

HYNDBURN BOROUGH COUNCIL
MEMBERS PLANNING CODE OF GOOD PRACTICE

A summary of some key points:

- This Planning Code of Good Practice is supplementary to the Members Code of Conduct, which applies to Members at all times.
- Planning Committees are “quasi-judicial” proceedings and the principle of natural justice applies – everyone has the right to a fair hearing, and the decision-making process must always be fair, and must be seen to be fair by all involved.
 - Individuals must be afforded a fair opportunity to present their case.
 - A decision maker should have no pecuniary or proprietary interest in the outcome of the proceedings and must not be suspected or show a likelihood of bias or predetermination.
- You should not take part in a decision if:
 - You have made up your mind beforehand or indicated to others that you have done so (predetermination);
 - You have a personal interest in the application that compromises your ability to give the application a fair hearing, or gives the impression that you are prejudiced one way or the other (bias); or
 - You have a Disclosable Pecuniary interest in the matter.
- Be as open as possible about your interests, your actions and your decisions, and be prepared to give reasons for your actions and decisions.
- You can be predisposed towards a particular outcome provided that you don't have a closed mind and you are willing to listen to and consider everything presented to the Committee before you reach a final decision.
 - If you indicate a predisposition to anyone, always make it clear that you are still open to hearing all the evidence before making a final decision.
 - Always consider how what you say and do would look to others.
- Avoid being lobbied and having contact with interested parties where possible, but where it isn't possible make it clear that you must remain open minded, and then report it to the Chief Planning and Transportation Officer.
- Political Group Meetings must never dictate how Members should vote on a planning application.
- Take account of relevant advice from the Council's statutory and other professional officers, taking all relevant information into consideration, remain objective and make decisions on merit.
- You must make decisions in accordance with planning law, all relevant planning policies and all material considerations, such as the NPPF.
 - There is always a presumption in favour of the Councils development/local plan, underpinned by national policy. In order to make a decision against the local plan, there must be strong material considerations which you believe outweigh the local plan.
 - If you are proposing, seconding or supporting a decision contrary to officer recommendation or the development plan you must clearly identify and understand the planning reasons leading to this decision, and these reasons must be recorded.

This summary sheet is designed to provide an overview only, and should be read in conjunction with the rest of this Code of Good Practice.

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1. INTRODUCTION

- 1.1. **The aim of this Code of Good Practice** is to make sure that the planning process is fair, open and conducted in accordance with all relevant planning policy, and to ensure that there can be no grounds for suggesting that any decision has been affected by bias, predetermination or is unreasonable in any way.
- 1.2. **Your role as a Member of the Planning Authority** is to make planning decisions openly, impartially, with sound judgement and for legally justifiable reasons. You are entitled to be predisposed to make planning decisions in accordance with your political views and policies provided that you do not predetermine any application. You must weigh up all material considerations and give fair regard to all relevant points raised, both in the Officer's report and presentation and by any person addressing the Planning Committee, with an open mind before making any decision.
- 1.3. **This Code applies to Members at all times when they are involved in the planning process.** This includes taking part in the decision making meetings of the Council when it is acting in its role as a Local Planning Authority which will usually be through the Planning Committee, or when you are involved on less formal occasions, such as meetings with officers or the public and consultative meetings. It applies not only to the determination of planning applications but also to planning enforcement matters or site specific policy issues.
- 1.4. **If you have any doubts about the application of this Code to your own circumstances you should seek advice from the Monitoring Officer or her staff, preferably well before any meeting takes place.**
- 1.5. **If you do not abide by this Code of Good Practice** your conduct may lead to the legal challenge of a Planning Committee decision, or invoke a finding of maladministration by the Local Government Ombudsman. You may also put yourself at risk of being reported to the Standards Committee, which could result in you being named in a report made to the Council or, if the failure is also likely to be a breach of the interest provisions of the Localism Act 2011, a complaint being made to the Police to consider criminal proceedings.

2. RELATIONSHIP TO THE MEMBERS' CODE OF CONDUCT

- 2.1. You must apply the rules in the Members' Code of Conduct first, as they must always be complied with. This includes the rules on Personal Interests, Disclosable Pecuniary Interests and Conflicts of Interest, as well as the general rules contained therein.
- 2.2. You should then apply the rules in this Planning Code of Good Practice, which explains and supplements the Members' Code of Conduct with specific reference to the Council's role as a Local Planning Authority.

3. DEVELOPMENT PROPOSALS AND INTERESTS UNDER THE MEMBERS' CODE OF CONDUCT

- 3.1. The Members' Code of Conduct requires you to notify the Council's Monitoring Officer of any Disclosable Pecuniary Interests, and any Personal Interests. You are also required to declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties, and to take steps to resolve any conflicts arising in a way that protects the public interest. This could be done by registering or declaring those interests in accordance with the Members' Code of Conduct.
- 3.2. In addition, a Member should always seek to act with integrity when reaching a decision, which is defined in terms that:

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

3.3. Disclosable Pecuniary Interests

- 3.3.1. Disclosable Pecuniary Interests are dealt with in detail in the Members' Code of Conduct and this section should be read in conjunction with the rules set out therein. In short, a Disclosable Pecuniary Interest is an interest of yourself or your partner in employment, office, trade, profession, sponsorship, contract, land, licenses, corporate tenancies or securities.
- 3.3.2. If you have a Disclosable Pecuniary Interest in any matter that is being considered by the Council / Planning Committee;
 - You must not participate in any discussion of the matter at the meeting (unless you have obtained a dispensation from the Standards Committee that permits you to speak on the item).

- You must not participate in any vote taken on the matter at the meeting (unless you have obtained a dispensation from the Standards Committee that permits you to vote on the item).
- You must disclose the interest to the meeting.
- If the interest is not registered and is not the subject of a pending notification, you must register the interest in your register of member's interests within 28 days.
- You should leave the meeting room whilst the matter in which you have a Disclosable Pecuniary Interest is being discussed and voted on.

3.3.3. The Members' Code of Conduct explains how failure to comply with the requirements relating to Disclosable Pecuniary Interests can amount to a criminal offence.

3.3.4. There are specific rights for Ward Members to speak at Planning Committee meetings on applications within their wards. However, even if you are not on the Planning Committee you are prohibited from speaking if you have a Disclosable Pecuniary Interest and have not been granted a dispensation by the Standards Committee.

3.3.5. Any ward member who does not have a Disclosable Pecuniary Interest or other conflict of interest of any description may address the Planning Committee in the same way as a member of the public i.e. by registering to speak. In such cases Members who are also Members of the Planning Committee should remove themselves from the seating area reserved for Members of the Committee.

3.4. Personal Interests

3.4.1. Personal Interests are also dealt with in detail in the Members' Code of Conduct and again this section should be read in conjunction with the rules set out therein. A Personal Interest can be any interest, no matter how small, that a Member may have in any business of the Council.

3.4.2. If you have, or think that you might have a Personal Interest in any planning matter before the Council / Planning Committee then you must disclose that interest at the commencement of the meeting, or as soon as the interest becomes apparent. You do not, however, have to leave the meeting and you may still be able to take part in the discussion and voting, provided you are satisfied that the interest will not affect your ability to deal with the matter fairly and with an open-mind, nor can it reasonably be perceived to do so.

3.4.3. You should notify the Monitoring Officer in writing of any personal planning applications / proposals that you submit to the Council. This notification

should be given to the Monitoring Officer no later than submission of the application.

3.4.3.1. The proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers.

3.4.3.2. It would also be advisable to employ an agent to act on your behalf on the proposal in dealing with officers and any public speaking at the Planning Committee. You are not prevented from seeking to explain and justify a proposal in which you have a conflict of interest to an appropriate officer, in person or in writing, but your role as a Member may place additional limitations on you in representing the proposal in which you have a Personal Interest. For example, you will need a dispensation from the Standards Committee if you wish to speak as a member of the public in respect of your own planning application.

3.4.3.3. You must not sit on the Committee nor take part in any discussion or voting. You may wish to leave the meeting room altogether whilst the item is heard.

3.4.4 If you have a private interest in a matter before the Planning Committee you may consider that the only way to resolve any conflict of interest, and for the sake of the matter appearing to be fair and free from any bias, is not to vote or even participate in any discussion.

3.4.5 Any Member may make a written request to refer an application to Planning Committee, such request must be in writing giving planning reasons for the referral and must be made within 14 days of the planning application first being included on the weekly list of such applications.

4. PREDISPOSITION, PREDETERMINATION AND BIAS

4.1. “**Predetermination**” occurs where a Member’s mind is closed to the merits of any arguments relating to a particular application and the Member makes a decision without taking them into account.

4.2. “**Bias**” occurs where a Member has a clear inclination or prejudice for or against one person or group relating to a particular application in a way that can be considered to be unfair.

4.3. Do not limit your discretion or appear to limit your discretion, and therefore limit your ability to participate in a planning decision, by making up your mind, or clearly appearing to have made up your mind, on how you will vote on any planning matter prior to formal consideration of that matter at the meeting of the Planning Committee and hearing the officer’s presentation and evidence and all of the arguments for both sides of a decision.

4.4. Restricting your discretion in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and/or a legal challenge on the grounds of there being a danger of bias or predetermination, or a failure to take into account all of the factors enabling the proposal to be considered properly and fairly on its planning merits.

4.5. This rule should not however be interpreted in such an unnecessarily restrictive way so as to limit the quality of debate or stifle valid discussion. You are entitled to have a “**predisposition**” towards a particular outcome, and even indicate your likely voting intentions, provided that you don’t have a closed mind and you are willing to listen to and consider all arguments and points being made on a matter before you reach a final decision.

4.6. Section 25 of the Localism Act 2011 clarifies the rules on predetermination by providing that:

“A decision maker is not to be taken to have had, or to appear 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”.

4.7. Members are able to publicise their views on issues, indicate their likely voting intentions and engage fully with their local communities (as this will help Members to better represent their constituents and enrich local debate) without this affecting participation in the Planning Committee’s formal decision-making process, provided that Members go into the Planning Committee meeting with an open mind, being prepared to listen to all of the facts, evidence and arguments presented before making a final decision.

4.7.1. In order to confirm this is the case the Chairman of the Planning Committee may ask a Member to confirm whether or not they still have an open mind in respect of any application to be considered.

4.7.2. If you do indicate that you are predisposed towards a particular outcome or state that based on what you have currently heard you are of a certain opinion, at any time before the Planning Committee votes on a particular matter you should always make it clear when doing so that you are still open to hearing all the evidence/arguments/debate before making a final decision.

4.7.3. If you are a Member of the Planning Committee it is permissible to speak on any item being heard on behalf of constituents providing you retain an open mind on the application. In such cases it may be appropriate to refer the constituents to another Member who is not on the Planning Committee and who is willing to speak on behalf of the residents.

4.7.4. If you have formed such a strong view on an item yourself that you feel unable to take part in the Committee decision then, subject to the rules on Interests, you may stand down from the Planning Committee and speak as a member of the public on behalf of residents.

4.8. Members are able to take part in any debate on a proposal when acting as part of a consultee body outside of their duties for this Council (where you are also a member of a Parish Council, for example, or both the Borough and County Council), provided that:

- The proposal does not substantially affect the well-being or financial standing of the consultee body; and
- You make it clear to the consultee body that:
 - Your views are expressed on the limited information before you only;
 - You must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Planning Committee, and you must hear all of the relevant information;
 - You will not in any way commit yourself as to how you or others may vote when the proposal comes before the Planning Committee, and;
 - You disclose the Personal Interest regarding your membership or role when the Planning Committee comes to consider the proposal.

4.9. Do not speak and vote on a proposal where you have openly and uncompromisingly limited your discretion for example by commenting in a newspaper or on social media that you will never support an application. You do not have to withdraw from the meeting room, but you may prefer to do so for the sake of appearances. You should explain that you do not intend to speak or vote because you have or you could reasonably be perceived as having predetermined the matter elsewhere, so that this may be recorded in the minutes.

4.10 In determining whether there is an appearance of predetermination or bias Members who are responsible for making the decision should apply the following test:

Would a fair minded and informed observer having considered all the facts, decide that there is a real possibility that the Member had determined the issue or was biased?

4.11 When applying this test it is important to remember that it is legitimate for a Member to be predisposed towards a specific outcome as long as the Member remains open minded and is prepared to consider all the arguments and points

made before reaching a final decision, however you must not do or say anything that could appear to others as though you have a closed mind.

5 CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS

- 5.1 If any applicant, developer, objector or other interested party approaches you as a Member of the Planning Committee you should, as far as is practicable, discourage them from speaking to you in relation to any individual planning application or any other matter which may give rise to a planning application. You should always refer them to Council officers for planning, procedural or technical advice.
- 5.2 Do not agree to any request (other than from the Chief Planning and Transportation Officer) to attend a meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Chief Planning and Transportation Officer to organise it.
- 5.3 The Council officer will then ensure that those present at the meeting are advised from the start that the discussions will not bind the Council to any particular course of action. They will also ensure that the meeting is properly recorded on the application file and that the record of the meeting is disclosed when the application is considered by the Planning Committee.
- 5.4 Otherwise when contacted you should:
 - follow the Council's guidance on lobbying (see section 6 below);
 - take notes wherever possible,
 - ask relevant questions for the purposes of clarifying your understanding but remember this is not part of the formal process of debate and determination of any subsequent application,
 - do not express any strong view or state how you or other Members might vote, and;
 - report to the Chief Planning and Transportation Officer any significant contact with the applicant and any other interested parties, explaining the nature and purpose of the contact and your involvement in it, and ensure that this is recorded on the planning file.

6 LOBBYING OF COUNCILLORS

- 6.1 Always explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, expressing an unequivocal intention to vote one way or another or such a firm point of view that it amounts to the same thing prejudices your impartiality and therefore your ability to participate in the Planning Committee's decision making process.
- 6.2 In such cases it may be advisable to refer those lobbying you to another Ward Member.
- 6.3 Remember that your overriding duty is to the whole community not just to the people in your ward/local area and, taking account of the need to make decisions impartially, you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- 6.4 Do not accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and register the gift or hospitality where its value is over £100 in accordance with the Members' Code of Conduct.
- 6.5 Always copy or pass on any lobbying correspondence that you receive to the Chief Planning and Transportation Officer at the earliest opportunity, and you should promptly refer to the Chief Planning and Transportation Officer any offers made to you of planning gain or constraint of development.
- 6.6 If you believe that you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality) you should promptly inform the Monitoring Officer.
- 6.7 Unless you have a Disclosable Pecuniary Interest, you will not have compromised your discretion or breached this Planning Code of Good Practice through:
 - listening or receiving viewpoints from residents or other interested parties;
 - making comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to predetermination of the issue and you make clear that you are keeping an open mind;
 - seeking information through the appropriate channels.

7 LOBBYING BY COUNCILLORS

- 7.1 If you are a Member of the Planning Committee it is inadvisable to become a member of, or lead or represent an organisation whose primary purpose is to lobby to promote or oppose any planning proposals. If you do you will have restricted your discretion and will have a Personal Interest.

- 7.2 You may join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society, but you should disclose a Personal Interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal.
- 7.3 Be aware of the power of social media posts or re-posting and be careful to not to give the impression that you will definitively vote in a certain way or act with a closed mind if you intend to participate in the decision making on behalf of the authority.
- 7.4 Do not excessively lobby fellow Councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- 7.5 Do not decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue.
- 7.6 It is not permissible for your political party to expect you to follow any position it may have taken on an application prior to the Planning Committee. It is important that each Member of the Planning Committee forms their own view on applications after considering officer advice and any representations.

8 SITE VISITS

- 8.1 Try to attend site visits organised by the Council where possible.
- 8.2 Do not request a site visit unless you feel it is strictly necessary because particular site factors are significant in terms of the weight attached to them relative to other factors, or due to the difficulty of their assessment in the absence of a site inspection; or there are significant policy or precedent implications and specific site factors that need to be carefully addressed.
- 8.3 Any information which you gained from the site visit should be reported back to the Committee, so that all Members have the same information.
- 8.4 Ensure that you treat the site visit only as an opportunity to obtain information and to observe the site. No debate on the planning merits of the case should take place during the site visit.
- 8.5 During the site visit you may ask questions or seek clarification from the officers on matters which are relevant to the site inspection.

- 8.6 During the site visit you should not hear representations from the applicant or any other party. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the Council and direct them to or inform the officer present. They should also be advised of the right to address the Planning Committee when the application comes forward for determination.
- 8.7 During the site visit avoid giving any express opinions or views to anyone.
- 8.8 Do not enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias, unless you feel it is essential for you to visit the site and you are unable to attend the official site visit. In such cases it is advisable to inform the Chief Planning and Transportation Officer about your intention to do so and why (which will be recorded on the file). You must ensure that you comply with these good practice rules on any such site visits.

9 PUBLIC SPEAKING AT MEETINGS

- 9.1 Do not allow members of the public to communicate with you during the Planning Committee's proceedings (orally or in writing including social media) other than through the scheme for public speaking, as this may give the appearance of bias.
- 9.2 Do not participate in social media or exchanges by texting as a Member of the Committee during the committee's proceedings as this may give the impression of undue external influence and may give the appearance of bias.
- 9.3 Always ensure that you comply with the Council's procedures in respect of public speaking, and seek clarification from officers if you are unsure of these procedures.
- 9.4 Members should be aware that Planning Committee meetings are open to the public, and so any member of the public is entitled to record the meeting from the moment that it has commenced to the moment the meeting concludes.

10 OFFICERS

- 10.1 Do not put pressure on officers to put forward a particular recommendation. This does not prevent you from asking questions or submitting views to the Chief Planning and Transportation Officer which may be incorporated into any committee report.
- 10.2 You should recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with a Head of Service or

those officers who are authorised by their Head of Service to deal with the proposal at a Member level.

- 10.3 You should also recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Planning Committee or its Members.

11 DECISION MAKING

- 11.1 If you request a proposal to go before the Planning Committee rather than be determined through officer delegation, your reasons for doing so should be recorded and repeated in the report to the Committee.
- 11.2 You must always come to Planning Committee meetings with an open mind and you should be able to demonstrate that you are open minded.
- 11.3 You must make decisions in accordance with section 70 of the Town and Country Planning Act 1990 (as amended), all relevant planning policies and all material considerations, such as the National Planning Policy Framework.
- 11.3.1 Planning decisions are constrained by the need to operate within the law and to give proper weight to policy. Planning decisions need to be taken on an authority wide basis – often putting the desires of local people second to the need to work within the authority's overall policy framework.
- 11.3.2 There is always a presumption in favour of the Council's development/local plan, underpinned by national policy. In order to make a decision against the local plan, there must be strong material considerations which you believe outweigh the local plan.
- 11.4 You should come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel that there is insufficient time to digest new information or that there is simply

insufficient information before you, you should request that further information be provided, or if necessary defer or refuse the application.

- 11.5 Do not vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, any public speakers and the officers' introduction to the matter. If you come in to Planning Committee late and public speaking has already commenced on an item, or if you have to leave the room part way through an item being heard, you will not be able to vote on that item. Where a matter is deferred and its consideration recommences at a subsequent meeting, only Members who were present at the previous meeting will be able to vote.
- 11.6 You must record the reasons for any Planning Committee decision to defer the determination of an application.
- 11.7 You must make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the **planning reasons** leading to this conclusion/decision. These reasons must be given prior to the vote and they must be recorded. Be aware that you may have to justify the resulting decision by giving evidence at an appeal, in the event of any legal challenge.

12 TRAINING

- 12.1 Members are required to attend any training prescribed by the Council before they participate in decision making at meetings dealing with planning matters.
- 12.2 You should endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures etc. beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.
- 12.3 You should participate in any review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations.

13 GENERAL

This Planning Code of Good Practice will be kept under annual review by the Executive Director, Legal and Democratic Services. It will also be reviewed following any relevant change in the Council's Constitution and Rules of Procedure.

