

## **Part 5 – Codes and Protocols**

### **Chapter 2 – Councillors' Code of Conduct for Planning Matters**

#### **1. Introduction**

- 1.1 The Council is the Local Planning Authority for Barking and Dagenham.
- 1.2 The Council's planning decisions must be taken with regard to policies contained in the adopted Development Plan, any supplementary planning guidance and any other material planning considerations. These decisions are made by Committees of elected Members (the Development Control Board) and also by officers under delegated powers.
- 1.3 The current Development Plan comprises the Local Development Framework (LDF), now known as the Local Plan, and the Spatial Development Strategy (the London Plan) set by the Mayor for London. The Development Plan must conform to Guidance from the Government including the National Planning Policy Framework. Planning decisions must be taken in accordance with policies contained in the Plans unless material planning considerations justify a departure.
- 1.4 Many minor applications are dealt with by officers under delegated authority, as provided for under the Council's Constitution and as a requirement of Government performance standards for planning. Major schemes and those raising substantial objections are determined by the Development Control Board.
- 1.5 This Code of Conduct for Planning Matters sets out the rules and procedures for the Council's Development Control Board when determining planning applications and considering site specific policy issues both in the lead up to and at a Development Control Board meeting. This Code is supplementary to the Councillors' Code of Conduct at Chapter 1 of Part 5 of the Constitution.
- 1.6 The law relating to the planning process obliges Members of the Board to act in a quasi-judicial and independent manner. They are required to consider planning applications and site specific policy issues solely on their own merits, in line with published relevant policy.
- 1.7 The key objectives of this Code are:
  - (i) to protect the Council and individual Councillors from allegations of unfairness, findings of maladministration and legal challenge
  - (ii) to ensure that the role of officers, developers and applicants / members of the public are understood
- 1.8 To ensure these objectives are maintained all Councillors are advised to be familiar with the Code. If there are any concerns or lack of clarity about a planning matter advice will be readily available from officers. This will help avoid potential conflicts of interest, which may occur from time to time. If there should be any risk of unresolved conflicts with this Code, officers have been instructed to raise their concerns with the Chair of the Development Control Board, who will be asked to take appropriate action, including giving specific advice to Councillors.

## **2. How to avoid a conflict of interest and still assist your constituents**

- 2.1 In making their decisions Members of the Development Control Board are required to have a neutral position on any application. This means they cannot be seen to side with either the applicant or the objector/s prior to the hearing of the application when all the relevant facts are known. Adhering to the following rules will ensure that public confidence in the Development Control Board is maintained and also serve to minimise the prospect of non-planning related matters clouding the judgment of Members. This is a requirement of the law and this guidance is aimed to assist Members in complying with this complex area of legislation and case law. Officers are always available to assist Members on these matters.
- 2.2 As their role is quasi-judicial, Members of the Development Control Board must not be involved in the support of, or the opposition to, planning applications. This could be considered as “predetermining” an application for permission that may be considered by the Board. Similarly, Members of the Board should not allow themselves to be influenced by members of the public and developers who might approach them and they should not be influenced by party politics or the views of other Councillors. If Members do have particularly strong views on a particular planning matter they should seek advice from the Council’s Monitoring Officer, or the Strategic Director of Growth and Homes in order to minimise any risk to themselves.
- 2.3 As decision-makers, Members of the Development Control Board should approach all applications with an open mind. If they express a view prior to the decision they could be seen to be predetermining the application, that is to say they have already made their mind up. Members must avoid the appearance of being influenced by those with whom they have a special relationship such as fellow Councillors at any stage prior to determination. Members should similarly avoid making public statements as to their support of, or opposition to, any application. This could be considered to be pre-judging the proposal and as such, could bring into question whether Members are acting independently on the merits of the case. While the Localism Act 2011 provides that that it is not conclusive of a closed mind by the fact that a Member may have said something about an application before hearing, it may be very difficult to avoid giving such an impression.
- 2.4 If Members should receive lobbying material relating to potential applications, they should not respond and should forward it to the Council’s Development Management Manager. If a Member is approached by an individual or an organisation in relation to a particular planning application on the agenda of an upcoming meeting, the Member should explain that they are unable to personally comment on the application but that the person or organisation may:
- Where the application is not yet on the agenda, write to the Planning Officer responsible for the particular application who will take into account any material planning considerations raised in the representations when preparing the report for the Development Control Board;
  - Contact the Democratic Services Officer to request to speak at the meeting;

- Contact an alternative Councillor who is not a member of the Development Control Board.
- 2.5 Members should make a written note of any approach made to them and inform the Monitoring Officer accordingly.
- 2.6 If a Development Control Board Member decides to become involved in organising the support of or opposition to a planning application, then that Member should accordingly declare an interest at the beginning of the meeting (see “When to declare an Interest” below) and remove themselves from taking part in the matter. By becoming involved in a planning application prior to the meeting other than to read the Planning Officer’s report and to attend a site visit accompanied by the Planning Officers, the Member risks forfeiting his/her right to take part in the discussion or vote on that particular item.
- 2.7 Ward Councillors who wish to make representations to the Development Control Board should, in particular, note paragraphs 2.2 and 2.3 above on influencing other Members, 4.1 on Declarations of Interest and 7.3 and 7.4. If any doubt exists in a Member’s mind about possible interests they should seek advice from the Monitoring Officer in advance of the meeting.

### **3. Members' Interests in Proceedings – General Principles**

- 3.1 The first general principle is that if a Member taking part at a meeting has an interest in an item of business they must declare it. In accordance with the provisions of the Localism Act 2011 there are two possible interests, that is disclosable pecuniary interests and non-pecuniary interests.
- 3.2 It is strongly recommended that as soon as Members receive their papers they check each application to make sure that they do not have an interest of any kind. If they consider themselves to have an interest they should notify the Democratic Services Officer responsible for the Development Control Board as soon as possible in advance of the meeting.
- 3.3 If it later becomes apparent to the Member that he/she has an interest (which may not be until the meeting) this should be declared as soon as the Member is aware. The Member should immediately withdraw from the meeting by leaving the room, thereby taking no further part in that business. If any doubt exists in a Member’s mind, they are advised to seek advice from the Monitoring Officer in advance of the meeting. In the final analysis, the duty to declare and the decision as to whether an interest should be disclosed rests with the Member, not with officers.

### **4. Interests and What to do**

#### **4.1 Disclosable Pecuniary Interests**

- 4.1.1 These are defined in the Code of Conduct for Councillors. These are set by law. If an interest is disclosable as defined under the Localism Act 2011 then the Member should not take part whilst that matter is being considered, unless they have been issued with a dispensation. How to get a dispensation is set out in the Code of Conduct for Councillors document.

## **4.2 Non-Pecuniary Interests**

- 4.2.1 These are interests which are not disclosable by law but could still be necessary to be declared. An interest which is not within the disclosable pecuniary category may still prevent Members taking part because it is capable of being seen as bias or prejudicial to a party before the Board.
- 4.2.2 A Member shall be regarded as having such an interest that would be prejudicial to the proceedings if it related to an item of business and the interest was one that a member of the public with the knowledge of the relevant facts would reasonably regard it to be so significant that it is likely to prejudice the Member's judgement. In such circumstances a Member is advised to leave the room, so that there can be no doubt that they did not influence the Board in its decision making. In case of doubt, the best advice is to withdraw from dealing with the application.
- 4.2.3 A common potential non-pecuniary interest arises where the Member resides near a development which is the subject of a planning application. While it is for the Member to judge, a useful rule of thumb is "will my enjoyment of my property be affected either positively or negatively by this application?" If the answer is yes, the Member should declare they have an interest and exclude themselves from discussion and voting on that item.
- 4.2.4 If a Member has a concern as to whether they may have such an interest they should seek advice from the Monitoring Officer though ultimately it is for a Member to decide whether or not to declare that they have an interest.

## **5. Decision-Making: Material Planning Considerations**

- 5.1 Members should only consider the planning merits of an application as set out before the Development Control Board in determining whether or not to grant planning permission. Members are not to give weight to non-planning related matters that may be raised by members of the public.
- 5.2 Further, an applicant or objector may not raise any substantial new information at a meeting (including by way of correspondence, other documents, photographs or models) at the Development Control Board meeting without due notice or the consent of the Board.
- 5.3 Any attempts by applicants or objectors (or their agents) to introduce such information in breach of this Code must not be taken into consideration by Members in arriving at their final decision.
- 5.4 Planning applications are considered with regard to the policies set out in the Development Plan and the National Planning Policy Framework. Applications must be determined in accordance with policy unless there are material planning considerations to indicate otherwise. Material considerations include the site history, appeal decisions, Central and London Government Guidance. All these policies and factors must be weighed together before a decision at Development Control Board level is made.
- 5.5 If a decision of a Development Control Board appears to be made on other than planning grounds it could be open to legal challenge. If it is appealed,

and a Planning Inspector or the Court decides the decision to be flawed, it may be overturned. This could have serious cost implications for the Council.

- 5.6 If the majority of Members on a Development Control Board make a decision which is contrary to the Planning Officer's recommendations, reasons for the decision need to be given. Officers will at this point outline to Members the implications of the decision they are making.

## **6. Site Visits Protocol**

- 6.1 Members will not make any decisions or discuss the merits or otherwise of a case during the site visit but may seek clarification, particularly about the layout of the site, from the accompanying Planning Officers.
- 6.2 The Democratic Services Officer will record the time/date of the site visit, Members in attendance and any other relevant information.

## **7. Conduct at Meetings**

- 7.1 Members who are not present throughout an entire item, for whatever reason, must refrain from participating in the discussion on that item and must not vote on it.
- 7.2 As this is a legal process it is vital that Members must be seen to act fairly – Members must not discuss, or appear to discuss, any matter with members of the public during the course of the meeting or in the lead up to it.
- 7.3 Councillors who are not members of the Development Control Board may speak at a meeting with the agreement of the Chair. Councillors should sit separately from the members of the Development Control Board and they should declare whether they have had any contact with the applicant/objector/property owner or their agents, and whether they are speaking on behalf of a third party, and if so, who.
- 7.4 Councillors who are not members of the Development Control Board must not communicate with those who are in respect of any undetermined planning matter in any other manner than that described above in the lead up to or during the course of the meeting.

## **8. Speaking at Meetings as an interested party or applicant.**

- 8.1 If you have an interest in a matter being discussed at a meeting, you must declare that you have an interest and the nature of that interest as soon as that interest becomes apparent to you. If you have a disclosable pecuniary interest you cannot take part in that matter at all unless you have been granted a dispensation.
- 8.2 You should then leave the room, unless members of the public are allowed to make representations, give evidence or answer questions about the matter, by statutory right or otherwise. If that is the case if you too are eligible you can also attend the meeting for that purpose only. You should not sit with Members of the Board and your right to address the Board is the same as other members of the public.

8.3 In addition, you must not seek to improperly influence a decision in which you have an interest. This rule is similar to your general obligation not to use your position as a Member improperly to your or someone else's advantage or disadvantage.

## **9. Breaching the Code**

9.1 Failure to comply with this Code of Conduct for Planning Matters could lead to a Councillor being in breach of the Councillors' Code of Conduct. Breaches of the Code will be referred to the Council's Monitoring Officer.

## **10. Training**

10.1 Members of the Development Control Board are required to attend planning training organised by the Council at which they will need to demonstrate a level of knowledge to the extent that until they have done so they shall not partake in the decision making process of the Board.

10.2 Members are encouraged to attend any other specialised training sessions provided, since these will be designed to extend Members' knowledge of planning law, regulations procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist Members in carrying out their role properly and effectively.