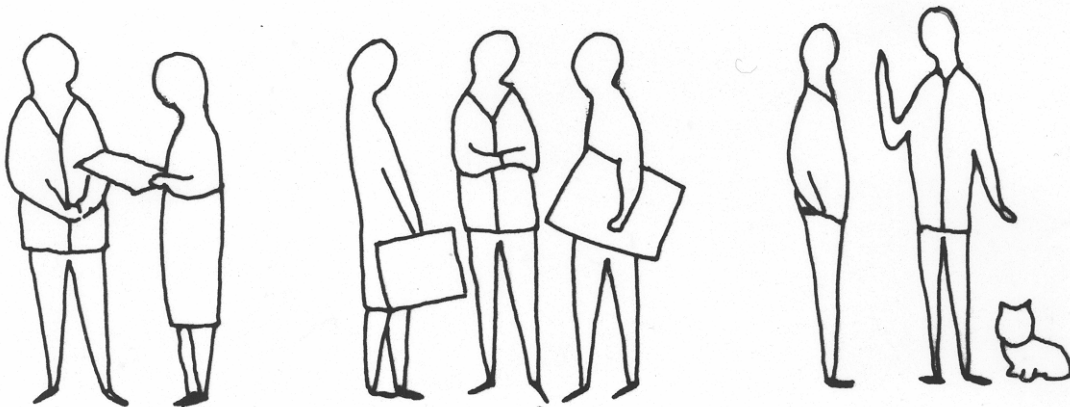


Scarborough Borough Council

PLANNING CODE OF PRACTICE

The Role of Councillors and Officers in the Planning Process



Support for Good Development

Planning and Building Standards
June 2007



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SCARBOROUGH BOROUGH COUNCIL

PLANNING CODE OF PRACTICE

JUNE 2007

This document replaces the 'Planning Code of Practice of November 2002 and of November 2006. Approved by Council 30 April 2007

1.0 INTRODUCTION

- 1.1 The Local Government Act 2000 introduced a new ethical framework to Local Government, including a Model Code of Conduct for Councillors arising from the Nolan Committee Report on Standards in Public Life (1997). That Code was updated in 2007 and has been incorporated into this guidance.
- 1.2 This document represents guidance on the application of the Model Code of Conduct to planning.
- 1.3 This Planning Code is based on advice from, the Local Government Association, the Standards Board for England, the Audit Commission, the Planning Advisory Service, the Department of Communities and Local Government, the National Planning Forum and the Regional Town Planning Institute. The Code sets out practices and procedures designed to avoid allegations of malpractice in the operation of the planning system. The aim is to protect the integrity of the planning system as open and fair to all parties.
- 1.4 Failure to follow the Planning Code without good reason could be taken into account in investigations into possible maladministration by the Council and might result in allegations that a Councillor had breached the Model Code.
- 1.5 The Planning Code refers mainly to the actions of a Planning Committee as the main decision making body, but it applies especially to other forms of decision making, Cabinet or Full Council where planning issues may be discussed.
- 1.6 The Planning Code relates to both Councillors and Officers who are involved in operating the planning system and to applicants/developers.
- 1.7 The fundamental basis of the Planning Code is that the Planning System operates in the public interest and therefore decisions affecting private and public interests have to be made openly, impartially, with sound judgement

and for justifiable reasons. Decisions on planning applications rely on informed judgement within a firm policy context.

- 1.8 In addition, the role of all Councillors on a Planning Committee involves balancing representing the needs and interests of individual constituents and the community with the need to maintain an ethic of impartial decision making on what can be highly controversial proposals which give rise to great tensions. The basis of the planning system is the consideration of private proposals against wider public interests. Opposing views are strongly held by those involved.
- 1.9 The success of the planning system depends, in part, on Planning Officers, Borough Councillors, Parish Councils, applicants and the public working effectively together, each party being clear as to their role within the decision making process. This Code aims to set out the arrangements or guidelines for involvement of Borough Councillors in planning applications and the relationship between the Borough Councillors and members of the public and applicants.
- 1.10 The Code covers the entire planning process and includes those planning applications which are 'delegated' ie the final decision is made by a planning officer. The Council has a policy that approximately 90% of decisions on planning applications are delegated to a planning officer.

2.0 THE RELATIONSHIP BETWEEN MEMBERS AND OFFICERS

- 2.1. Councillors and Officers have different, but complementary roles. Both serve the public. Councillors are responsible to the electorate and are elected to represent all people of the district. Officers are responsible to the Council as a whole. Officers advise the Council and its Committees and carry out the Council's work. They are employed by the Council, not by individual Councillors, and it follows that instructions may only be given to Officers through the Council, the Cabinet, or Committee decisions. The successful operation of the system relies on mutual trust and on understanding of each others roles. It also relies on each ensuring that they act in a way which is not only fair and impartial, but is also clearly seen to be so.
- 2.2 The following guidance covers the role of Officers:
 - (a) Individual Councillors should not give instructions to Officers on planning matters or put pressure on Officers to make a particular recommendation or do anything which compromises their impartiality. Councillors should not seek to influence Officers or put pressure on them to support a particular course of action in relation to a Planning Application.

- (b) Officer's actions will follow Council policy and Committee decisions.
- (c) Officers are responsible to the Council for providing advice, reports and recommendations and decisions under the Council's Scheme of Delegation to Officers.
- (d) If the Planning Committee makes a decision contrary to the Officer's recommendation (whether approval or refusal) a detailed minute of the Committee's reasons should be made and the Officer given the opportunity to explain the implications of the contrary decision.
- (e) The RTPI Code of Conduct says that planners:
 - Shall not make or subscribe to any statement or reports which are contrary to their bona fide professional opinions;
 - Shall act with competence, honesty and integrity;
 - Shall fearlessly and impartially exercise their independent professional judgement and understanding.
 - Shall discharge their duty to their employers, clients, colleagues and others with due care and diligence.
 - Shall not discriminate on the grounds of race, sex, sexual orientation, creed, religion, disability or age and seek to eliminate any such discrimination by others and to promote equality.

3.0 COMMUNICATIONS WITH OFFICERS AND MEMBERS

Discussions with Officers

- 3.1 Discussions between planning officers and a developer, builder or landowner, about the possibility of obtaining planning permission are encouraged and should take place at an early stage, well before an application is formally submitted.
- 3.2 The details of the Council's policies on pre-application procedures are set out in document called 'The Planning Application Protocol'. Planning officers will respond to written enquiries about the need for planning permission and the possibility of obtaining permission. Prospective applicants or developers are advised to seek and obtain this advice in writing.

- 3.3 For householder development, the Council has a specific form called the 'Pre-Application Householder Enquiry Form' which is given to prospective applicants to sketch the proposal which helps planning officers to determine whether planning permission is needed and is likely to be granted.
- 3.4 For proposed major development, an appointment can be made to have a meeting with the planning officer for the area within which the proposal is located or with a "development team" of officers from relevant services.

How can problems arise?

- 3.5 There is recognition that Councillors in representing their ward will involve themselves in discussions with developers, their constituents and others about planning matters in general.
- 3.6 It is quite common for applicants to wish to discuss and seek support from their Councillor - for or against a proposed development - before a planning matter is decided. However, such lobbying can lead to the impartiality and integrity of a Member being called into question, unless all parties exercise care and common sense.
- 3.7 Further, Local Planning Authorities and applicants are required to take a positive attitude to early engagement in pre-application discussions so that formal applications may be submitted with greater understanding as to what are likely to be the contentious issues.
- 3.8 The danger is however, that such discussions may be perceived as offering an opportunity to elicit or influence a member's viewpoint on particular issues. Difficulties can be avoided if this Code is followed.

Discussions with Members

- 3.9 The rule is that a Member "must not in his official capacity or any other circumstances, use his position as a Member improperly to confer on or secure for himself or any other person, an advantage or disadvantage".
- 3.10 Any decision made by Committee Members must be taken in the interests of the Borough as a whole and should not be improperly influenced by or favour any person, company, group or locality.
- 3.11 All Councillors have a special duty to their Ward constituents, including those who did not vote for them, but their overriding duty is to the whole community. Members must therefore represent their constituents as a body and vote in the interests of the whole district not to favour any group or individual, parish council or company.
- 3.12 If involved in a particular planning matter, a Member must take care not to directly influence other Councillors through private discussion and declare a prejudicial interest and withdraw consideration of the matter at Committee meeting.

- 3.13 Members of Planning Committees should not act as agents or advocates for planning applications, enforcement cases or Local Plan proposals. If a Councillor makes a commitment or campaigns, lobbies, takes a stand, expresses any opinion on an application, proposal or potential application or indicates his/her likely voting intentions before hearing all the arguments and evidence at Committee he commits himself to a viewpoint.
- 3.14 If a Member expresses a view upon the merits of a planning application prior to a Committee meeting, it is inevitable that the Member will be perceived as having a bias in relation to that application - formed without consideration of all the evidence at the Committee. Accordingly, should a Member ever do this, he must declare a prejudicial interest and withdraw from consideration of that particular application.
- 3.15 At all points of the process Members must demonstrate through words and conduct that any planning decision will be taken on the facts, which will be considered with an open mind and conclusions reached once all the evidence has been received at Committee.
- 3.16 If this principle is not followed, an aggrieved party may seek judicial review of the way a decision was made, or complain to the Ombudsman or Standards Board for England.

How to manage Pre Application Communications/Lobbying

- 3.17 Members of a Planning and Development Committee should discourage applicants or potential applicants from approaching them, should aim to minimise social contacts with known developers or agents, and refrain from such contacts when an application has been submitted. Even a friendly private discussion with a developer could cause others to mistrust the Councillors impartiality.
- 3.18 If an approach is received by an applicant, agent, or objector or an enquiry made as to the possibility of obtaining planning permission, or a matter which may give rise to a planning application, a Member of the Planning and Development Committee should:
- (a) refer the applicant or agent to the relevant Planning Officer or a Member who is not a Member of a Planning Committee;
 - (b) adopt a listening role, encourage the applicant to submit written information to the appropriate planning officer so that it can be included in the officer report;
 - (c) avoid giving any commitment or impression of a commitment; that they hold any particular view about the merits of the development or how they will vote;

- (d) restrict the information given to procedural matters to the Council's published planning policies only. Advice may be given but do not enter into negotiations;
- (e) in the event of an opinion being given, declare the fact that an opinion has been made at the Committee where the application is being considered, and that any such declaration is recorded in the minutes;
- (f) report instances of persistent lobbying to the Head of Planning Services;
- (g) pass any written material given to a Councillor immediately to the appropriate Case Officer;
- (h) state that he/she cannot express a view until all the facts are presented by the officer's report.
- (i) keep a personal note of the contact with the date, time and details of the conversation, in case of subsequent challenge.

3.19 A standard letter has been prepared for Members who are approached or lobbied on any particular planning matter. The letter explains that the Member must maintain a neutral stance and remain impartial pending consideration of all the material facts at the Planning Committee.

When can meetings take place?

- 3.20 Discussions held in private between Councillors and applicants, even friendly private discussions, give rise to suspicion of improper conduct. Therefore any discussions between Members and applicants must be part of structured and open arrangements.
- 3.21 Meetings between Members and developers may only take place where there is a Planning Officer present and a file note of any discussions must be taken. Such meetings are held solely to communicate the Council's vision/expectations and policies for the area in relation to an issue. Members should not meet or negotiate with developers/applicants alone.
- 3.22 It will be made clear at the outset of any meeting that discussions are not binding and that views expressed are not part of the determination process. Prefatory remarks by Members should be avoided. At such meetings the merits of the application will not be discussed.
- 3.23 If present at such a meeting a Member must maintain an impartial listening role and avoid expressing an opinion or giving advice beyond outlining the adopted local policy. Questions to clarify aspects of a proposal, or the expressions of policy concerns are legitimate as long they do not develop into negotiations.

- 3.24 If the applicant requests the views of the authority these will be communicated subsequently and in writing. In such communication, Officers will make it clear that any view expressed prior to formal determination is preliminary and not binding.
- 3.25 On a monthly basis, the Head of Planning Services has a meeting with the Chair and Vice Chair of the Planning and Development Committee to discuss any significant pre-application enquiries or submissions. Any feedback from this meeting will be relayed to the developer/prospective applicant. Again, Officers will make it clear that any view expressed prior to formal determination is preliminary and not binding.

Pre-application Consultation

- 3.26 Prior to the formal submission of a planning application, developers or applicants should, depending on the scale of the proposal, consult statutory undertakers, interested bodies, neighbours and the wider public, as appropriate.
- 3.27 Developers/prospective applicants should not send Members information or plans of their proposal and anything that you receive should be referred to the planning officer. For major applications, developers will be encouraged to liaise with the planning officer as to whether it is appropriate to involve Members in pre-application discussions by way of a presentation or exhibition.
- 3.28 Presentations or exhibitions may be appropriate for major applications only and the arrangements and format for such events will be organised by the planning officer who must attend such events with Members.
- 3.29 Following a public presentation by a prospective applicant/developer, members may ask questions and make comments and suggestions on the draft proposals but must not indicate how the proposal might be decided should an application be considered by the Local Planning Authority either by the Committee or by a planning officer under delegated powers.

Consultation with Members where they are not the decision taker

- 3.30 When a planning application is formally submitted and it is registered, the plans and details of the application will appear on the Planning Service Website. At this stage, each application is given a provisional designation as a Committee item (COM) or one which will be decided by the planning officer under the delegated powers (DEL). In general terms, the size of the application determines whether it will be decided by Officers or Member.
- 3.31 All Members are expected to monitor the list of new applications on the Planning Service Website. Members will have a particular interest in applications within their own Wards.

- 3.32 If not the decision taker – ie not a member of the Planning and Development Committee or the decision is to be taken by an officer – a Member may wish to make comment on the application.
- 3.33 If a Member wishes to make a comment on any application, it should be put in writing (post or email) to the case officer. The name of the case officer is listed against each application on the Website. Members should not verbally pressurise or lobby officers to decide a delegated application in a particular way. Members may send comments on planning applications to the Chair of the Planning and Development Committee but should not pressurise or lobby the Chairman with a view to influencing the officers' recommendation.
- 3.34 All comments received by a Member will be placed on the application file, which can be examined by the public.
- 3.35 If the application is a delegated case, the views of individual Members are taken into account in the same ways as other comments by neighbours, the public, interested bodies, statutory consultees and others.
- 3.36 If the planning application is referred to the Committee, the Councillor's comment will be recorded on the Committee report alongside the views of all other consultees.
- 3.37 Written comments by Councillors on individual planning applications must be received within the deadline for consultation, ie 21 days after the registration of the application. While note will be taken of comments received after the deadline, it may not be possible to take these fully into account.
- 3.38 Written comments from Members must give specific reasons for expressions of support or objection. In particular, reasons for refusal must be given and these reasons must relate to planning matters.
- 3.39 As a general guide, the following are examples of appropriate /inappropriate comments.
- ✓ I object because the neighbours will be overlooked
 - ✓ The development contains poor quality alterations to an attractive building in a conservation area
 - ✓ The application contains supporting documentation, which provides evidence that shows the proposal complies with Local Plan Policy number
 - ✓ I strongly support the comments made by Mr and/or Mrs
 - X I object because the neighbours object

- X The development will de-value the next-door property
- X As a local company the applicant should be supported

Pre-application Committee Presentations

- 3.40 By agreement with the Head of Planning Services and the Chairman of the Planning and Development Committee, developers/prospective applicants may present draft proposals prior to the formal submission of an application, to Members of the Planning Committee.
- 3.41 Such presentations will usually be limited to major applications only. The Council's normal practice is to have these presentations between 11.30 am and 12.30 pm on the day of the Planning and Development Committee. This committee meets every three weeks.
- 3.42 Such presentations will only be held in private where the Head of Planning Services is of the view that information would otherwise be disclosed that meets the criteria for exempt information under the Constitution.
- 3.43 A developer's presentation must be in a form that can be copied and recorded and the questions and answer session will be minuted. Comments from Councillors at this stage are for information and are not binding. Pre-application meetings of presentations must be recorded on any subsequent committee report. Any follow up action from these meetings/presentations will be recorded on the case file. .
- 3.44 If a prospective applicant presents information at a meeting which he wishes to remain confidential, this needs to be clearly stated and recorded in the note of the meeting/presentation. However, applicants should note that under the revised Code of Conduct for members it is intended to introduce a defence to an allegation of breach of confidence against a member in certain limited circumstances where a member considers such disclosure to be in the public interest.¹

Political Groups

- 3.45 Councillors cannot be mandated to take a stance on any planning matter by their political group. There must not be a 'party whip' or voting guidance given in relation to planning and related applications.

Dual Membership (eg Borough – County or Parish)²

- 3.46 Where a Borough Councillor is also a Member of the Town or Parish Council Planning Committee (dual membership), that Councillor may express a preliminary view as a Parish/Town Councillor on the facts

¹ See para 5.9 below for clarification upon the proposed changes

² See para 5.6 below in relation to the proposed introduction of "Public Service Interests"

available when the Parish/Town Council consider an application. At the Parish/Town Council meeting, a dual Member should not indicate a definite intention to vote in a particular way.

- 3.47 If a dual Member does express an opinion at the Parish/Town Council meeting, he/she should make it clear they will only be in a position to take a final decision once they have heard all the evidence and arguments at the Borough Council meeting.
- 3.48 When the application is before a Borough Council Committee the Councillor should indicate that he or she expressed an preliminary view to the Parish/Town Council but made clear that he would not form a final view until the Committee meeting. At the Borough Council Committee the Councillor may then take a different view on the application in light of the presentation of all the material considerations in the officer report.
- 3.49 Any dual Parish/Borough Council Member who sits on a Borough Planning Committee cannot be mandated to vote in accordance with the views of their own Parish/Town Council.
- 3.50 However, if the planning application is from the body of which the member is a dual member, the member must declare a personal and prejudicial interest and remove himself from the meeting.

At Committee

- 3.51 Decisions on planning applications can only be made following a full explanation of the material planning considerations and information on the relevance of, eg the Development Plan, national guidance and consultations at Committee. If a Councillor expresses an opinion prior to Committee, he/she should make it clear that this is an interim or provisional opinion and they will only be in a position to make a final decision after hearing all the relevant evidence and information at Committee.
- 3.52 When any Councillor speaks at a meeting of the Committee, on the subject of a particular planning application, he/she shall disclose the fact that he/she has been in contact with the applicant/objectors/supporters but has not expressed a view on the merits of the case. A Councillor should not represent, speak or advocate on behalf of the applicant or agent or objector. A Councillor should address the planning merits of each case, not the merits, character, track record of the applicant, builder, developer, or consultee.
- 3.53 Any written information received by a Member of the relevant Committee from the applicant, agent, supporter or objector cannot be taken into account because it is not in the public domain, therefore it should be passed or copied to the Case Officer or declared at the start of the consideration of the particular application.

Post Decision Involvement by Members

- 3.54 Decisions made on planning applications by the Planning and Development Committee are final. However, an applicant may appeal to the Secretary of State. If a Member has made a formal comment on an application which is recorded, then that Member, along with other consultees, will be invited to comment on the appeal. Decisions on appeals are made by the Secretary of State and are final. In exceptional circumstances, the applicant or any other third party may have the right to seek judicial review of a planning decision. In exceptional cases the Ombudsman may seek to rescind a planning decision.

4.0 DECLARATIONS OF INTEREST

- 4.1 The Model Code set out requirements and guidance for Councillors on the declaration of interests. The responsibility for declaring an interest lies with the individual Councillor.

- 4.2 A member must declare a **personal interest** at the beginning of the meeting or when the interest becomes apparent:

(a) an interest arising from

(i) his or her **employment, or ownership of or interest in property or land;**

(ii) a contract between the member and the Local Authority;

(iii) an interest arising from his or her **membership** or position of general control or management in **a body:**

(bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union);

(iv) **the interests of a donor of a gift or hospitality** to a member with a value in excess of £25 (for a period of three years from receipt of the gift or hospitality)

or

(b) if the decision **might reasonably be regarded as affecting to a greater extent than that of the majority of the inhabitants of the Member's ward the well-being or financial position of the Member or:-**

- (i) **any member of the Member’s family or any person with whom the member has a close association;**
- (ii) **any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;**
- (iii) **any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000;**
- (iv) **any body to which he or she was appointed or nominated by his or her authority; or**
- (v) **any body of which you are a member or in a position of general control or management and:**
 - (aa) **which exercises functions of a public nature;**
 - (bb) **is directed to charitable purposes; or**
 - (cc) **one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union).**

4.3 A member must declare at the point when the member addresses the meeting his **membership** of or a position of **general control or management** in a body to which he or she was **appointed or nominated by his or her authority, or** an interest arising from his or her **membership** or position of general control or management in **a body** exercising functions of a public nature;

4.4 A member with a personal interest in any business of the authority also has a prejudicial interest if the interest is one which **a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member’s judgement of the public interest.**

4.5 However, a member does not have a prejudicial interest in any business of the authority where that business:

- (a) **does not** affect the member’s **financial position or the financial position** of a person or a body referred to in paragraph 4.2 above;
- (b) **does not** relate to the determining of any approval, **consent, licence, permission or registration** in relation to you or any person or body described in paragraph 4.2 above;

4.6 The following examples explain when it may (depending on the facts of the case) be necessary for a Councillor to declare a prejudicial interest in a planning matter.

- (a) Close acquaintance, personal friendship, close working or family connections with an applicant, agent, objector or other person with an interest in the planning application, other application, enforcement case or Local Plan proposal;
- (b) Regular business dealings with a person with an interest in a planning matter;
- (c) Living or running a business in proximity to particular sites such that the Councillor may be affected by the proposals under discussion;
- (d) Personal enmity involving a person or organisation with an interest in the planning proposal;
- (e) Being a member, representative or employee of an organisation which has applied for planning permission or is involved in a planning matter – unless the Councillor's involvement is no different from that of an ordinary member of the public (e.g. membership of a national organisation such as RSPB or the AA);
- (f) When the Councillor has made his/her views known publicly or privately on a planning matter or advocated for or against a proposal, which has fettered his/her discretion prior to a Planning Committee where all the facts of the case are presented;
- (g) Where a Councillor is a life member and/or season ticket holder of a football club who is the applicant or interested party;
- (h) In cases where a Cabinet Member comments on a planning matter or advocates for a development, the Councillor may not be able to vote on any related application.

4.7 If a Councillor has publicly expressed a clear opinion on an application, or suggested his/her voting intentions or support for an applicant or objector, the Councillor cannot objectively consider the evidence at Committee and therefore should declare a prejudicial interest at Committee and not vote.

5.0 FURTHER GUIDANCE ARISING FROM THE REVISED MODEL CODE OF PRACTICE

Definition of “friend”

5.1 There is no definition of a friend or close personal acquaintance in the revised code, however, a friend has been defined in cases arising from complaints as someone who is:

- (a) well known to the Member, and
- (b) regarded by the Member with liking, affection and loyalty

Reference to those with whom a Member has a **close association** includes those who the Member may not regard as a friend but is closely associated with.

5.2 However, the requirement to declare such an interest, or that of a relative, will only apply if the Member **is aware, or ought reasonably to be aware of the interest** held by that person.

Disclosure of Confidential Information

5.6 Members are permitted to disclose confidential information in certain limited circumstances. These are where the Member:

- (a) has the consent of a person authorised to give it
- (b) is required by law to do so
- (c) is obtaining professional advice
- (d) the disclosure is
 - (i) reasonable and in the public interest
 - (ii) made in good faith and in compliance with the reasonable requirements of the authority

The reasonable requirements of the local authority require that advice is taken from the Council’s Monitoring Officer prior to any disclosure taking place.

6.0 GIFTS AND HOSPITALITY

6.1 In the operation of the planning system, the general rule is that gifts and hospitality, including refreshments, favours, discounts, visits of any value, particularly on individual site visits, should be politely refused by Councillors and Officers because it gives the impression that the applicant and the Councillor are in negotiations or the Officer is over-familiar with the applicant.

- 6.2 Councillors or the Council's Planning Committee should not normally receive presentations or bus trips from developers (other than as part of a formal and agreed process) as it is easy for this to become, or to be seen to become part of the lobbying process.
- 6.3 Developers or prospective applicants may, by agreement, hold exhibitions or public meetings in relation to a proposal. In these circumstances, no hospitality should be offered or accepted.
- 6.4 Offers and receipts of gifts or hospitality should be recorded and reported to the Council's Monitoring Officer immediately.
- 6.5 If Officers are offered gifts or hospitality from people with an interest in a planning matter, these offers should be declined, however minor (eg calendar or a cup of coffee).

7.0 INTERNAL LOBBYING

- 7.1 Officers of the Council and other statutory bodies should not lobby, pressurise or give instructions to or otherwise influence the Council's Planning Officers so as to compromise or attempt to compromise them in the formulation of the recommendation of a planning application.
- 7.2 Officers of the Council should not meet with applicants or prospective applicants to discuss an application or the submission, nor give a view on the planning merits of a proposal without a Planning Officer being in attendance.

8.0 THE LOCAL PLAN/LOCAL DEVELOPMENT FRAMEWORK

- 8.1 The Planning Code covers both decision making and planning applications and the Local Plan/Local Development Framework or other policy documents. In relation to the review, amendment or preparation of a Local Plan/Local Development Framework or supplementary planning guidance, Councillors' interests will be less obvious and particular care will need to be taken to consider the effect of certain policies or land allocations in relation to Councillors' personal circumstances.

9.0 APPLICATIONS BY THE COUNCIL, COUNCILLORS AND OFFICERS

- 9.1 Councillors who act as agents for people pursuing planning matters within the Council should play no part in the decision making for those proposals. Should a Councillor submit a personal proposal, he/she should play no part in its processing. These proposals will not be decided by Officers under the Scheme of Delegation to Officers.
- 9.2 Applications for the Council's own development, or on Council land, will be treated the same way as private proposals, in accordance with Circular 19/92, particularly in relation to Officer's advice.
- 9.3 Under the revised Code the consideration of a Councillor's application by Committee would require that Councillor to withdraw from the meeting at the point that the decision is to be made, however, the Councillor must not seek to influence a decision apart from normal negotiations with a Planning Officer and the right to speak as applicant.
- 9.4 Applications by the Council and staff (either as applicant or agent) of the Council are considered by Committee.

10.0 INDIVIDUAL SITE VISITS BY COUNCILLORS

- 10.1 The Model Code applies whenever the Councillor is conducting official business, which includes site visits. Site visits by Committee can cause delay and additional costs and should only be used where the expected benefit is substantial.
- 10.2 As a general principle, Councillors are encouraged to familiarise themselves with the site and surroundings of planning applications under consideration throughout the Borough, and particularly in relation to major or controversial applications where the recommendation is for refusal.
- 10.3 Invitations by applicants or their agents to an individual Councillor or group of Councillors to visit a site and participate in a dialogue on site or attend private meetings or briefings should be declined, unless it is arranged as an official Committee visit/presentation.
- 10.4 Site visits made by individual Councillors should, wherever possible, be conducted from public land or adjoining property. If a Councillor deems it necessary to enter private land which is the subject of a planning application, then the Councillor should make him/herself known to the occupier/owner and seek permission to proceed with the visit.

- 10.5 In these circumstances the Councillor should make it clear that the purpose of the visit is to obtain an impression of the site and how the application will relate to the site, and not to discuss or given an opinion on the merits of the application. Councillors should discourage applicants from providing written or verbal information on the application which is not in the public domain. If such information is received, the applicant should be requested to send a copy to the Head of Planning Services and advised that any such information will be reported at Committee.
- 10.6 A Councillor should inform the applicant/agent that a decision made on a planning application is made in the public interest and not for the benefit of the applicant, or particular individuals.
- 10.7 If a Councillor believes that he/she cannot make a site visit without breaching the terms of the Planning Code, or that an explanation of the proposal by an Officer or a demonstration of aspects of the proposal by applicant/agent is required, or an important part of the site is hidden from view; then the Councillor should request a formal Committee site visit.
- 10.8 To avoid the deferral of applications by Committee for site visits, a request for a Committee site visit must be made to the Chair of Planning or Head of Planning prior to 5 days before the Committee meeting.

11.0 COMMITTEE SITE VISITS

- 11.1 Site visits by Committee are the exception rather than the norm. In the vast majority of cases individual Councillors will familiarise themselves with sites and will benefit from written, verbal and pictorial information presented by Officers at Committee. A Committee site visit is only justified when detailed factual information on the nature of the site, on the effect on adjoining sites, or on interior or hidden parts of the site, are required.
- 11.2 The need for a Committee site visit will be determined by the nature of the application. Large applications do not necessarily require visits, while apparently minor applications which raise wider issues, may do.
- 11.3 **The Purpose of the Site Visit**
- 11.3.1 The purpose of a site visit is to enable the Committee to become familiar with the site, the relationship between the site and adjoining land, and to visualise the proposed development on the site. The specific planning reasons for a Committee site visit should be identified and recorded in the minutes.

11.3.2 The reason for this is:

The recording of reasons will ensure that there is a factual planning basis for the visit and that visits are not used to delay or defer consideration of an application without valid reasons or to enlist or secure support for a particular application based on non-planning related issues.

11.4 **Arranging the Site Visit**

11.4.1 A site visit by Committee can be agreed by the Head of Planning Services in agreement with the Chair of the Committee up to 5 working days before the relevant Committee. Site visits will normally be held in the morning of the Committee meeting.

11.4.2 The reason for this is:

Site visits called at short notice are unlikely to be well attended and will fail to fulfil their intended function. The deferment of an application for a site visit delays the decision-making process, in relation to the target deadline for the decision. The Council must be confident that the value added by site visits justifies the delay they can cause. The Council can be the subject of criticism if a deferred decision leads to unanticipated and costly delay. Good quality visual presentations at Committee may be an acceptable alternative to a site visit.

11.5 **Access to the Site**

11.5.1 The applicant and (if relevant) the site occupier or owner will be informed by telephone or letter of a proposed site visit. An Officer will arrange access to the site (if required) with the site occupier/owner/agent (as appropriate).

11.5.2 The reason for this is:

The Citizens' Charter recommends that an applicant be informed of the progress of an application and reasons given for delay.

11.5.3 Where access onto a site is required the site occupier will be informed, consent obtained and any special arrangements made with regard to safety, security or access. Some site visits can be conducted from outside the site.

11.5.4 Councillors have insurance cover for official Committee site visits.

11.6 **Assembly**

11.6.1 Councillors and Officers will assemble at one location. The Chairman will call those present to order and an Officer will describe the purpose of the visit, describe relevant aspects of the proposal and outline the arrangements for the site visit. The Officer will answer factual questions relating to the proposal and the site.

11.6.2 The reason for this is:

It is important that all Councillors present receive the same information and that the purpose of the site visit and the issues to be examined are clear and agreed by all parties present.

11.7 Attendance

11.7.1 Attendance at a site visit should be limited to Members of the relevant Committee, together with Officers. Councillors within whose Ward the site is situated, but who are not Members of the decision-making Committee, may attend the site visit by agreement with the Chairman of the Committee. This agreement and the reason for the Ward Members' attendance should be recorded. In exceptional circumstances third parties may be invited to site visits but only for a specific purpose, ie to demonstrate an aspect of the proposal (eg operate machinery, or enable noise calculations to be carried out, etc). Where necessary the Chairman or Officer will identify the parties present and a record will be kept of all persons attending.

11.7.2 Members of the public are not invited to attend or participate in the site visit. Where members of the public do arrive to observe the visit they will be asked to retire to a suitable distance or leave the site. Members of the public may not address Committee Members on site visits. The site visit will not proceed until these conditions are met.

11.7.3 Prior to every formal Committee site visit, a representative of the Parish Council for the appropriate area will be invited to attend. The Parish Council representative may bring matters of fact to the attention of the Committee on site, but he/she should not debate the merits of the application. The formal comments of the Parish on the merits of the application should be made in writing in the usual way and the site visit is not an opportunity to change or reinforce these comments. The Parish representation should be limited to one person who is a member of the Parish Council and who does not have an interest to declare in the application. The Parish representative should make him/herself known to the Chairman at the site visit.

11.7.4 The reason for this is:

The purpose of a site visit is to obtain factual information relating to the site and the application and not to provide an opportunity for lobbying or expressions of support or objection by members of the public, or interested Councillors or other third parties.

11.8 The Applicant

11.8.1 In most cases the site occupier, owner or applicant will be present on site during a site visit to effect access. The applicant/agent/occupier/owner may not address the Councillors present but may answer factual questions posed by the Officer.

11.8.2 Subject to paragraph 11.8.1 above no new written or verbal information relating to the application should be presented at the site visit. If such information is received it should be given to the Officer and reported at the Committee meeting, if material.

11.8.3 The reason for this is:

Members of the public or other third parties who have been excluded from the site visit may feel aggrieved that the applicant has a special, private and unfair right of access to Committee Members. This may give rise to allegations of maladministration. It is important that there is no dialogue between Councillors and the applicant/agent during the site visit, as such dialogue invariably will involve extraneous considerations which are not material in planning terms and are not on record. The applicant should not be given the opportunity to provide new information which cannot be verified by the time of the Committee meeting.

11.8.4 The purpose of a site visit is not to debate or receive verbal or written information which is not part of the application, is not in the public domain, and which will not be reported by an Officer at the Committee meeting. Councillors who are unable to attend the site visit would be disadvantaged if Councillors at the site visit received verbal or written information, (eg letters of support, statements by applicants etc) which is not contained in the Officer's Committee Report.

11.9 **Making Decisions**

11.9.1 The merits of an application should not be discussed at the site visit. Councillors should not express their views on the merits of the application, make or imply a decision, or draw immediate conclusions on the basis of the site visit.

11.9.2 The reason for this is:

Councillors should only make a decision on a planning application in the light of a comprehensive verbal or written report by the Officer at the appropriate Committee meeting. Members of the Committee must make a decision in accordance with the development plan and any other material considerations, including the views of other Councillors who may not have attended the site visit. It is important that at a site visit, Councillors not only act in a fair and impartial manner, but that they are seen to do so. Any hint of bias, whether actual or perceived, may give rise to criticism of the Council's eventual decision, and even to investigation by the Ombudsman.

11.10 **The Conclusion of the Site Visit**

11.10.1 The Chairman will declare the site visit closed and all parties will immediately leave the site.

11.10.2 The reason for this is:

For the avoidance of doubt, it is necessary to establish whether all Councillors present have examined the site to their satisfaction and that any questions have been answered. Individual Councillors or Officers should not remain on the site with the applicant or other third parties as this may give rise to allegations that lobbying is taking place and that information is being exchanged or decisions made without the knowledge of the whole Committee.

12.0 ENCLOSURES AND REFERENCES

12.1 Related documents include:

- (a) the Model Code;
- (b) Leaflet: "Pre Committee Procedure - A Guide"
- (c) Leaflet: "Planning Applications - A Guide"
- (d) Booklet "The Planning Application Protocol" (also summary leaflet)
- (e) Leaflet: "Development Control - Scheme of Officer Delegation"
- (f) Leaflet: "Public Speaking at Planning Committee"
- (g) Booklet "The Development Service Charter".
- (h) "Pre-Application Community Engagement Protocol".

12.2 The revised Planning Code supersedes:

Leaflet: "The Relationship Between Members and Applicants"

Leaflet: "Committee Site Visits"

Booklet: "Planning Code of Practice November 2002" and "Planning Code of Practice November 2006"

12.3 The advice set out in this Code is consistent with the following guidance noted:

1. 'Probity and Planning (update) – the role of Councillors and Officers' The Local Government Association March 2002

2. 'Member Engagement and Planning Matters' – The Local Government Association, Association of Council Secretaries and Solicitors 2006
3. 'Positive Engagement – A guide for Planning Councillors' – Office of the Deputy Prime Minister/Planning Advisory Service/Local Government Association/Royal Town Planning Institute/Association of Council Secretaries and Solicitors/The Standards Board for England - November 2005
4. 'Pre-application advice for Town and Country Planning' – The National Planning Forum/Local Government Association - 2005
5. 'Constructive Talk Investing in Pre-Application Discussions Planning Advising Service 2007' (www.pas.gov.uk)