



THE ROYAL BOROUGH OF  
KENSINGTON  
AND CHELSEA

# **GUIDE TO THE CONDUCT OF MEMBERS WITH REGARD TO PLANNING APPLICATIONS**

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## **1. Introduction**

- 1.1 The planning regime has a crucial role in improving the lives of residents and others, making provision for their future well being and preserving the best of the Royal Borough's architectural heritage. To achieve these objectives and to avoid the risk of successful legal challenge it is essential that decisions are made with sound judgement and are made openly and fairly.
- 1.2 This Guide to the Conduct of Members with regard to Planning Applications has therefore been developed to assist Members involved in planning matters.
- 1.3 This Guide applies to Members at all times when they are involved in the planning process, both in respect of formal decision-making and less formal occasions, such as meetings with officers or the public. It applies, for instance, to planning enforcement matters and to site specific policy issues as well as to the consideration of planning applications. This Guide will also be helpful guidance to Members who are not on the Planning Applications and Major Planning Development Committees.
- 1.4 The Guide supplements the Members' Code of Conduct. It is unlikely that there will be any conflict between the two documents but, if there is, the provisions of the Members' Code of Conduct will take precedence.
- 1.5 If Members have any doubts about the application of this Guide to their own circumstances, they should seek advice as early as possible before the relevant meeting from the Bi-Borough Director of Law, the Chief Solicitor and Monitoring Officer or one of the Planning Solicitors.
- 1.6 If at any time it appears that the rules and procedures set out in this Guide are not being followed, the Legal Adviser and Governance Administrator will bring this to the attention of the Chairman who will be asked to take appropriate action.
- 1.7 Where reference is made in this Guide to "the Committee" it applies to both the Planning Applications Committee and the Major Planning Development Committee.

## **2. General Principles of Sound Decision Making**

### Democratic Accountability

- 2.1 The Court of Appeal has held that Planning Committees are not acting in a judicial or quasi-judicial role when deciding planning applications but "in a situation of democratic accountability". This means that Committee

Members are not acting in the same way as judges or quasi-judges. The Court of Appeal recognised that Members are elected to formulate and pursue policies and therefore they are not required to cast aside views on planning policy they will have formed when seeking election or when acting as Councillors. Unlike judges, Committee Members are not required to be independent or impartial. They are required, however, to address the planning issues before them fairly and on their merits even though they may approach them with a predisposition in favour of one side of the argument or other. Further guidance on these specific points is set out below.

### Justifiable Planning Decisions

- 2.2 The Committee must make planning decisions for justifiable planning reasons. Planning legislation requires that the determination of planning applications and other planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise.

### Being Well Informed

- 2.3. Sound decision making requires Committee Members to understand the issues involved. This clearly involves having read and understood the Committee report and accompanying papers and where necessary having visited the application site and attended any presentations on the proposed development both before and after the application has been submitted.

## **3. Open and Fair Decisions**

- 3.1 At the Royal Borough of Kensington and Chelsea decisions on controversial planning applications are taken openly and in public by the Committee.

For a decision to be open and fair :

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

### Bias or predetermination

- 3.2 It is entirely permissible for Committee Members, who are democratically accountable decision makers, to be predisposed towards a particular outcome. Nonetheless they must address the planning issues before them fairly and on their merits. That means they can have a view on the

application but must not make up their minds on how to vote before formally considering the application and any representations. Committee Members must have an open mind to the merits of a proposal before it is formally considered at the Committee meeting and they must be prepared to be persuaded by a different view in the light of any detailed arguments or representations concerning the particular matter under consideration.

- 3.3 If the Committee's decision on a planning application is challenged in the High Court by way of judicial review on the grounds that some of the Committee Members were biased, or had predetermined the application, the court will assess the case on the basis of what a fair-minded observer, knowing the relevant facts would think.
- 3.4 Section 25 of the Localism Act 2011 came into effect on 15 January 2012 and provides that a decision maker is not to be taken to have had, or appeared to have had, a closed mind when making the decision just because;
  - (a) the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take, in relation to a matter and
  - (b) the matter was relevant to the decision.

This provision does not change the law on bias and pre-determination which means that Committee Members must still take planning decisions with an open mind and having taken into account all relevant material planning considerations. What section 25 does provide is that statements made by Members cannot be used in court as evidence that the Member in question had or appeared to have a closed mind. Other evidence or any evidence that a Member has taken into account irrelevant considerations, however, is not so restricted by section 25.

Notwithstanding section 25 the safest course is for Committee Members to avoid making public statements (including expressing views in emails) as to their support for or opposition to any application which would indicate they had made up their minds before the formal consideration of the application at the meeting. If a Committee Member has made such a statement they must be satisfied that they can still consider the application with an open mind and are prepared to take into account any new matters or any new arguments in favour of or against the proposed development until the decision is made otherwise they should not take part in any decision on the application in question.

#### **4. Declaring an interest**

- 4.1 It is important that Committee Members should not be influenced or perceived to be influenced by any interests that they, their family or close associates may have in a particular application. To this end at the start of

every Committee meeting Committee Members will be asked to declare any interests they may have in relation to the matters before them. As outlined in the Members' Code of Conduct, what are known as "disclosable pecuniary interests" are prescribed by law and are entered in the register of interests maintained by the Council's Monitoring Officer. The Members' Code of Conduct also provides for the disclosure of other interests at meetings in certain circumstances. The following paragraphs set out the definitions of these two types of interest and paragraphs 6.1 to 6.2 of the Guide set out in more detail how Committee Members should act if they have any such interests.

#### Disclosable Pecuniary Interests

- 4.2 'Disclosable pecuniary interests' are prescribed by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and are set out in Appendix A to the Members' Code of Conduct. The categories of disclosable pecuniary interests include employment or office, interests in land in the Borough and contracts with the Council.
- 4.3 An interest is a 'disclosable pecuniary interest' if it is of a type described above and it is an interest of the Member or of their spouse or civil partner, a person with whom they are living as husband and wife or a person with whom they are living as if they were civil partners and the Member is aware of the interest.

#### Other interests

- 4.4 A Committee Member may have other interests which, whilst not falling within the legal definition of disclosable pecuniary interests, should be declared in the public interest. For example, such an interest may arise where the Committee Member resides near a development which is the subject of the planning application under consideration. While it is for the Committee Member to judge, a useful rule of thumb is "will my enjoyment of my property be affected either positively or negatively by this application?" If the answer is in the affirmative, it would be advisable for the Committee Member to declare an interest.
- 4.5 An interest would also arise, for example, if the affected property were to be owned by a company of which the Committee Member is a director.
- 4.6 Paragraphs 6.1 and 6.2 below advise what Committee Members and non-Committee Members should do if they have a disclosable pecuniary interest or other interest in an application due to be considered at a Committee meeting.
- 4.7 It is important to note that the rules relating to declarations of interest apply equally to non-Committee Members who may from time to time wish to attend a Committee meeting and speak on a particular matter. Each Member who attends a meeting must make an assessment of

whether they have an interest in the matters under discussion, whether they intend to participate in proceedings or not.

#### Consistency

- 4.8 Decisions will not be seen as fair if they are different from those taken on previous similar cases without good reason. The Committee report will set out the relevant considerations and will draw attention to decisions on any other similar cases where appropriate.

#### Reasons

- 4.9 Fair and open decision making requires the reasons for the decision to be clear. This is particularly important when the Committee's decision differs from that recommended in the report.

### **5. Before the Committee Meeting**

#### Lobbying and representations

- 5.1 The proper place for objectors to raise their concerns is in writing in response to public consultation on a planning application or by making representations at a Committee meeting. Committee Members may nevertheless receive lobbying material through the post or by email from either the applicant or the objectors or be approached personally by interested parties. In dealing with such approaches, it is important for Committee Members not to do or say anything that could be construed as bias or pre-determination.
- 5.2 Where Committee Members receive lobby material through the post or by email they should forward it to the Executive Director for Planning and Borough Development. If Committee Members feel it is necessary to acknowledge receipt of or comment on the correspondence, they should consider the advice on bias or predetermination in paragraphs 3.2 to 3.4 of this Guide and should send a copy of their response to the Executive Director for Planning and Borough Development.
- 5.3 If a Committee Member is approached by an individual or an organisation in relation to a particular planning application they may listen to what is said but they should explain that because they are a member of the Committee they must keep an open mind until they have seen all the material before the Committee. A Committee Member might suggest that the individual or organisation should;
- Where an application is not yet on a Committee agenda, write to the Planning Officer responsible for the particular case who will take into account any material planning considerations raised in the representations when preparing a report for Committee.

- If the application is already on a Committee agenda contact the Executive Director for Planning and Borough Development, if they wish to seek the Chairman's permission to speak at the Committee meeting.
  - In either case contact another Member who is not a Committee Member to seek their support. Generally speaking this should be the Ward Councillor for the Ward within which the application is made. Many wards have a dedicated "Planning Councillor" who is not a Committee Member.
- 5.4 If a Committee Member does decide to become involved in organising support for or opposition to a planning application or has offered an opinion on a planning application then that Committee Member must take in account the advice on bias or predetermination in paragraphs 3.2 to 3.4 of this Guide. If after considering that advice the Committee Member comes to the view that on an objective assessment they cannot sit on the Committee and decide the application with an open mind, they should not be part of the Committee that decides the application.

#### Pre-application meetings

- 5.5 Committee Members, Ward Councillors and representatives of residents' associations may be invited to pre-application meetings at which the applicant will brief them on proposals for the development prior to an application being submitted. The Executive Director for Planning and Borough Development will arrange such meetings. The purpose of pre-application meetings is for Committee Members and others to understand the scheme. Pre-application meetings are therefore particularly useful for major applications which may in due course be considered by the Major Planning Development Committee. At such meetings Members are encouraged to ask questions and seek further details about the proposed development.

#### Site Visits

- 5.6 Committee Members may find site visits helpful, particularly for major applications. Such visits will normally be arranged by the Executive Director and a Planning Officer will be in attendance. On other occasions if a Committee Member wants to visit and enter a site it will generally be preferable for a Planning Officer to attend as well. Such visits are particularly helpful in enabling Committee Members to seek clarification about proposals from the accompanying Planning Officers or the applicant or neighbours.
- 5.7 Committee Members may find it helpful to visit sites informally and individually before the Committee meeting without a planning officer in attendance. If a Committee Member speaks to applicants, objectors or neighbours or enters their premises during such visits they should say so at the Committee meeting.

### Post-application Presentations by Applicants

- 5.8 Presentations by applicants before Committee meetings are often a useful way of understanding a proposal and its impact. The presentations may be combined with a site visit. They are standard practice for Major Planning Development Committee applications. The Executive Director for Planning and Borough Development will arrange these meetings. Normally Ward Members and representatives of residents' organisations (limited to not more than two each) will be invited to such meetings. The Cabinet Member will also be invited.
- 5.9 A presentation is not part of the formal process of a debate and determination of an application. Committee Members should however use the opportunity of a presentation to seek clarification and ask questions.

### Expressing a view at informal meetings

- 5.10 When attending site visits, pre-application meetings or post-application presentations, or when discussing development proposals with their constituents and others, Committee Members should not express a view on the merits of the proposal, offer advice or indicate how they might vote unless having taken account of the advice on bias or predetermination in paragraphs 3.2 to 3.4 of this Guide they are satisfied that they can do so and still consider and be seen to consider the application with an open mind.

## **6. The Committee Meeting**

### Declarations of Interest

- 6.1 There is a specific item on each Committee Agenda for declarations of interest to be made. Committee Members should declare any disclosable pecuniary interests and other interests in any matter on the agenda. Any other Members attending the meeting who wish to speak either on their own behalf or representing others should declare any disclosable pecuniary interests or other interests in any item on the agenda at the beginning of their presentation.
- 6.2 If a Committee Member declares a disclosable pecuniary interest they must leave the table but may address the Committee at the discretion of the Chairman in accordance with the *Guide to the Planning Applications and Major Planning Development Committees*, so that their views can be taken into account by the Committee. The same applies if a Member declares any other interest and the circumstances are such that they should not participate in the decision on that application because the

interest may give rise to a perception of a conflict of interest in the application under consideration. The Members' Code of Conduct provides that in both circumstances such members must withdraw from the meeting room before the Committee begins its deliberations.

#### Late Representations

- 6.3 Late representations i.e. after the public consultation period has expired are not normally accepted. Sometimes applicants and objectors write directly to Committee Members, after the report has been published, commenting on the report or providing further material. If the Executive Director has not been copied into the correspondence, Committee Members should forward any correspondence to him. At the meeting the Executive Director will advise if the late material raises any matters which should be taken into account by the Committee.

#### Predetermination or Bias

- 6.4 If a Committee Member has become involved in organising support for or opposition to a planning application, or has expressed support or opposition either publicly or to the applicant or objectors on a planning application and that application is to be considered at a meeting when he is sitting on the Committee, then that Committee Member should declare this at the beginning of the Committee meeting. They should leave the table (but not necessarily the room) when the application is being considered unless having taken account of the advice on bias or predetermination in paragraphs 3.2 to 3.4 of this Guide they are satisfied that they can consider or be seen to consider the application with an open mind. If such a Member wishes to represent one of the parties, they may address the Committee at the discretion of the Chairman in accordance with the *Guide to the Planning Applications and Major Planning Development Committees*.

#### Conduct at Committee Meetings

- 6.5 Committee Members must conduct themselves in accordance with the Members' Code of Conduct.
- 6.6 It is important that those who decide planning applications are aware of all the relevant facts and material considerations before they come to a decision. Committee Members should therefore make sure not only that they have read the reports and other relevant papers before the meeting but also they are present for the whole of the consideration of any planning application. Committee Members who are not present throughout must refrain from participating in the discussion on that item and must not vote on it.
- 6.7 Committee Members must act fairly and be seen to act fairly when considering planning applications. Committee Members must not discuss, or appear to discuss, any application with members of the public

outside of the meeting room before the Committee considers the application.

- 6.8 Committee Members should take care, if expressing any opinion on the planning applications before them, that they confine their comments to matters which are material planning considerations (see paragraphs 6.11 and 6.12).
- 6.9 In the interests of good governance Committee Members should be mindful of the need to ensure that Committee meetings are conducted efficiently and expeditiously whilst properly considering the planning applications to be decided by them.
- 6.10 Regardless of any political group discussion prior to the Committee meeting, Committee Members must consider applications on their merits and not simply feel bound by decisions made at group meetings. Committee Members cannot be 'whipped' to vote in a particular way.

#### Material Planning Considerations

- 6.11 Applications must be determined in accordance with the development plan unless material considerations indicate otherwise. At present the development plan consists of the London Plan, the Core Strategy and those policies of the Unitary Development Plan remaining in effect.
- 6.12 Committee Members should consider only the planning merits of an application in determining whether or not to grant planning permission. When taking a decision Committee Members must not give weight to non-planning matters. Officers can be asked to provide guidance at the meeting if necessary. A refusal by the Committee other than on sound planning grounds will be overturned on appeal by a planning inspector and a grant of planning permission where immaterial considerations have been taken into account could be open to legal challenge in the High Court.

## **7 Other Matters**

#### Applications made by Members

- 7.1 As soon as reasonably practicable after the submission of a planning application, a Member must advise the Council's Monitoring Officer of any planning application for development in the Royal Borough of Kensington and Chelsea which has been made either on their own behalf or by them acting as an agent for another party. Any such applications will be reported to the Committee for determination.

#### Members' Training

- 7.2 The Royal Borough wishes to work to the highest standards when considering planning applications. The complexity of the planning system

and the frequent changes to it, as well as the panel system (which means that Committee Members do not sit on every Committee) mean that this can only be achieved through regular training of Committee Members and feedback from the Chairman to Committee Members about their performance.

- 7.3 All Committee Members must therefore receive appropriate training and ongoing training. No Member can sit on the Major Planning Development Committee unless they have received first stage training on planning law and practice. Committee Members should attend the relevant training sessions provided by the Council and where it appears to the Executive Director that the proposed course content is directly relevant to the work of the Committee, one or more Committee Members might be asked to attend the Planning Summer School that takes place in early September.
- 7.4 If Committee Members believe they require additional training they should discuss this with the Executive Director.

#### Guidance for Councillors who are not Members of the Committee

- 7.5 Councillors who are not members of the Committee should they so wish, may support or oppose planning applications on behalf of their constituents.
- 7.6 Members who are not on the Committee may speak at a Committee meeting on behalf of applicants or objectors with the agreement of the Chairman. They may also ask for applications to be heard by the Committee which would not otherwise be on the agenda. Members who are not on the Committee should sit separately from the Committee Members.
- 7.7 Members wishing to make representations in their personal capacity have the same opportunities to request to speak as other objectors in accordance with the *Guide to the Planning Applications and Major Planning Development Committees*. Whether they wish to speak or not Members with a disclosable pecuniary interest must leave the room before the Committee begins its deliberations on the application.

#### Legal Advice

- 7.8 Members need to be mindful of the rules on declarations of interests and if Committee Members or other Members require advice about possible disclosable pecuniary interests or other interests or if Committee Members are in any doubt as to whether they have expressed a view that could give the appearance of bias or that they have pre-determined a matter they may seek advice from the Bi-Borough Director of Law or the Chief Solicitor and Monitoring Officer in advance of the Committee meeting or alternatively seek advice from the Legal Adviser to the Committee before the meeting starts. Once advice has been given, it is up to the Member to make their own decision on whether or not they

have a declarable interest and whether or not they can participate in the decision.

## **8 Annual Review of Decisions**

- 8.1 The Executive Director of Planning and Borough Development will conduct a review of planning permissions implemented and report annually to the Planning Committees. As part of the review Committee Members will be invited to visit a sample of implemented planning permissions to assess the impact of decisions made by the Planning Committees or on appeal and with the aim of improving or maintaining the quality and consistency of decision making.