

Subject: Amendment to the Members
Planning Code of Good Practice

Status: For Publication

Report to: Development Control Committee

Date: 19th October 2006

Report of:
Head of Legal and Democratic Services

Portfolio

Holder: Regeneration

Key Decision: No

1. PURPOSE OF REPORT

1.1 To notify Members of an amendment to the Members' Planning Code of Good Practice that was presented at Cabinet on 18th October 2006.

2. CORPORATE PRIORITIES

2.1 The matters discussed in this report are linked to and support the following corporate priorities:

- *Finance and Risk Management – through putting in place policies and procedures to address identified risk exposures.*

3. RISK ASSESSMENT IMPLICATIONS

3.1 All the issues raised and the recommendation in this report involve risk considerations as set out below:

- By not approving the amendment to the Members' Planning Code of Good Practice there could be risk to the Council in terms of the potential for challenge.

4. BACKGROUND AND OPTIONS

4.1 It is in the Councils interest that the Members' Planning Code of Good Practice be amended to provide clarity on the reasons by which Members' can request Planning Applications to be considered by the Development Control Committee.

4.2 The proposed amendment will ensure that the Councillor of the relevant ward in which the development is located requests in writing, stating clear and

articulate planning reasons (within 14 days of being informed that the application has been submitted) that it should be determined at Committee. A copy of the Code is set out in Appendix A and the amendments are highlighted for Members' consideration.

5. COMMENTS OF THE HEAD OF FINANCIAL SERVICES

5.1 No specific comments.

6. COMMENTS OF THE HEAD OF LEGAL AND DEMOCRATIC SERVICES

6.1 It is recommended that the Council approves the amendment to ensure transparency in the planning process so that planning decisions are made openly, impartially, with sound judgement and for justifiable planning reasons.

7. COMMENTS OF THE HEAD OF HUMAN RESOURCES

7.1 No specific comments.

8. CONCLUSION

8.1 The amendment to the Code is required by the Council to reduce risks and provide clarity

9. RECOMMENDATION

9.1 That the Members of the Development Control Committee note the contents of the report.

10. CONSULTATION CARRIED OUT

10.1 Portfolio Holder, Chair of Development Control

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No background papers

ROSSENDALE BOROUGH COUNCIL

MEMBERS' PLANNING
CODE OF GOOD PRACTICE

ROSSENDALE BOROUGH COUNCIL
Members' Planning Code of Good Practice

Background

Introduction

- 1. Relationship to the Members' Code of Conduct**
- 2. Development Proposals and Interests under the Members' Code of Conduct**
- 3. Membership of Development Control Committee**
- 4. Fettering Discretion in the Planning Process**
- 5. Contact with Applicants, Developers and Objectors**
- 6. Lobbying of Councillors**
- 7. Lobbying by Councillors**
- 8. Site Visits**
- 9. Public Speaking at Meetings**
- 10. Officers**
- 11. Decision Making**
- 12. Application of the Code to the Development Plan Process and other Planning Functions**
- 13. Training**
- 14. Complaints**

ROSSENDALE BOROUGH COUNCIL

Members' Planning Code of Good Practice

Background

This Code of Good Practice has been prepared in response to the Local Government Association's Guidance Note on the preparation of Local Codes of Good Practice on Planning Matters in the light of the introduction of the new ethical framework and is based on a Model Code produced by the Association of Council Secretaries and Solicitors in consultation with the District Audit Service, Local Government Ombudsman and the Standards Board for England.

Introduction

The aim of this code of good practice: to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

The key purpose of Planning: to control development in the public interest.

Your role as a Member of the Planning Authority: to make planning decisions openly, impartially, with sound judgement and for justifiable **planning** reasons.

When the Code of Good Practice applies: this code applies to Members at all times when involving themselves in the planning process.

It also applies to any involvement you might have in respect of applications which are delegated to officers to determine. The Development Control Manager has delegated power to determine all applications which accord with Policies adopted by the Council except for:-

- All applications on Council-owned land, by or on behalf of the Council, its partner organisations, or other agents.
- All applications for the Council's own development.
- All applications where the decision would be prejudicial to, or in conflict with, National or Development Plan Policy.
- All applications where it is known that the decision could give rise to substantial claims for compensation or purchase notices which might be difficult to defend.
- All applications where it is known that they are submitted by, or on behalf of, either Members or Officers (and their spouses).
- All applications which, in the opinion of the Development Control Manager and Planning Officer, are likely to be contentious or to give rise to significant, novel or unusual issues.

- All applications for development requiring an Environmental Impact Assessment.
- All applications where it is intended to overrule material planning objections from 3 or more separate addresses.
- All major applications for residential development for more than 0.5 hectares or 10+ dwellings (excluding reserved matters).
- All major applications for non-residential development for more than 1000m² or more, or where the site will be 1 hectare or more.
- Any other application where a Councillor of the relevant ward in which the development is located requests in writing **stating clear and articulate planning reasons** (within 14 days of being informed that the application has been submitted) that it should be determined at Committee.

If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer, Linda Fisher telephone 01706 252447 or e-mail lindafisher@rossendalebc.gov.uk or one of her staff, and preferably well before any meeting takes place.

1. Relationship to the Members' Code of Conduct

- **Do** apply the rules in the Members' Code of Conduct first, which must be always be complied with.
- **Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not abide by this Code of Good Practice, you may put:
 - the Council at risk of proceedings on the legality or maladministration of the related decision; and
 - yourself at risk of either being named in a report made to the Standards Committee or Council or, if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Standards Board for England.

2. Development Proposals and Interests under the Members' Code

- **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter.
- **Do** then act accordingly. **Where your interest is personal and prejudicial:-**
 - **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.
 - **Don't** try to represent ward/local views, get another Ward/Local Member to do so instead.
 - **Don't** get involved in the processing of the application.
 - **Don't** seek or accept any preferential treatment, or place yourself in a position

that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a personal and prejudicial interest in a proposal, using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.

- **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate officer, in person or in writing, the Code places greater limitations on you in representing that proposal than would apply to a normal member of the public. (For example, where you have a personal and prejudicial interest in a proposal to be put before a meeting, you will have to withdraw from the room or chamber whilst the meeting considers it, whereas an ordinary member of the public would be able to make use of the public speaking scheme to address the meeting on the proposal and observe the meeting's consideration of it from the public gallery.)
- **Do** notify the Monitoring Officer of any planning application that you submit and note that:
 - notification to the Monitoring Officer should be made no later than submission of the application;
 - the proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers; and
 - it is advisable that you employ an agent to act on your behalf on the proposal in dealing with officers and any public speaking at Committee
- Personal and Prejudicial Interests are explained in Part 5 of the Council's Constitution in the Code of Conduct for Councillors Independent and other Voting Representatives. Members should not allow the impression to be created that they are, or may be, using their position to promote a private or personal interest rather than forwarding the general public interest. Private and Personal interests include those of family and friends, their employment as well as those arising through membership of or, association with, Clubs, Societies and other organisations such as the Freemasons, trade unions and voluntary bodies.
- A Personal interest will also be 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 Members' judgment of the public interest.

3. Membership of Development Control Committee

- It is important that members of the public have confidence in the Members who are making decisions on planning applications and in connection with other planning matters. Regarding the conduct of Members, not only should impropriety be avoided but also any appearance or grounds for suspicion, of improper conduct. Also, members of the public need to be confident that Members have reasonable capability, in terms of background knowledge, for making these decisions, and are making them in line with agreed and adopted policies, national guidance and legislation.
- Members who have businesses or other interests which may bring them into contact

with the Council's planning system on a regular basis should not generally be considered for membership of the Development Control Committee.

4. Fettering Discretion in the Planning Process.

Members of the Development Control Committee.

- **Don't** fetter your discretion and therefore your ability to participate in planning decision making at this Council by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the planning authority and of your hearing the officer's presentation and evidence and arguments on both sides.

Fettering your discretion in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

- **Do** be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)
- **Do** also be aware that, whilst the Members' Code of Conduct provides for a presumption that you may regard yourself as not having a prejudicial interest in matters which relate to the organisations mentioned below, you must exercise your discretion in deciding whether or not to participate in each case and where:
 - you have been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of:
 - another local or public authority of which you are a member; or
 - a body to which you have been appointed or nominated by the Council as its representative; or
 - you are a trustee or company director of the body submitting the proposal and were appointed by the Councilyou should always disclose a prejudicial as well as personal interest and withdraw.

Members of Consultee Bodies.

- **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the parish council, for example, or both a borough and county councillor), provided:
 - the proposal does not substantially effect the well being or financial standing of the consultee body;
 - you make it clear to the consultee body that:
 - your views are expressed on the limited information before you only;

- you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Committee and you hear all of the relevant information; and
- you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee; and
- you disclose the personal interest regarding your membership or role when the Committee comes to consider the proposal.
- **Don't** speak and vote on a proposal where you have fettered your discretion. You do not also have to withdraw, but you may prefer to do so for the sake of appearances.
- **Do** explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.

Ward Members

- **Do** take the opportunity to exercise your separate speaking rights as a Ward/Local Member where you have represented your views or those of local electors and fettered your discretion, but do not have a personal and prejudicial interest. Where you do:
 - advise the proper officer or Chairman that you wish to speak in this capacity before commencement of the item;
 - remove yourself from the member seating area for the duration of that item; and
 - ensure that your actions are recorded.

5. Contact with Applicants, Developers and Objectors

- **Do** refer those who approach you for planning, procedural or technical advice to officers.
- **Don't** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Development Control Manager to organise it. The officer 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.
- **Do** otherwise:
 - follow the rules on lobbying;
 - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
 - report to the Development Control Manager any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

In addition in respect of presentations by applicants/developers:

- **Don't** attend a planning presentation unless an officer is present and/or it has been organised by officers.
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application; this will be carried out by the appropriate Council Committee.
- **Do** be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other Members might vote.

6. Lobbying of Councillors

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and therefore your ability to participate in the Committee's decision making to express an intention to vote one way or another or such a firm point of view that it amounts to the same thing.
- **Do** remember that your overriding duty is to the whole community not just to the people in your ward/local area and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum; its acceptance is declared as soon as possible and remember to register the gift or hospitality in accordance with the Council's Code of Conduct on gifts and hospitality for Councillors.
- **Do** copy or pass on any lobbying correspondence you receive to the Development Control Manager at the earliest opportunity.
- **Do** promptly refer to the Development Control Manager any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- **Do** note that, unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this Planning Code of Good Practice through:
 - listening or receiving viewpoints from residents or other interested parties;
 - making comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
 - seeking information through appropriate channels; or
 - being a vehicle for the expression of opinion or speaking at the meeting as a Ward/Local Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

7. Lobbying by Councillors

- **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and are likely to have a personal and prejudicial interest and have to withdraw.
- **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society, but disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal.
- **Don't** excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken
- **Don't** decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue.

8. Site Visits

- **Do** try to attend site visits organised by the Council where possible.
- **Don't** request a site visit unless you feel it is strictly necessary because:
 - particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
 - there are significant policy or precedent implications and specific site factors need to be carefully addressed.
- **Do** ensure that any information which you gained from the site visit is reported back to the Committee, so that all Members have the same information
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **Don't** hear representations from any other party with the exception of the Ward/Local Member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.
- **Don't** express opinions or views to anyone.
- **Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
 - you feel it is essential for you to visit the site other than through attending the official site visit,

- you have first spoken to the Development Control Manager about your intention to do so and why (which will be recorded on the file) and
- you can ensure you will comply with these good practice rules on site visits.

9. Public Speaking at Meetings

- **Don't** allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- **Do** ensure that you comply with the Council's procedures in respect of public speaking.

10. Officers

- All Members and Officers must ensure that contact between them in connection with planning matters accords with the established convention of mutual respect, despite possible personal and professional differences of opinion on particular issues. Any contact between them should not undermine working relationships which are crucial to the success of the Council and good local government.
- Officers have a duty to give impartial advice to Members and the Council on planning applications and other planning matters and to make recommendations to Committee in the light of the Council's adopted planning policies, national planning policies, and any other material consideration using their professional judgement. Members should not attempt to use their position to pressurise officers into making a particular recommendation.
- **Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Development Control Manager, which may be incorporated into any committee report).
- **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with a Head of Service or those officers who are authorised by their Head of Service to deal with the proposal at a Member level.
- **Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

11. Decision Making

- **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your **planning** reasons are recorded and repeated in the report to the Committee.
- **Do** come to meetings with an open mind and demonstrate that you are open-minded.

- **Do** comply with section 54A of the Town and Country Planning Act 1990 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- **Do** consider other relevant legislation such as the Human Rights Act 1998, Race Relations Act 1976 as amended, Crime and Disorder Act 1988.
- **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.
- **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- **Do** have recorded the reasons for Committee's decision to defer any proposal.
- **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge. In certain instances it may be preferable to defer the application to the next Development Control Committee so that Members can have a further report on the application in light of their proposed decision to determine the application contrary to the Officer's recommendation.

12. Application of the Code to the Development Plan process and other Planning Functions.

- In the Development process, decisions are made by the Council regarding allocations and policies which relate to specific sites, or general policies which are not site specific but can have a bearing on how and what land can be developed. All these affect private interests.
- During the Development Plan process the Council will be dealing with people putting forward proposals for inclusion in the Plan, whilst others will be objecting to the proposals in the Plan.
- The decision-making Committee in relation to the Development Plan is Development Regeneration and Environment Committee.
- Interested parties will primarily be landowners or developers and interest groups, together with statutory bodies and authorities, and local residents. All play a part in the process and interact with Members and Officers.
- In addition to planning applications, other development control functions include enforcement action, tree preservation orders and dealing with listed buildings and conservation areas. All these areas of work involve important decisions being made which affect peoples interests, and this Code applies to these decisions as well.
- It is essential, therefore, that Members have regard to the guidance in this Code of Conduct in relation to these other areas of work besides planning applications.

13. Training

- **Don't** participate in decision making at meetings dealing with planning matters if you have not attended planning training provided by the Council.
- **Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.
- **Do** participate in the annual review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations.

14. Complaints

- Whatever procedures and practices are put in place it is possible that complaints will be made. However, the adoption of the advice in this Code should reduce the occasions on which complaints are justified. It should, hopefully, also provide less reason for people to complain in the first place.
- Complaints about the planning process will be dealt with through the Council's and Departmental complaints system. (Objections to planning applications are not treated as complaints). However, complaints by applicants/agents about the decision made (not the process) will not be entertained as a complaint as they are able to make use of the external statutory appeals process to the Secretary of State.

DECLARING INTERESTS FLOWCHART – QUESTIONS TO ASK YOURSELF (Non-Overview and Scrutiny Meetings)

