and local planning policies to provide pre-application advice to householders, businesses, community groups, landowners, developers and other potential applicants;
- assessing and deciding planning applications, taking into account comments from residents, businesses, organisations and others;
- defending the Council’s planning decisions on appeal;
- providing information to those living, working, visiting and investing in the Borough;
- investigating and gathering evidence to resolve unauthorised developments;
- working with residents, businesses, communities, service users and others to

improve the services we offer;  
and

- working with landowners, residents, businesses, investors and others to secure infrastructure and other policy objectives.

- 1.6 Councillors and officers should have regard to this Code and how it may apply to their circumstances when conducting themselves in relation to any planning matter, particularly where they are the decision maker.
- 1.7 If councillors or officers have any doubts about the application of this Code to their own circumstances they should seek advice from the Monitoring Officer, Director of Law or one of the Council's planning solicitors early, and preferably well before a decision is made or any meeting takes place.

1.8 **Relationship to the Members' Code of Conduct and the Code of Conduct for Employees**

Whilst this Planning Code supports, interprets and supplements the Members' Code of Conduct and the Code of Conduct for Employees in relation to planning matters it is subordinate to the overarching conduct documents Members' Code of Conduct (in respect of councillors) and the Code of Conduct for Employees (in respect of officers). In the event of any inconsistencies between the documents, the Members' Code of Conduct (in respect of councillor conduct) and the Code of Conduct for Employees (in respect of officer conduct) will take precedence.

1.9 **Not complying with this Code**

A breach of this Code could result in a planning decision being legally challenged or a complaint being upheld by the Local Government and Social Care Ombudsman. In the case of a councillor, a complaint could be made to the Council's Monitoring Officer that the councillor has breached the Members' Code of Conduct. In the case of an officer, breach of this Code could lead to an investigation in accordance with the Council's disciplinary procedures.

**2 ROLE OF COUNCILLORS AND OFFICERS**

2.1 **General role of Councillors and Officers**

- 2.1.2 Councillors and officers have different, but complementary roles, however, both serve the public and act in the public interest. Both councillors and officers must make planning decisions openly, impartially, with sound judgment and with justifiable planning reasons.

**Councillors**

As elected representatives, councillors are empowered to make planning decisions on behalf of the whole community, many of

**Officers**

Officers are responsible to the Council as a whole, whilst councillors are responsible to the public as a whole.

which are delegated to officers in the Council's Constitution.

Planning officers will use their professional knowledge and experience with the aim of achieving the Council's agreed priorities. This necessitates them expressing their professional views and the priorities of the Council as part of providing advice and negotiating on behalf of the Council and in the public interest.

Advising or contributing to advising on behalf of the Council does not prevent officers being involved in making subsequent or related decisions or advising councillors on the Planning Committee. Planning officers' views, opinions and recommendations will be presented on the basis of their obligation of professional independence. This may sometimes be different to the views, opinions or decisions of the Planning Committee or councillors. Where an officer expresses their professional view on a planning application this will not necessarily be the view of the Council as a whole and the formal decision on an application on behalf the Council may only be carried out by the relevant decision maker. This may be an officer under delegated powers, the Planning Committee or other councillors.

Officers are not appointed to serve any political group and therefore advise all councillors and the Council. Officers carry out the daily functions of the Council's business in accordance with the direction of Council decision making bodies, the overall management of the Chief Executive and the specific management direction of their relevant Executive Director or Director.

## **2.2 Relationship between Councillors and Officers**

2.2.1 Mutual trust, respect and understanding between councillors and officers are the keys to achieving effective local government. A successful relationship between councillors and officers can only be based upon

mutual trust and understanding of each other's positions. This relationship, and the trust that underpins it, must never be abused or compromised.

- 2.2.2 Councillors must not put pressure on officers to put forward a particular recommendation or deal with a planning matter in a particular way. This does not prevent a councillor from asking questions or submitting views to the officer. These views, when received in written form, will be uploaded to the planning file and considered together with other material planning considerations.

### **3 REGULATION AND CONDUCT OF COUNCILLORS**

- 3.1 For the avoidance of doubt this section of the Code shall apply to councillors only.

#### **3.2 Disclosable pecuniary interests**

- 3.2.1 A "disclosable pecuniary interest" is as prescribed by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and as set out at Appendix A of the Members' Code of Conduct.
- 3.2.2 A councillor should refer to the Members' Code of Conduct for assistance in identifying disclosable pecuniary interests, or seek advice from the Chief Solicitor and Monitoring Officer or one of the Council's planning solicitors prior to attending a meeting.
- 3.2.3 Councillors should have regard to the Members' Code of Conduct in relation to actions required if they have a disclosable pecuniary interest.
- 3.2.4 Under the Members' Code of Conduct a councillor who has a disclosable pecuniary interest must, if the interest is not one already on the register of interests or subject to a pending notification to the Monitoring Officer, disclose the existence of that interest to the meeting and thereafter notify the Monitoring Officer of that interest within 28 days of this disclosure.
- 3.2.5 Where a councillor has a disclosable pecuniary interest, the councillor may address the Committee if registered to speak in accordance with the relevant rules of procedure. The councillor may answer any questions directed to them by the Committee but must then leave the room and may not participate further in any discussion of the matter at the meeting or participate in any vote or further vote on the matter.
- 3.2.6 A councillor with a disclosable pecuniary interest can also present their views to the meeting through other means. For example, the councillor can:
- make written comments in a private capacity and addressed to officers, disclosing the existence and nature of the interest in the representations and not seeking preferential consideration of the representations;
  - use a professional representative to make a representation on the councillor's behalf in circumstances where the councillor's planning application is being considered;

- arrange for another RBKC councillor to represent the views of constituents on matters in which a councillor has a disclosable pecuniary interest.

### **3.3 Other Interests**

3.3.1 A councillor may have an “other interest” which, whilst not falling within the legal definition of a disclosable pecuniary interest, should be declared in the public interest. This will often be due to bias or predetermination (or the appearance of bias or predetermination) – see section 3.4 below. Examples include:

- Where a councillor lives near the site of the planning application being considered;
- Where a property affected by the proposed development is owned by a company or other organisation of which a councillor is a director or trustee; and
- Where the applicant is a close friend or family member of the councillor (but not falling into the category of a disclosable pecuniary interest e.g. a sibling or a child).

3.3.2 As above for disclosable pecuniary interests, a councillor may seek advice from the Monitoring Officer, Director of Law or one of the Council’s planning solicitors for assistance in identifying interests and to what extent the interest might limit the councillor’s involvement in the decision making process.

3.3.3 The approach described in paragraphs 3.2.4, 3.2.5 and 3.2.6 also applies if a councillor declares any other interest and the circumstances are such that they should not participate in the decision on that application because the interest gives rise to a perception of a conflict of interest in the matter under consideration.

### **3.4 Bias, predetermination and predisposition**

3.4.1 Councillors need to avoid bias or predetermination or any appearance of bias or predetermination before making a decision on a planning matter.

3.4.2 Bias and predetermination (and the appearance of bias or predetermination) are principles of natural justice to which the decision maker is expected to adhere. Deciding a planning matter is a formal administrative process which applies national, regional and local policies, refers to legislation and case law and follows rules of procedure.

3.4.3 Planning councillors should not decide or declare which way they will vote in advance of a meeting, or before hearing the evidence and arguments on both sides.

3.4.4 However, councillors will often form an initial impression or view. This is not necessarily predetermination or bias. A distinction is drawn by the courts between:

- having clearly expressed an intention to vote in a particular way before a meeting (predetermination); and
  - a predisposition to an initial view (such as supporting the policies in the Development Plan) where the councillor is clear they are willing to listen to all the material planning considerations presented at the meeting and keep an open mind before deciding on how to vote. In the latter case there would be no predetermination or bias, just a legitimate predisposition.
- 3.4.5 If a planning councillor attends a pre-application meeting or meets an applicant or other interested party, they should not at this stage express a firm view on the development as a whole, as this could be predetermination. Such a view should only be formed at the end of the process when all the material considerations are available to consider and weigh up.
- 3.4.6 A useful test to decide whether a position or view could be considered to be biased is to think about whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias. Predetermination goes beyond predisposition and essentially evades that process of weighing and balancing relevant factors and taking into account other viewpoints.
- 3.4.7 If a planning councillor has been lobbied and wishes to promote or oppose a particular approach to a planning decision, they will need to consider whether this is likely to be regarded as amounting to bias and going against deciding the matter fairly. If they have predetermined their position or have given that impression, they should avoid being part of the decision-making body for that matter.
- 3.4.8 A Planning Committee member who is also a ward councillor for the relevant area and wishes to campaign for or against an approach to a planning decision may speak at the meeting (in accordance with the Council's public speaking procedures) on behalf of their constituents, having declared their predetermined position, but may not participate in the debate or vote on the matter.
- 3.4.9 The councillors can continue to represent those ward interests as a spokesperson for their local community despite being a planning councillor provided that, if the councillor has a disclosable pecuniary interest or other interest (that would give rise to the perception of conflict of interest), they may only participate in accordance with paragraphs 3.2.4, 3.2.5 and 3.2.6 above.
- 3.4.10 If a planning councillor has expressed a view on a planning matter they must be satisfied they can still consider the matter with an open mind and are prepared to take into account any new matters or any new arguments in favour of, or against, until the decision is taken. If they cannot, they should not take part in any decision on the matter.

#### **4. REGULATION AND CONDUCT OF OFFICERS**

*Constitution Part Eight, Section Seven – Code of Conduct on Planning*

- 4.1 For the avoidance of doubt this section of the Code shall apply to officers only.
- 4.2 Planning officers who are members of the Royal Town Planning Institute (RTPI) are subject to a professional code of conduct and breaches may be subject to disciplinary action by the RTPI. Similarly, other professional officers are also likely to be subject to regulation by their own respective regulatory bodies.
- 4.3 Officers dealing with planning matters should be conversant with the Code of Conduct for Employees, particularly those parts which will regularly apply to their role.
- 4.4 Any officer dealing with a planning matter who has an interest or relationship in respect of that matter which requires a declaration to an appropriate manager in accordance with Code of Conduct for Employees (most relevant will be section 5.3 Relationships with Contractors, Planning Applicants and those applying for Council Grant, and section 9 Personal Interest which results in an actual or perceived conflict of interest) shall declare that interest as soon they become aware of the interest or relationship and shall take no part in the processing or consideration of that matter. If an officer is unsure as to whether they must declare an interest or their involvement in respect of a planning matter they should seek advice from the Council's Legal Service.
- 4.5 Officers (as defined in paragraph 1.5 of this Code) should not accept gifts from and should be cautious in respect of hospitality offered by any person involved in or affected by a planning matter. If hospitality is offered (whether it is accepted or declined) officers should ensure they comply with the requirements of relevant sections of the Code of Conduct for Employees (particularly sections 13 (Hospitality) and 16 (Gifts offered or received)). If an officer is unsure as to whether they must declare a gift or hospitality (even if declined) they should seek advice from the Council's Legal Service. For the avoidance of doubt this paragraph shall not preclude officers from receiving complimentary materials at events or seminars attended as part of their role.
- 4.6 Officers must not act as agents for people pursuing planning matters within their authority even if they are not involved in the decision making on it.
- 4.7 As employees of the Council, Planning Officers must always act impartially and in a politically neutral manner and should comply with the provisions of section 4 of the Code of Conduct for Employees.

**5 APPLICATIONS AND DEVELOPMENT PROPOSALS SUBMITTED BY THE COUNCIL, COUNCILLORS OR OFFICERS**

- 5.1 **Applications and development proposals submitted by the Council**
  - 5.1.1 Proposals for a Council's own development can lead to suspicions of impropriety. It is perfectly legitimate for such proposals to be submitted to, and decided by, the Council. Proposals for the Council's own development will be treated no differently from any other application.

5.1.2 Due to their other Council roles, some councillors, such as Lead Members, may be heavily committed to or involved in a Council's own development proposal. In such circumstances, when a planning matter comes to be decided, if they are part of the decision making body they must consider whether they have an interest or degree of involvement with the proposals that could give the impression of bias or predetermination.

5.1.3 If they do, the most appropriate approach would be to address the committee or other body (in accordance with the relevant rules of procedure and the Members' Code of Conduct) but then leave the room and not take part in the deliberation and decision. It is important that the councillor should restrict their address to the relevant planning considerations rather than wider non-planning issues that are not material to the decision.

## 5.2 **Applications and development proposals submitted by councillors and officers**

5.2.1 It is perfectly legitimate for planning applications and development proposals to be submitted by councillors and officers. However, it is vital to ensure they are handled in a way that gives no grounds for accusations of bias or predetermination.

### **Councillors**

If a councillor makes an application or requests pre-application advice for development within the Borough they must notify the Monitoring Officer as soon as reasonably practicable. This includes if someone else makes the submission on their behalf, or if they are acting for another party. Any such applications will be reported to the Planning Committee for decision.

### **Officers**

If a senior officer at Head of Service level or above or an officer closely involved in the day-to-day work of the Council's planning function (for the avoidance of doubt this will include any officer who is employed within the Council's Planning Department) makes an application or requests pre-application advice for development within the Borough they must notify the Monitoring Officer as soon as reasonably practicable. This includes if someone else makes the submission on their behalf, or if they are acting for another party. Any such application will be reported to the Planning Committee for decision.

All officers submitting a planning application or requesting pre-application advice should comply with the requirements of section 9 of the Code of Conduct for Employees and should make a declaration to an appropriate manager.

5.2.2 If a councillor or officer submits a planning application or requests pre-application advice they should take no part in its processing or

consideration. A councillor who acts as an agent or representative for someone pursuing a planning matter with the Council should also take no part in its processing or consideration.

- 5.2.3 Where a councillor or officer's own application is referred to Planning Committee, the councillor or officer will have the same rights to speak in support or against of the application as any other member of the public (in accordance with the Council's Rules of Procedure). However, they must leave the committee room having made their representations in the allotted speaking time, and must remain outside until the debate and vote has concluded. This requirement helps to ensure no perception of bias or pre-determination, or any undue pressure on the decision makers.

## **6 LOBBYING OF, AND BY, COUNCILLORS**

- 6.1 For the avoidance of doubt this section of the Code shall apply to councillors only.
- 6.2 Lobbying is a normal part of the political and planning process. Members of the public, applicants or local interest groups will often seek to influence a decision through an approach to their ward councillor. It is important that councillors can undertake their democratic, representative purpose effectively, but for planning councillors care needs to be taken to avoid the perception of bias or predetermination of any planning matter.

### **6.3 Lobbying of councillors**

- 6.3.1 A planning councillor should explain to those lobbying or attempting to lobby them that, whilst they can listen to what is said, it may prejudice their impartiality and ability to participate in the decision if they express either an intention to vote one way or another or such a firm point of view that it amounts to the same thing.
- 6.3.2 Planning councillors should ensure it is made clear to any lobbyists that they will only be in a position to reach a final decision on any planning matter after they have heard all of the relevant arguments and looked at the relevant information during the decision making meeting.
- 6.3.3 Planning councillors should therefore:
- suggest to lobbyists that they submit their comments to the Director of Planning and Place so that their views can be included in the officer reports prepared for the decision;
  - pass on any lobbying correspondence received (including plans, data or correspondence) to the Director of Planning and Place as soon as practicably possible so that it can be taken into account and included in the report on the matter;
  - copy any response to lobbying correspondence to the Director of Planning and Place so it can be kept on the planning file;
  - remember their overriding duty is to the whole community, not just residents or businesses within their ward, and that they have a duty to

make decisions impartially without improperly favouring, or appearing to improperly favour, any person, company, group or locality;

- not accept gifts and should be cautious about hospitality from any person involved in or affected by a planning matter. If hospitality is offered (whether it is accepted or declined) councillors should ensure they comply with the Members' Code of Conduct on gifts and hospitality; and
- inform the Monitoring Officer where they feel that they have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will advise the appropriate officers to follow the matter up where necessary.

6.3.4 As long as they comply with the Members' Code of Conduct and the rules of bias and predetermination, planning councillors are not precluded from:

- listening or receiving viewpoints from residents or other interested parties;
- making comments to residents, interested parties, other councillors or appropriate officers, provided they do not consist of or amount to predetermination and they make clear they are keeping an open mind;
- seeking information through appropriate channels; or
- being a vehicle for expressing the opinions of others at a meeting, provided that make clear they have not committed themselves to vote in accordance with those views and they will make up their own mind having heard all the facts and listened to the debate.

#### **6.4 Lobbying by councillors**

6.4.1 Planning councillors should not become a member of, lead or represent a national or local organisation whose primary purpose is to lobby to promote or oppose planning proposals. If a councillor does, they may appear to be biased.

6.4.2 Councillors can join general groups which reflect their areas of interest and which concentrate on issues beyond particular planning proposals, but they should disclose an interest where that organisation has made representations on a particular proposal. A councillor can make it clear that they have reserved judgement and the independence to make up their own mind on each separate proposal.

6.4.3 Councillors should not excessively lobby planning decision makers regarding their concerns or views on a planning matter, 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.

6.4.4 Councillors should not decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other councillor to do so. Planning decisions must not be made on a party political basis. It is the councillor's individual responsibility to decide what view to take on any

question which requires a decision, after having considered all material facts.

## **7 PRE-APPLICATION ADVICE AND DISCUSSIONS**

- 7.1 Discussions between a potential applicant, interested parties and the Council prior to submitting an application can be of considerable benefit to all parties. The government and the Local Government Association recognise that councillors have an important part to play in these discussions.
- 7.2 Officers will regularly interact with potential applicants and interested parties through pre-application discussions as part of their professional duties. More occasionally, councillors will also engage with potential applicants and interested parties before an application is made.
- 7.3 Councillors' and officers' interactions with potential applicants should reflect their respective roles and responsibilities. At all times councillors and officers must abide by the requirements of this Code to ensure the highest standards of ethical conduct.
- 7.4 Pre-application discussions are often subject to public scrutiny. It is vital that such discussions are conducted in accordance with this Code so there can be no suggestion of actual pre-determination or bias, or any perception of pre-determination or bias, or any other procedural impropriety.
- 7.5 This paragraph sets out the conduct expected of councillors and officers involved in the pre-application process.

### **Councillors**

### **Officers**

- 7.5.1 The Planning Committee Chairman may request or the Director of Planning and Place may suggest a briefing for planning councillors on a potential application and provide an opportunity for questions to be asked. Officers will organise the briefing normally alongside, but not part of, a Planning Committee meeting.
- 7.5.2 Only a potential applicant, officers and planning councillors will be entitled to participate in the meeting. Other interested parties, such as relevant ward councillors and local amenity groups, will be invited to attend. At the discretion of the Planning Committee Chairman these interested parties will be able to participate in the meeting by, for example, asking questions of the potential applicant.
- The opinions offered by officers during the course of pre-application discussions are without prejudice to the final decision of any subsequent planning application.
- Advice provided by officers in a pre-application meeting shall be consistent and based upon the development plan and material planning considerations.

Both the Members' Code of Conduct and this Code apply at these meetings and they will follow the procedures in paragraph 7.5.3.

7.5.3 Councillors may attend relevant meetings (as defined in paragraph 7.5.5 below), either individually or together, with **potential applicants and/or their agents** before an application is received. Both the Members' Code of Conduct and this Code apply at these meetings. Where these meetings involve a planning councillor they will be subject to the following procedures:

- the meeting shall be organised through officers by contacting the Director of Planning;
- the meeting shall be agreed with the Planning Committee Chairman and the Director of Planning and Place in advance;
- a Council planning officer shall be present for the entire meeting (including any form of live interaction including conference calls and video conferencing);
- the meeting shall be at the site, at a venue provided by the Council, as part of an organised visit to see another site or another venue determined by the Director of Planning;
- it should be made clear at the beginning of the meeting and throughout where appropriate that the discussion will not bind the Council or any individual councillor attending the meeting to making a particular decision and that any view expressed is personal and provisional;

Care will be taken by officers to ensure that advice provided is impartial, otherwise the subsequent report or recommendation to committee could appear to be advocacy.

A written advice note will be prepared by the planning officer for all formal pre-application discussions, in the interest of public transparency and consistency in decision making. The note will be (except in clearly justified exceptional cases) made public as soon as possible, and in any event on submission of the relevant application.

- no commitment to take any particular position on a planning matter shall be made and no inference of pre-determination shall be given;
- the focus should be on the requirements of the development plan and material considerations with negotiations and advice left for meetings with officers;
- a contemporaneous note of the meeting shall be prepared by the planning officer attending and a copy sent to all parties present and the Planning Committee Chairman if not present within 14 days of the meeting or on submission of the relevant application, whichever is the sooner; and
- the meeting note will be published should a planning application subsequently be received so it is open to public inspection.

7.5.4 Councillors may attend relevant meetings (as defined in paragraph 7.5.5 below), either individually or together, with **potentially interested parties**, before an application is received. Potentially interested parties include those who might object to, or support, a potential application. Both the Members' Code of Conduct and this Code apply at these meetings. Where these meetings involve a planning councillor they will be subject to the following procedures:

- the meeting shall be agreed with the Planning Committee Chairman and the Director of Planning and Place in advance;

If, during the course of pre-application discussions, an officer involved in the discussions discovers that they have a conflict of interest, they should remove themselves from the decision making process and should declare an interest in accordance with the provisions set out above.

- it should be made clear at the beginning of the meeting and throughout where appropriate that the discussion will not bind the Council or any individual councillor attending the meeting to making a particular decision and that any view expressed is personal and provisional;
- no commitment to take any particular position on a planning matter shall be made and no impression of pre-determination shall be given;
- the focus should be on the requirements of the development plan and material considerations with negotiations and advice left for meetings with officers;
- a note of the meeting shall be prepared by the councillor(s) attending and shall be provided to the Director of Planning and Place within 14 days of the meeting or on submission of the relevant application, whichever is the sooner; and
- the meeting note will be published should a planning application subsequently be received so it is open to public inspection.

7.5.5 For the purpose of this Code a “relevant meeting” in paragraphs 7.5.3 and 7.5.4 means a formal pre-application meeting and any other meeting which includes substantive discussions about a forthcoming application, specific potential development site or proposal or other specific planning matter.

Councillors may also become involved in pre-application discussions and offer valuable local knowledge, expertise and understanding of community concerns to the process. Officers involved in the pre-application process should also be aware of the responsibilities of councillors and the terms of their involvement which must be in accordance with this Code.

- 7.5.6 [not used] Internal procedures are, and shall remain, in place to ensure all pre-application advice provided by planning officers is appropriately supervised to ensure effective oversight and adherence to the principles set out in this section.

## **8 POST SUBMISSION DISCUSSIONS**

- 8.1 For the avoidance of doubt this section of the Code shall apply to councillors only.
- 8.2 A planning councillor should not usually be involved in discussions with an applicant or agent when a planning application has been submitted and remains to be decided. Potentially, these discussions could be interpreted, particularly by objectors to a proposal, as an indicator of predetermination or bias.
- 8.3 In limited circumstances planning councillors may legitimately engage in post-submission discussions. An example would be in the case of a large-scale development, where it is desirable for there to be a full understanding of the Council's planning and economic objectives. Such meetings will be organised by officers and run under the same procedural rules as pre-application discussions.
- 8.4 If a planning councillor is contacted by the applicant, their agent or objectors, they should follow the rules on lobbying and consider whether or not it would be prudent in the circumstances to make notes when contacted. Councillors should report to the Director of Planning and Place any relevant contact with the applicant or other parties, explaining the nature and purpose of the contacts and their involvement in them so that it can be recorded on the planning file.
- 8.5 Planning councillors should not attend post-submission meetings that are not organised through, and attended by, officers and any meeting that does proceed shall also be subject to the procedures set out in paragraphs 7.5.3 *Councillors* (for meetings with applicants and their agents) and 7.5.4 *Councillors* (for meetings with other interested parties) above.

## **9 OFFICERS' REPORTS**

- 9.1 For the avoidance of doubt this section of the Code shall apply to officers only.
- 9.2 In writing and preparing planning reports, planning officers should ensure that reports:
- are accurate and include the substance of any objections and other responses received to the consultation;
  - include a clear assessment against the relevant development plan policies, relevant parts of the National Planning Policy Framework

(NPPF), any local finance considerations and any other material planning considerations;

- include a written recommendation for a decision to be made;
- where necessary, contain technical appraisals which clearly justify the recommendation;
- where the recommendation is contrary to provisions of the development plan, the material considerations which justify the departure are clearly stated.

## **10 PLANNING APPEALS AND CASES ‘CALLED IN’ BY THE MAYOR OF LONDON**

- 10.1 Appeals into the Council’s planning decision are heard by a planning inspector appointed by the Secretary of State. Any hearing or inquiry will be open to the public and councillors are able to attend. Councillors are encouraged to attend these hearings as they can be a good learning experience. This part of the Code is concerned with councillors who wish to participate actively in these appeals.
- 10.2 Conduct and strategy of planning appeals are the responsibility of the Director of Planning, however, the Director will also liaise with the Chairman of the Planning Committee and the Lead Member, as appropriate.
- 10.3 If a councillor wishes to attend a hearing or public inquiry as a ward councillor or as a member of the public they are free to do so. It is strongly recommended that they discuss their participation with the Director of Planning and Place to ensure they are aware of the process and that they do not act in a manner which compromises their position as a councillor, brings the Council into disrepute or puts the decision made at risk of challenge.
- 10.4 A councillor cannot represent the Council on behalf of the Planning Committee unless this is part of the Council’s case as decided by the Director of Planning. The decision of the committee will be documented in the minute and set out in the decision notice. The planning officer will present the Council’s case on its planning merits, in accordance with the Committee’s decision. The Inspector is required to decide the appeal on its planning merits and therefore all representations should focus on these.
- 10.5 Where the appealed decision was contrary to the officers’ recommendation, officers are generally able to present the Council’s case. Where this may not be possible, the case will be presented by a planning consultant employed by the Council.
- 10.6 This Section also applies to matters ‘called in’ by the Mayor of London.

## **11 PLANNING ENFORCEMENT**

- 11.1 It is perfectly legitimate for councillors to bring to the attention of the planning service suspected breaches of planning control so that they may be investigated to see whether any action is possible or necessary. These

cases should be reported online or brought to the attention of the Director of Planning and Place.

- 11.2 The Council's planning enforcement team works to a priority system so that those breaches that cause the most harm are dealt with first.

## **12 SITE VISITS BY COUNCILLORS**

- 12.1 Councillors may find site visits helpful, particularly for major applications. Where they take place, such visits will be arranged by the Director of Planning and Place and a planning officer will attend.
- 12.2 On other occasions if a councillor wishes to visit and enter a site it is preferable for a planning officer to accompany them. Such visits are particularly helpful in enabling councillors to seek clarification about proposals from the accompanying planning officers, the applicant or neighbours.
- 12.3 Once a councillor becomes aware of a proposal they may be tempted to visit the site alone. In such a situation, a councillor is only entitled to view the site from public vantage points and they have no individual rights to enter private property. Whilst a councillor might be invited to enter the site by the owner, it is not good practice to do so on their own, as this can lead to the perception that the councillor is no longer impartial.

## **13 COUNCILLOR TRAINING**

- 13.1 Councillors may not participate in decision making Planning Committee unless they have attended mandatory planning training. This will be provided by the Director of Planning and Place or their nominee and will cover the principles of planning and probity in planning.
- 13.2 Other councillors are also encouraged to attend the training so they can ensure they keep up-to-date. If any councillor believes they require additional training they should discuss this with the Director of Planning and Place.
- 13.3 All planning councillors should endeavour to attend any other specialised training sessions provided, since these will be designed to extend their knowledge of planning law, planning policy, procedures and good practice. This will assist them in carrying out their role properly and effectively.
- 13.4 Training provided on planning related matters is aimed at planning decision makers, but is always open to any councillor with an interest.

## **14 PRE-ELECTION GUIDANCE**

- 14.1 The Chief Solicitor and Monitoring Officer will normally provide detailed guidance before elections. Essential business should continue during this time, including:
- statutory consultation on planning applications;
  - making decisions on planning applications (even where controversial); and

*Constitution Part Eight, Section Seven – Code of Conduct on Planning*

- other routine planning matters.

14.2 Councillors should however be aware of the heightened political sensitivity during this period and should avoid situations which may generate publicity or media opportunities in relation to planning matters.