

Sandwell Metropolitan Borough Council Planning Code of Good Practice

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1. Introduction

- 1.1 This Code offers guidance to councillors about good practice in the planning process. It supplements the Council’s Code of Conduct for Members and aims to ensure that the Council is seen to make planning decisions properly, openly, impartially, and for justifiable reasons.
- 1.2 This Code applies to members at all times when involving themselves in the planning process. It applies to formal decision-making and to less formal occasions, such as meetings with officers or the public and consultative meetings. It applies, for instance, to planning enforcement matters or site-specific policy issues as well as to the consideration of planning applications.
- 1.3 **If you have any doubts about the application of this Code to your own circumstances you should seek advice at early stage, from the Director of Legal and Governance Services, preferably well in advance of any meeting.**

2. Relationship to the Members’ Code of Conduct

- 2.1 This Code is intended to supplement the Members’ Code of Conduct adopted by the Council on the 3 July 2012. It is unlikely that there will be any conflict between the two codes but, if there is, the provisions of the general Code will take precedence.

2.2 It is important that members are careful to apply both the general Code of Conduct and this Code in dealing with planning issues. Failure to do this may place the Council at risk of legal challenge or a finding of maladministration. It may also place you at risk of a complaint to the Monitoring Officer of the Council.

3. Development Proposals and Interests under the Members' Code

3.1 Members must always declare personal and disclosable pecuniary interests in accordance with the Members' Code of Conduct.

3.2 **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other members. Disclose your interest at the commencement of discussion on that particular matter.

3.3 Where your interest is a disclosable pecuniary interest and you have not obtained a dispensation:-

- **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Planning Authority under the Council's standing orders, if you have a disclosable pecuniary interest you are required to leave the room.
- **Don't** get involved in the processing of the application.
- **Don't** use your position to discuss the proposal with officers or members when other members of the public would not have the same opportunity to do so. (You should never seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a Member).

3.4 Whilst you are not prevented from seeking to explain and justify a proposal in which you have a disclosable pecuniary interest to an appropriate officer, in person or in writing, you are not permitted to speak or vote on the matter unless you have obtained a dispensation from the Standards Committee. Standing Orders also require you to withdraw from the meeting when the matter is considered unless you have obtained a dispensation from the Standards Committee.

4. The Rule on Pre-determination and Decision Making

4.1 To protect the rights of planning applicants, and to preserve the integrity of Committee decisions, it is vital that you do not make up your mind before you have all relevant material and arguments before you at the Planning Committee meeting. You are entitled to feel pre-disposed towards a particular decision, but must still be able to consider and weigh relevant

factors before reaching the final decision. Pre-determination arises when your mind is closed (or reasonably perceived to be closed) to the consideration and weighing of the relevant factors. That risks making the whole decision vulnerable to legal challenge.

4.2 Section 25 of the Localism Act 2011 has sought to clarify the law regarding pre-determination.

- Section 25 applies where a decision by members is challenged on the grounds of bias, pre-determination, or otherwise, there is an issue about the validity of a decision of the Authority; and
- It is relevant to that issue whether the decision-maker, or any of the decision-makers, had or appeared to have had a closed mind (to any extent) when making the decision.

Section 25 states that:

“ A decision maker is not taken to have had, or appeared to have had, a closed mind when making a 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 that matter, and

(b) the matter was relevant to the decision.”

4.3 Whilst section 25 provides some comfort to you on the extent to which you are entitled to express firm views on matters before decisions are made it still remains the case that you must retain an open mind at the time the decision is made and be prepared to listen to the views of officers and deliberations at the committee meeting.

4.4 Don't make up your mind, or appear to have made up your mind, on how you will vote on any planning matter until you have heard the Officer's presentation and evidence at the Planning Committee when the matter will be considered. This is particularly important if you are contacted by an external interest or lobby group. If you have made up your mind prior to the meeting and are not able to reconsider your previously held view, then you will not be able to participate in the determination of the matter by the Authority because if you did take part in the discussion or vote it would put the Authority at risk in a number of ways.

- Firstly it would probably in the view of the Local Government Ombudsman constitute maladministration.

- Secondly, the Authority could be at risk of legal proceedings on a number of possible grounds:
 - (i) that there was a danger of bias on your part; and/ or
 - (ii) pre-determination; and/or
 - (iii) a failure to take into account all of the factors enabling the proposal to be considered on its merits.

4.5 You may take part in the debate on a proposal when acting as part of a consultee body provided:

- you make it clear during the discussion at the consultee body that;
 - (i) your views are expressed on the limited information before you only; and
 - (ii) you will reserve judgement and the independence to make up your own mind on each separate proposal when it comes before the Authority and you hear all of the relevant information; and

(iii) you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Authority; and

- you disclose the personal interest regarding your membership of the consultee body when the Authority comes to consider the proposal.

4.6 Where you have already made up your mind (in legal terminology “fettered your discretion”), and therefore decline to speak or vote on a proposal, you do not also have to withdraw (unless you also have a disclosable pecuniary interest and have not obtained a dispensation), but you may prefer to do so for the sake of appearances. If you decide to stay in the meeting, explain that you do not intend to speak and vote because you have (or you could reasonably be perceived as having) judged the matter elsewhere, so that this may be recorded in the minutes.

5. Contact with Applicants, Developers and Objectors

- 5.1 It is important to recognise that lobbying is a normal and perfectly proper part of the political process and is important to local democracy; those who may be affected by a planning decision will often seek to influence it through an approach to their elected ward member or a member of the Planning Committee. However, unless care is taken, lobbying can lead to the impartiality of a member being called into question and to difficulties in the member participating in the decision.
- 5.2 When being lobbied, you should pay heed to the advice in this Code about the dangers of appearing to approach a decision with a “closed mind”. You should make it clear that your final position will be determined at the end of the planning process when you are aware of all the material considerations. Unless you have a disclosable pecuniary interest or non disclosable pecuniary interest, you can:-
- Listen to/receive viewpoints from residents or other interested parties.
 - Make comments to residents, interested parties, other members or appropriate officers, provided this does not indicate that you are approaching the merits of the application with a “closed mind”.
 - Give non-technical advice on planning procedures, including suggesting to those who are lobbying, that they should speak or write to the relevant officer, in order that their opinions can be included in the officers report to Committee.
 - Seek information through appropriate channels.
 - Alert the decision-making committee to issues and concerns that have been drawn to your attention.
- 5.3 If you are approached by applicants or others seeking planning, procedural or technical advice, they should be referred to officers.
- 5.4 If you are invited to, or asked to arrange, a formal meeting with applicants, developers or groups of objectors (for instance, residents’ associations) or supporters, you should inform the case officer dealing with the application. In accordance with the guidance issued by the Local Government Association “Member engagement in planning matters” in December 2004 it is generally better to put formal meetings on an official basis, with Planning Department representation and a note taken of the meeting. This applies to all stages of the planning process, including the pre-application stage.

- 5.5 If you receive any approaches which raise new issues or bring new information to light, you should let the case officer know what these are as soon as possible. If a developer offers any planning gain or offers to accept any conditions on development in return for consent, be sure to let the case officer know as soon as possible.
- 5.6 If any approach by a developer or anyone else gives you cause to feel uneasy, please approach the Director of Legal and Governance Services.
- 5.7 In addition, if you consider any issue or fact to be a relevant consideration, and other members may not be aware of it, be sure to raise it when the application is considered. You may wish to state that the issue or fact you wish to raise is material to the application and warrants further debate and discussion before a fair decision can be arrived at. You should not rely on information which is not in the public arena in reaching a decision.
- 5.8 You should bear in mind that your overriding duty is to the whole community not just to the people in your ward, that planning decisions need to be taken on planning grounds and that you should avoid the appearance of improperly disfavours or favouring any person, company, group or locality.
- 5.9 You should not accept gifts or hospitality from developers or from any person involved in or affected by a planning proposal including pre-application proposals. If acceptance of some hospitality is unavoidable, it should be kept to a minimum and should be declared. If the value of the hospitality is over £100 it should be registered in accordance with Member's Code of Conduct. If significant hospitality is offered, you should seek advice from the Director of Legal and Governance Services before accepting.

6. Site Visits

- 6.1 Individual Planning Committee members may wish to visit a site on which they have been asked to determine an application. This should be undertaken before the Committee meeting. A copy of the Planning Committee Site Visit Protocol is attached to this Code.
- 6.2 If you decide to visit a site, you should avoid putting yourself in a position where you could be accused of partiality by any interested party to the application. It is best to visit a site unaccompanied by the applicant or by objectors. However, if a site visit is carried out in the presence of the applicant and/or their agent, or of residents/objectors, you should bear in mind the advice given in paragraphs 4 and 5 of this Code. You should only seek factual information to help familiarise yourself with the site and its surroundings. You should avoid being put under undue pressure from any interested party to visit a site.

- 6.3 You should not enter onto private land or premises without first obtaining the permission of the owner as members of the Planning Committee have no statutory rights to enter on to private land without consent. Where possible, you should always try to familiarise yourself with the site from a public viewpoint. If you go onto a site, you should only do so if satisfied that it is quite safe to do so. You should not, for instance, enter a site where excavations or building works are in progress unless guided by a responsible site manager. If you anticipate a need to ask to enter onto land, you should attempt to make arrangements in advance and should carry (and produce) your Council identity card.
- 6.4 You should ensure that any relevant and material information which you gained from the site visit is reported back to the Committee, so that all members have the same information.
- 6.5 Committee site visits in the company of ward representatives and other interested parties will be arranged at the request of members following a resolution of the Committee to undertake a site visit. When they occur a record will be kept of who attended. The Committee site visit will be led by the Chair of the Committee accompanied by an officer, who will point out any relevant factors and issues concerning the site and its surroundings. A site visit is to obtain information and is not a meeting to discuss the planning merits of the scheme or to make a decision. The appropriate place for discussion and decision is the Committee Chamber where all interested parties can participate. This should be stressed to all attending the visit.

7. Public Speaking at Meetings

- 7.1 You should not allow members of the public to communicate with you either inside or outside of the Committee room during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give an appearance of bias or special access to Councillors.

- 7.2 All planning matters will be considered in public session, unless there are specific reasons for dealing with an item as confidential under the provisions of the Local Government Act, 1972, in which case the public will be asked to leave the room.
- 7.3 A representative of either the applicant or the objector(s), agents and members of the public with an interest in an application may be allowed to speak at Planning Committee meetings at the invitation of the Chair of the Committee and in accordance with the agreed Council procedures.
- 7.4 You should avoid over-familiarity with applicants, objectors and other members of the public when attending meetings, as this is open to misinterpretation.

8. Officers

- 8.1 You should not put pressure on officers to make a particular recommendation.
- 8.2 All members should pay particular attention to the professional advice and recommendations from officers. You are not bound to follow officers' advice or recommendations, but you should only depart from advice or recommendations where you have good reason to do so, based on clear and legitimate planning grounds.
- 8.3 Planning officers 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. The views, opinions and recommendations of planning officers may on occasion differ from the views, opinions or decisions of the Committee or its members.

9. Decision Making

- 9.1 If you wish for a proposal to go before the Planning Committee, rather than be determined through officer delegation, you should provide written notice/request of the delegated item, together with reasons for your request. The written request should be made to the Area Director-Regeneration and Economy within 15 working days from the date of publication of the weekly list of planning applications on which the said planning application appeared, for the application to be considered by the planning committee. The subsequent committee report should record the name of the member who requested the matter to come before the Committee and the reasons for doing so.
- 9.2 If you are submitting your own planning application, you should be particularly careful to avoid any impression of either seeking or receiving

special treatment. You should also make sure that the Area Director Regeneration and Economy is aware of your own planning application.

- 9.3 You should come to meetings with an open mind and should demonstrate through your conduct at the meeting that you are giving careful, fair and balanced consideration to the issues under discussion. It is particularly important that applicants and members of the public have confidence in the way in which decisions are reached. The conduct of members can be important in ensuring that faith in the planning process is maintained.
- 9.4 You should keep in mind your obligation to make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- 9.5 The Council's own proposals for development must be dealt with on exactly the same basis as applications submitted by members of the public. You should be particularly careful to ensure that any decision on a Council application is based purely on relevant planning considerations.
- 9.6 You should make a decision only after you have considered all the relevant information needed to make a decision. If you feel you have had insufficient time to digest new information or that you need further information, you should say so and, if necessary, ask for a deferral.
- 9.7 You should not vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- 9.8 If you are expressing a view contrary to officer recommendations or the development plan, you should identify clearly the planning reasons leading you to take a different view.
- 9.9 Where any members are proposing to vote against the officer recommendations, the Chair shall make sure that their reasons are apparent before a vote is taken. The reasons may be expressed in broad planning terms and must be recorded in the minutes if the officer recommendations are not agreed.
- 9.10 If a motion is lost contrary to officer recommendation the lead officer may request that a further report is brought before the Committee outlining the consequences of the proposed decision and to allow members to review the matter.
- 9.11 Members should be aware at all times that the Planning Committee only has delegated powers to determine applications in accordance with Council policy. Consequently, any decision contrary to policy will require

ratification by the full Council. Disputes as to whether or not a matter is contrary to Council policy may be referred to the Monitoring Officer. Any disputes will have to be referred to the Monitoring Officer forthwith as planning decisions are normally issued the day after the Planning Committee has determined the decision.

10. Training

- 10.1 Planning decisions are often complex and differ in nature from some of the other decisions taken by the Council. It is crucial that planning decisions are based on legitimate planning grounds and that appropriate weight is given to possible competing factors. The Council offers training to councillors on planning law and procedure and all members are strongly urged to participate.



PLANNING COMMITTEE SITE VISIT PROTOCOL

1. Introduction

- 1.1 This protocol is intended to guide Members of the Planning Committee when carrying out site visits as part of the process of making a decision on a planning or other related application.

2. Why Have Site Visits?

- 2.1 The purpose of the site visit is to enable Members of the Planning Committee to understand more fully:
- The details of a development proposal in the context of the application site and the surrounding land and buildings;
 - Examine issues raised by interested parties.
- 2.2 Visits may be called by Members at the beginning of each Committee meeting or following debate on a particular application during the meeting itself.
- 2.3 The reasons for a visit being called should be clear and related to planning matters only. Members will vote to ensure that they agree that a visit is necessary.
- 2.4 Members should only request visits were they feel it is absolutely necessary to inform the decision making process. They should be mindful that site visits can cause delay to the planning process.

2.5 Site visits will be organised by planning officers which also includes obtaining access to the application site, and informing the local Ward Councillors and interested parties. Officers will also identify relevant health and safety issues.

3. The Site Visit

3.1 The Chair of the Planning Committee will oversee that the conduct of a site visit is undertaken in a formal and orderly manner.

3.2 Councillors should remain in one group for the duration of the visit to ensure that they all receive the same information. Mobile phones should be switched off or on silent to avoid distractions.

3.3 The lead planning officer present will undertake introductions on behalf of the Chair on arrival at site.

3.4 The Chair will call the site inspection to order and ask the lead planning officer to summarise:

- The application proposal
- Any relevant site history
- The features of the site and surrounding development
- Any other matters of relevance

3.5 The planning officer may also ask the applicant/agent to explain certain aspects of the proposal. Members may also seek clarification from the planning officer on matters they feel relevant. Comments must be restricted to facts and not opinion.

- 3.6 **At No Time** during the visit should Members enter into a debate with the applicant/agent or any other third party present. Members if approached should emphasise that the correct place for discussion is in the Council Chamber at the Committee meeting itself and direct individuals to the planning officers present.
- 3.7 The Chair will close the site inspection as and when he/ she feels appropriate.
- 4. Record of the Visit
 - 4.1 A record of the visit will be made by Council officers. The record will include the timetable for the meeting, attendees and what was viewed on site.