



## **PLANNING PROTOCOL FOR MEMBERS**

### **1. Introduction and Application**

- 1.1 This protocol is relevant to all elements of the planning process. It is in addition to and supplementary to the Code of Conduct for Members, and does not affect the Code in any way.
- 1.2 If you do not abide by this Protocol, you may put the Council at risk from complaints of maladministration or challenges about the legality of a planning decision. Also, you may put yourself at risk of a complaint for breach of the Code of Conduct.

### **2 to 5 APPLY TO ALL MEMBERS**

### **2. Lobbying of Members by Applicants/Developers/Objectors**

- 2.1 If you are contacted by applicants, developers or objectors:
  - consider referring those who approach you for planning, procedural or technical advice to the officers;
  - you should not normally agree to any meeting with applicants, developers or objectors unless there are very good reasons to see them – if you do wish to attend such a meeting, then an officer should also be present to take a record of what went on for the planning file.
  - Members of the Development Control Committee should reveal at the discussion in Committee any meetings with or written material from applicants, developers or objectors.

### **3. Members' Applications and Lobbying by Members**

- 3.1 The law and the Code of Conduct set out requirements and guidance for Councillors on declaring interests and the consequences of having such interests. These must be followed scrupulously. The responsibility for this rests individually on each Councillor.
- 3.2 In the case of your own development applications:
  - Consider employing a spokesman or agent to act for you to speak to officers or at Committee.
  - You can make written representations in your private capacity (to officers, rather than to other councillors).
  - Disclose a prejudicial interest and leave the meeting when your application is considered in accordance with the Code of Conduct: also, remember that you may, if you wish, speak under paragraph 12(2) of the Code before leaving.
- 3.3 In connection with lobbying of other Councillors and Officers by a Councillor:
  - You should not lobby fellow councillors on your own application.
  - You should not seek to influence Officers or put pressure on them to support a particular course of action in relation to an application.

#### 4. Gifts / Acting as Agents

- 4.1 As a general principle, you should not accept gifts or hospitality from applicants or objectors. Remember that any gift/hospitality of £25 or over must be registered with your Register of Interests: see the Standards Board for England 'Guidance', page 29 for further details.
- 4.2 You should not normally act as an agent for planning applicants or on enforcement matters or in relation to Local Development Framework proposals. If you do so, you will be identified with them and will have a prejudicial interest.

#### 5. Ward Representatives

- 5.1 Members who are not a member of the Development Control Committee may nevertheless exercise their separate speaking rights at that Committee as a Ward Member set out in the Council's procedural Standing Orders, Order 43.2 and in accordance with the Committee's speaking scheme. However, if you have a prejudicial interest, you will only be able to do this under the exception in the Members' Code of Conduct at paragraph 12(2), and then you must leave the meeting.

### **6 to 9 APPLY TO DEVELOPMENT CONTROL COMMITTEE MEMBERS**

#### 6. Discussing Applications

- 6.1 It is particularly important that you are careful what you say in public about an application before it comes to Development Control Committee.
- 6.2 If you are involved in any discussions with applicants, developers or objectors before the committee meeting, it is strongly advised that Members do not commit themselves to a particular viewpoint before hearing all the evidence at Committee. You should make it clear that any views you express are provisional pending a full knowledge of the circumstances, officers' views, consultees' views and policy issues. [See also the section on Predetermination below].

#### 7. Predetermination

- 7.1 Predetermination is sometimes referred to as fettering your discretion, or bias, or having a closed mind. It occurs when you have made up your mind, or clearly appear to have made up your mind, on how you will vote on an application prior to its formal consideration at the Development Control meeting. You are perfectly entitled to form a preliminary view on a matter prior to a meeting, but this must be provisional and you must be open to persuasion by the evidence and arguments from all parties at the meeting. In other words, you can be **predisposed** towards a particular outcome, but you cannot be **predetermined**.
- 7.2 If you predetermine a matter as described above and then take part in the decision at Development Control Committee meeting, it will put the Council at risk of a complaint of maladministration or a legal challenge to the validity of the Committee's decision.
- 7.3 If you have already made up your mind on a matter or appear to have done so and particularly if you have indicated this in public prior to its consideration at Development Control Committee, then:
- Do not take part in the discussion or vote on the application at Development Control Committee: you do not have to withdraw from the Committee meeting, but may consider it appropriate to do so – although remember that if you have a prejudicial interest, you do have to leave the meeting in any case under the Code of Conduct.

- Disclose at the committee meeting that you do not intend to speak or vote because you could reasonably be perceived as having predetermined the matter, so that this may be recorded in the minutes.
  - Where you are predetermined, and cannot discuss or vote as a member of the Committee, having declared the position to the Committee you would not normally be debarred from speaking as a ward member at the meeting, provided that you took no further part in it.
- 7.4 If the Council is the landowner, developer or applicant and you have acted as a chief advocate or initiator for the proposal (e.g. as executive member for that function), you should regard yourself as predetermined.
8. Membership of Town/Parish or County Councils
- 8.1 Where the town/parish council is a **consultee**, a member of the Development Control Committee or ward member can take part in discussions (and vote, if you think fit) at the Town/Parish meeting, provided that you are not irrevocably making up your mind in advance of the Development Control Committee meeting. You are strongly advised not to make any strong statements in public for or against the application at the Town/Parish meeting and to make it clear that you will be reconsidering the matter as a whole at the Development Control Committee.
- 8.2 Where you are a member of a town/parish/county council who is the applicant for planning permission, you would normally be considered to have a prejudicial interest and must take no part in the discussion in Committee, and must also leave the room.
9. In Committee Meetings
- 9.1 The following principles should be borne in mind in Committee:
- Decisions should be made in accordance with the development plan/Local Development Framework unless material considerations indicate otherwise.
  - Take into account all of the information put before the Committee.
  - Ensure that if you are moving or seconding a proposal contrary to officer's recommendations that you clearly state and justify the planning reasons for doing so before any vote is taken.
  - Only vote at a meeting on a proposal where you have been present to hear the whole debate, including the Officer's introduction to the matter.
- 9.2 When considering planning matters and applications, your duty is to the whole Breckland community, not just to the people in your Ward. You must ensure that decisions are impartial, and you should not improperly favour or appear to improperly favour any person, company, group or locality, including the residents of your Ward.
- 9.3 If you have a prejudicial interest, do not sit in the public area when the matter is discussed: declare the interest and leave the room entirely, unless paragraph 12(2) of the Code applies. You may exercise your right to speak under paragraph 12(2) of the Code of Conduct, but it may be preferable to get another member to represent Ward views.

## **10 APPLIES TO ALL MEMBERS**

10. Site Visits
- 10.1 The purpose of site visits is to acquire information about the nature of an application, the site and the possible impact on the surrounding area.
- 10.2 During site inspections:
- You should endeavour to keep together in the Members' Group.

- Do not engage as an individual in discussions with applicants or objectors.
  - Do not express any personal opinions in relation to the application.
  - You are perfectly entitled to ask officers at the site visit questions or seek clarification from them on matters which are relevant to the site.
- 10.3 Neither the applicant nor objectors will normally be permitted to speak at site inspections except where invited by the Chairman to clarify points of information. They will not be permitted to promote their opinions since the correct place for this is in the relevant committee meeting. They will, however, usually be asked by the Chairman or Senior Officer present if there are any additional features or geographical viewpoints they wish the Members to see.
- 10.4 Failure to attend a site visit will not of itself preclude a member from voting, but in these circumstances or in any other case a member should not participate or vote on an application in committee if they are not in possession of all the relevant material/information.

9 March 2009