

**PART 5D**

**BRISTOL CITY COUNCIL**

**GOOD PRACTICE PROTOCOL FOR PLANNING**

## 1. Introduction

- 1.1 **The aim of this code** is to ensure that, in the planning process, planning decisions are not biased, are well founded on planning considerations, and to inform potential developers and members of the general public of the standards adopted by the City Council and the performance of its planning function.
- 1.2 **The aim of the planning system**, as set out in the National Planning Policy Framework, is to contribute to the achievement of sustainable development and has the three overarching objectives of economic, social and environmental.
- 1.3 **When this code applies** – to all members of the development control committees and officers at all times when they are involved in the planning process. This would include, for example, making decisions at development control committees, or if an officer, making delegated decisions on applications, or on less formal occasions such as meetings between members and officers and/or members of the public on planning matters. The code applies equally to planning enforcement matters or site-specific policy issues and to planning applications.
- 1.4 The process of arriving at decisions on a planning matter must be open and transparent and the involvement of both Officers and Members must be clearly understood. The main principles which Members should have clear regard to are: -
  - a) The key purpose of planning is to achieve sustainable development which effectively balances economic, social and environmental interests and takes relevant local circumstances into account.
  - b) The overriding duty as a Councillor is to all residents of the City of Bristol and in relation to planning issues to help ensure that the council's planning policies are achieved.
  - c) The role as a member of the planning authority is to make planning decisions openly, impartially, with sound judgement, and for justifiable reasons.
  - d) Whilst Members may be strongly influenced by the views of others and of their party it is their sole responsibility to independently decide what view to take on any planning issue which councillors have to decide upon.
  - e) Section 38(1) and 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act requires members to take planning decisions in accordance with the provisions of the development plan unless material considerations indicate otherwise. They should ensure that all decisions they make have regard to proper planning considerations and are made impartially and in a way, which does not give rise to public suspicion or mistrust.

- f) The Code applies to all decisions of the Council on planning related matters. This includes Members' involvement in any planning application, whether or not it is reported to a committee and all applications determined by any committee.
- 1.5 When acting in your capacity as a Councillor, Members must also have regard to the Council's Member Code of Conduct.
- 1.6 Any concerns regarding whether this code of conduct applies to a particular circumstance should be raised at the earliest possible opportunity with the Director Legal and Democratic Services. Any advice should be sought well before any meeting of the local planning authority takes place.

## **2. The Member Code of Conduct**

- 2.1 The Member Code of Conduct sets out the standards of behaviour expected of Councillors and the requirements in relation to the declaration of interests in the Members Register of Interests and at meetings. Not only should impropriety be avoided but also any appearance or ground for suspicion of improper conduct. When considering any planning matter Members should have regard to the Code, and particularly the requirement to properly declare all interests. Members should:
  - a) Comply with the requirements of the adopted Member Code of Conduct first
  - b) Then apply the rules in this Good Practice Protocol for Planning
- 2.2 **If Members do not** follow and apply the code then they may put
  - a) The Council at risk of proceedings challenging the legality of the decision made or of a complaint to the Ombudsman in respect of alleged maladministration and
  - b) Themselves at risk of sanction if there has been a failure to comply with the Member Code of Conduct

## **3. Development Proposals and Declaration of Interests Under The Member Code of Conduct**

- 3.1 When considering planning matters Members may find that they need to
  - a) Declare interests in accordance with the requirements of the adopted Code of Conduct or
  - b) Indicate whether or not they may have come to a fixed view on a planning application prior to the meeting (i.e. pre-determination)

- 3.2 The existence and nature of any interest should be disclosed in accordance with this Code at any development control committee, any informal meetings or discussions with officers and any other Members.
- 3.3 Members should disclose their interest at the commencement of the meeting and not at the beginning of the discussion on that particular matter.
- 3.4 Members should notify the Director - Legal and Democratic Services as monitoring officer in writing of their interest to ensure that a proper record of the interest is noted at any meeting
- 3.5 Where a Member has a Disclosable Pecuniary Interest (DPI) or a Prejudicial Interest they should ensure that they:**
- a) **Do not** participate or give the appearance of trying to participate in the making of any decision by the Local Planning Authority.
  - b) **Do not** get involved with the processing of the application and direct any queries or technical matters to the relevant officer
  - c) **Do not** seek or accept preferential treatment or place themselves in such a position so that members of the public would think they are receiving preferential treatment because of their position as a Councillor. An example would be where a member has an interest in a property and uses their position as Councillor to discuss a planning application with officers or members when ordinary members of the public would not have the same opportunity to do so. A member in this position may need to identify another local member who is prepared to represent local interests
  - d) **Leave the room** whilst the item is being discussed.

#### **4. Pre-Determination in the Planning Process**

- 4.1 Allowance made for Councillors to be predisposed to a particular view and this is a practical recognition of:
- a) The role played by party politics in Local Government
  - b) The need for Councillors to inform constituents of at least an initial view on a matter as part of their public role
  - c) The structure of local government which ultimately requires the same Councillors to make decisions
- 4.2 It is therefore particularly important for elected Members to have a clear understanding about the implications of expressing strong opinions or views on planning matters
- 4.3 Section 25 of the Localism Act 2011 introduced provisions for dealing with allegations of bias or pre-determination or matters that otherwise raise an issue

about the validity of a decision, where the decision-maker(s) had or appeared to have a closed mind (to any extent) when making the decision.

- 4.4 The Act provides that a decision-maker is not be taken to have had (or to have appeared to have had) a closed mind when making the decision just because
- a) they 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
- 4.5 On this basis it is expected that councillors will be able to publicise their views on issues, indicate their likely voting intentions and to engage fully with their local communities without this affecting their participation in the council's formal decision making. In addition, councillors should be able to engage with planning applicants to educate themselves about their proposals.
- 4.6 So if a Member has campaigned on an issue or made public statements about their approach to an item of council business, they will be able to participate in discussion of that issue in the council and to vote on it if it arises in an item of council business requiring a decision.
- 4.7 The key point is that Members still need to be and seen to be open minded at the point that the decision is taken in the sense of listening to all of the arguments, and weighing them against their preferred outcome, before actually voting.
- 4.8 The difference is that the fact that councillors may have campaigned against a proposal will not be taken as proof that they are not open-minded.
- 4.9 For example, in a situation where a member said something like "over my dead body" in respect of voting a particular way on an issue, the view must be that whilst the provision on predetermination in the Localism Act might be useful in giving councillors confidence about making their views on particular issues known, it has not changed the legal position that if a member could be shown to have approached a decision with a closed mind, that could affect the validity of the decision.
- 4.10 Equally, if a member had expressed views on a particular issue but could show that when taking the decision they had approached this with an open mind and taken account of all the relevant information, they could reasonably participate in a valid decision.
- 4.11 An important point to bear in mind is that if you give an indication of your own viewpoint, ensure that you indicate that you will take all relevant considerations into account and that the decision will be based firmly on planning grounds but that they will ensure views are fully heard and taken into account by the Council. It is also a good idea to record your involvement.

- 4.12 In practice, a Councillor may campaign for or against a planning application, and still vote at planning committee, so long as they go into the meeting with an open mind to hear all the facts and evidence. This can be demonstrated by the Committee Chair asking the Councillor at the beginning of the meeting to confirm whether or not they still have an open mind on a proposal.
- 4.13 A Councillor quoted in a newspaper having said, “Over my dead body will that planning application be approved. I will never support it under any circumstances” could be said to have pre-determined the decision. These extreme statements should still be avoided.
- 4.14 It is important to note that if a member has expressed particularly extreme views, it will be more difficult in practice to be able to get away from the impression that they would approach the decision with a closed mind.

## **5. Contact with Applicants, Developers and Objectors**

- 5.1 Local Authorities are encouraged to enter into pre-application discussions with potential applicants.
- 5.2 Members can be involved, provided their roles in discussions are clearly understood at the outset. In particular members of development control committees need to be aware of the distinction between the giving and receiving information and engaging in negotiations. Member involvement may inadvertently open up a decision to challenge on the ground of apparent pre-determination. Members **should** also be aware that presentations by developers are, in effect, a form of lobbying and that the principles set out.
- 5.3 Points to note:
- a) Members should take advice from the Monitoring Officer if they are invited to attend meetings with applicants, developers or groups of objectors if they are likely to be part of the decision-making process. This will enable Members to make an informed decision on attending a meeting and any issues relating to pre-determination.
  - b) Members should refer those who approach them for planning, procedural or technical advice to officers.
  - c) Members should not agree to any formal meeting with applicants, developers or groups of objectors. Where a formal meeting would be useful in clarifying the issues, this should be part of a structured arrangement organised by officers. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the

application file and the record of the meeting is disclosed when the application is considered by the Committee.

- d) Members should remember that the presentation is not part of the formal process of debate and determination of any subsequent application, as this will be carried out by the appropriate Committee of the Local Planning Authority
- e) Members should be aware that a presentation is a form of lobbying and if they express a view, they will need to carefully consider if they have pre-determined the matter prior to the vote.
- f) Members should follow the rules on lobbying and report to the Head of Development Management any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and Member involvement in them and ensure that this is recorded on the planning file.

## 6. Lobbying of Members

6.1 Lobbying is an integral part of the planning process. However, care has to be taken to avoid members' integrity and impartiality being called in question and accordingly there is a need to declare publicly that an approach of this nature has taken place. Lobbying can take place by professional agents, public relations consultants, as well as un-represented applicants / landowners and community action groups.

6.2 Members should:

- a) Remember that their overriding duty is to the whole community and not just the people in their own particular ward
- b) Explain to those lobbying or attempting to lobby them that whilst they can listen to what is being said it may prejudice their impartiality and may affect your ability to participate in the Committee's decision making to express an intention to vote one way or another.
- c) **Not** accept any gifts or hospitality from any person or group involved in or affected by a planning proposal. Whilst a degree of hospitality may be unavoidable, members must ensure that such hospitality is of a minimum and its acceptance is declared as soon as is possible.

6.3 Members **must** enter hospitality in accordance with the rules on gifts and hospitality and should:

- a) Copy or pass on any lobbying correspondence received to the Head of Development Management or one of the planning team managers at the earliest opportunity.

- b) Immediately refer to the Head of Development Management or one of the planning team's area managers any offers made of planning gain or a constraint of development through a proposed s106 obligation or otherwise.
- c) Inform the Monitoring Officer where there has been undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality) that may require an investigation.
- d) Note that a matter will not have been pre-determined of the code breached if:
  - i. Members have listened or have received views from residents or other interested parties;
  - ii. Members have made comments to residents, interested parties, other Members or appropriate officers, provided the comments have not amounted to a pre-determination of the issue and they have made it clear that they are keeping an open mind;
  - iii. Members have sought information through appropriate channels; or
  - iv. Members are representing opinion or speaking at the meeting as a Ward/Local Member, provided that this is clear at the beginning of the meeting or item and that, having expressed the opinion or ward/local view, that they have not committed themselves to vote in accordance with those views and will make up their own mind having heard all the facts and listened to the debate.

## 7. Lobbying by Development Control Committee Members

- 7.1 A Development Control Committee Member who represents a ward affected by a particular application is in a difficult position particularly if it is a controversial application around which a lot of lobbying takes place. There is a balance to be struck between the duties to be an active ward representative and the overriding duty as a Councillor to the whole community. In these circumstances the member:
- a) Is able to join general interest, resident or amenity groups which reflect their areas of interest and which concentrate on issues beyond particular planning proposals. Examples are local civic societies, the Ramblers' Association, the Victorian Society and CPRE. Members **must**, however, disclose any interest in accordance with the code of conduct when that group has made representations on a particular matter and such members should make it clear to that group and to the Development Control Committee that they have reserved judgment and the independence to make up their own mind on each and every proposal.



- b) **Should not** excessively lobby fellow members regarding their concerns or views nor attempt to persuade other members how they should vote in advance of a meeting at which a planning decision is to be taken.
- c) **Should** not discuss at any political group meeting how to vote on a planning matter or lobby any other member to do so. Political group meetings should never dictate how members should vote on a planning issue.

## 8. Site Visits by Members

8.1 Any Member of the Development Control Committee may request a site visit. Members should:

- a) Try to attend site visits organised by the Council where the relevant development control committee has resolved that a visit is required. If the member does not attend a formal site visit, they will be unable to participate in the debate or vote on the relevant item when it is formally considered for decision by the Committee. This does not apply to site visits arranged informally by officers with the agreement of the Chair.
- b) **Not** request a site visit unless they feel it is strictly necessary and where:
  - i. Particular site factors are significant in the terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
  - ii. There are significant policy or precedent implications and site factors need to be carefully addressed.
- c) Ensure that any information gained from the site visit is reported back to the Committee, so that all Members have the same information
- d) Ensure that the site visit is only used an opportunity of seeking information and to observe the site.
- e) Ask the officers questions and seek clarification from them on matters, which are relevant to the site inspection.
- f) **Not** hear representations from any other party at the site visit. If approached by the applicant or a third party, the member should advise them that they should make representations in writing to the Council and direct them to or inform the officer that is present.
- g) **Not** express opinions or views to anyone at a site visit.

- h) Not enter a site that is subject to an application or proposal other than on an official site visit, even if it is in response to an invitation, as this may give the impression of bias. The only exception to this being:
  - i. If it is essential for to visit the site other than as part of an official site visit; and
  - ii. The member has spoken to the Head of Development Management or a Planning Manager of your intention to do so and why (which will be recorded on the file)

## **9. The Decision Making Process**

- 9.1 A decision on a planning application cannot be made at the committee meeting until all of the available information is to hand and has been duly considered.
- 9.2 Any political group meeting prior to a Committee meeting should not be used to decide how Councillors should vote.
- 9.3 Any pre-Committee meetings will solely be for the purpose of enabling an exchange of briefing material between Officers and Members on planning issues of concern in relation to particular applications, and will be open to Members of all political groups.
- 9.4 All applications considered by Development Control Committee or by way of a delegated decision shall be the subject of written reports and clear recommendations.
- 9.5 If the recommendations are contrary to the provisions of the Development Plan, the material considerations which justify this must be clearly stated. The recommendations put forward by officers and the decision by members are separate parts of the same process,

## **10. Members Relationship with Officers**

- 10.1 The Council's protocol for member/officer relationships governs the working relationship between Officers and members and the principle of mutual respect and courtesy should be observed at all times.
- 10.2 Members should not put pressure on officers to put forward a particular recommendation. If Members wish to speak to an officer regarding any proposal then they should speak to the case officer or the relevant Planning Manager.
- 10.3 Officers must act in accordance with the Council's Code of Conduct for Officers and their own professional codes of conduct. Officers' views, opinions and recommendations will be based on their overriding obligation of professional

independence, which may on occasion be at odds with the views, opinions and decisions of a committee or its members.

## **11. Public Speaking at Meetings by Members**

- 11.1 Members must not allow members of the public to communicate with them during the committee proceedings (orally or in writing, including via social media) other than through the scheme for public speaking.
- 11.2 Members must ensure that they comply with the Council's procedures in respect of public speaking.

## **12. Decision Making by Members**

- 12.1 Members should come to a meeting with an open mind on a matter and demonstrate this through their behaviour at the meeting .
- 12.2 Members should comply with the Sections 38(1) and 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- 12.3 Members should come to a decision only after due and proper consideration of all of the information reasonably required upon which to base a decision. If there is insufficient time to consider new information or there is insufficient information to enable a decision to be taken further information should be requested and, if necessary, the application should be deferred.
- 12.4 Members should not vote or take part in a discussion at a meeting unless they have been present for the entire meeting or for the whole of the matter in question and this includes the public speaking and the officers' introduction to the matter. If a member needs to leave a meeting for a short period, such as for a comfort break, that member should seek an adjournment.
- 12.5 The reasons for the Committee's decision to defer any proposal should be recorded
- 12.6 If a Member is proposing, seconding or supporting a decision **contrary to** officer recommendation or the development plan they should clearly identify the planning reasons leading to this conclusion/decision. These reasons, **must** be given prior to the vote and be recorded.
- 12.7 Any reasons given by a member for a decision **must** be their reasons. They cannot ask an officer to give the reasons for them but an officer may assist in the drafting of reasons. See guidance at Appendix 1.

### 13. Training of Members

- 13.1 All Members serving on the Development Control Committee and/or who have any decision making role on planning matters including substitute members in accordance with the Council's Constitution must be trained in planning procedures before serving on the Committee and making any decisions.
- 13.2 Member training is offered annually but in any event Committee Members must attend mandatory re-training every 4 years to coincide with the Council's electoral cycle.
- 13.3 It is good practice to attend any other specialised training sessions provided, to extend knowledge of planning law, procedures, Regulations, Codes of Practice and the Development Plan.
- 13.4 A training record will be maintained in respect of all training received.

### 14. The Role of Officers In Planning Matters

#### Decision making function:

- 14.1 Officers **must**:
- a) Act fairly and openly at all times
  - b) Consider each and every application with an open mind
  - c) Consider all the material planning considerations attaching the appropriate weight to each one
  - d) Avoid any inappropriate contact with applicants, members and any other interested parties
  - e) Ensure that the reasons for any decision are clearly recorded
  - f) Ensure that the reasons for any decision are sufficient and reasonable and that the recording of such reasons comply with the relevant legislation and guidance in accordance with Article 31 of the Town and Country Planning Development Management Procedure) (England) Order 2010 (SI 010/2184), regarding reasons for approval and refusal.

#### Reporting function

- 14.2 When reporting to a committee on a planning matter officers **will**:
- a) Provide professional and impartial advice at all times
  - b) Ensure that all the information necessary for a decision by Members is made available to those members
  - c) Ensure that a report includes the substance of all the objections and the views of the consultees
  - d) Produce a clear, accurate and objective written analysis of the Issues
  - e) Make a clear recommendation.

- 14.3 Every planning application file and other files relating to planning matters should contain an accurate assessment of that application's history. Particular care should be taken with files relating to delegated decisions, which should be as carefully maintained as those files relating to decisions taken by members.
- 14.4 Any material planning information received after the writing of the report and up to midday of the day before the date of the committee meeting will be presented verbally by officers or be included on an amendment sheet.
- 14.5 The Head of Development Management or relevant Planning Manager may, after consulting the Chair of the relevant development control committee, withdraw any item from the agenda of that committee before that item is discussed by that committee if the circumstances of an application have changed after the report has been prepared.
- 14.6 Officers have a duty to carry out the decisions of members even when Members decide a matter against officer recommendations.

## **15. Discussions Regarding Planning Applications**

- 15.1 Officers should have regard to the relevant parts of this code regarding members' involvement in pre application or post submission discussions with applicants, supporters or objectors.
- 15.2 In particular all officers taking part in such discussions should inform all those present at such discussions that the decision on the particular application will either be taken by elected members in a committee or in specified circumstances by the Head of Development Management or by a duly authorised officer of that department.
- 15.3 An officer **must** always take a note of all such meetings. All meeting notes and follow-up correspondence **must** be placed on the relevant file.

## **16. Officers' Disclosures of Interests**

- 16.1 Officers **must not** play any part in the processing of any application where they have, or can be perceived to have, a conflict of an interest. Such interests would include financial or professional interests and the interests of family and friends.

## **17. Hospitality – Officers**

- 17.1 Officers **must not** accept any gift or hospitality from any person or group affected by a planning proposal. Whilst a degree of hospitality may be unavoidable, officers

**must** ensure that such hospitality is minimal and its acceptance is declared as soon as is possible.

## **18. Action to be taken by Officers Regarding Decisions taken Contrary to Professional Advice**

18.1 In matters where members have refused an application against an Officer recommendation for approval:

- a) Officers will give their full support to members and any external witnesses appointed on behalf of the Council in the preparation of the evidence for any planning inquiry
- b) Officers will only give evidence themselves in the exceptional circumstances where their code of professional conduct has not been breached or where a hearing is to be held, with no cross examination and where the officer concerned has not been involved with formulating the original recommendation
- c) Officers will give their full support to Member decisions that are appealed under the written representations procedure

## **19. Sanctions**

19.1 A failure to adhere to the Code gives rise to potential consequences to the Council and individual Members.

### **a) The Local Government Ombudsman**

Although the Local Government Ombudsman will not investigate the merits of a particular planning decision they may agree to investigate a planning complaint in relation to the way in which a decision was taken. If it is found injustice has been caused by maladministration in the light of statutory or established Council procedures they will recommend redress, which may take the form of compensation.

### **b) Appeals to the Secretary of State**

An applicant who has been refused planning permission has a right of appeal to the Secretary of State. If an appeal is successful and it is shown that the Council's conduct in dealing with the matter was unreasonable the appellant's costs may be awarded against the Council. Examples of "unreasonable behaviour" are: failing to follow the Council's policies; no evidence of significant harm; and giving too much weight to local opposition to proposals.

### **c) Judicial review**

If objectors are convinced that the Council in determining to grant an application did not observe their statutory duties to carry out all necessary procedures, did not base their decision on the development plan and or did not take into account all relevant representations they may apply for Judicial Review of the decision which might result in the decision being suspended and subsequently quashed. In such circumstances it would be normal for the costs of the applicant to be awarded against the Council.

**d) Powers of the Secretary of State**

The Secretary of State possesses a range of powers which could be exercised where a Local Planning Authority appears to make inconsistent decisions or decisions which are seriously in conflict with national and Development Plan Policies. This could involve the greater use of the power to call in applications whereby an application will be determined by the Secretary of State following a Public Inquiry. Where permission has already been granted by the Council powers exist to revoke or modify permissions or to require discontinuance of a land use which if exercised would give rise to a liability to compensate on the part of the Council

**e) District Auditor**

Each of the above courses of action could result in significant costs to the Council. The District Auditor will closely examine these costs. Where it appears to an Auditor that a loss has been incurred or a deficiency caused in the Councils accounts by the wilful misconduct of any person they are required to certify that the loss or deficiency is due to that person and it may therefore lead to a formal report to Council in accordance with the powers granted to District Auditors under the Local Government Act 2000.

**19.3 Possible sanctions against individual Members for breach of the Code of Conduct which could include:**

- a) Investigation and Report on findings to Full Council i.e. “naming and shaming”.
- b) Recommendation to a Group Leader that the member concerned be removed from any committee or sub-committee.
- c) In relation to any members of the executive recommendation that the member concerned be removed from the Executive.
- d) Recommendation to arrange appropriate training for the member concerned.
- e) Recommendation to remove a member concerned from any outside body appointments.
- f) The withdrawal of Council facilities e.g. use of computer or internet.
- g) Exclusion of a member from the Council’s offices or other premises except for the purpose of attending formal meetings.

## **Appendix 1: Committee Making Decisions Contrary to the Officer Recommendation**

### **Overturn from Officer Recommendation of Approval to Refusal**

1. Normally, in making a decision on any planning application before the DC Committee, the Chair will move a motion in accordance with the officer recommendation (to test this is what the Committee want to do) or seek another Member to do so.
2. If that motion is not seconded, or if the vote on the motion is not carried, the Chair will move a motion to defer a decision (allowing more time for Members to propose grounds for refusal if needed) and request that officers bring back a report to the next meeting of the Committee with detailed advice on these grounds, supporting Members to make a final decision.
3. The Committee would then consider the report of potential reasons for refusal and the original report before making a final decision on the application.
4. If the Chair's motion in 2 is not seconded or not carried the Chair will seek an alternative motion from the Committee.
5. The full Committee debate and decision process is illustrated by the diagram in Appendix 2.

### **Overturn from Officer Recommendation of Refusal to Approval**

1. Members should clearly identify and understand the planning reasons leading to this conclusion and should specify the planning reasons for approval during the debate.
2. At the time the motion for approval is moved, Members should specify the planning reasons upon which the motion for approval is based to ensure that all members are clear as to the basis for their vote.
3. The decision by Members is an 'in principle' only decision at this time. For example, Members support the application subject to conditions.

That Delegated Authority is resolved to be given to officers to prepare conditions and (where necessary) section 106 obligations and issue the decision notice **OR**

Delegated authority is given to officers to draft conditions to be considered by the next available Development Control Committee **OR**

The Committee approves the delegation to draft conditions in consultation with the Chair of the Committee.