

# ST ALBANS CITY AND DISTRICT COUNCIL CODE OF PRACTICE FOR MEMBERS AND OFFICERS DEALING WITH PLANNING MATTERS

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# 1. Introduction

The key purpose of the planning system is to manage private interests in the development of land, having regard to the wider public interest.

Development affects people's vital interests, such as quality of environment, and their freedom to enjoy and use it.

The planning system has to balance these with the competing interests of others. It is therefore vital that public confidence is maintained in the fairness of the decision-making process.

This will be achieved by ensuring that there are no grounds for suggesting that a decision has been biased, partial or not well founded.

The aim of this Code of Practice is to assist members and officers to act in a way that will promote these aims.

## ***When the Code of Practice applies***

This Code applies to you whenever you involve yourselves in the planning process, acting in your capacity as a member of St Albans City and District Council, including:

- At formal meetings of the Council, its Committees and Sub-Committees, its Cabinet and Cabinet Committees
- When acting as a representative of the authority
- In taking any decision as a Cabinet member or a Ward Councillor
- In discharging your functions as a Ward Councillor
- At briefing meetings with officers
- At site inspections and
- When corresponding with the authority other than in a private capacity

It applies as equally to planning enforcement matters, strategic or site-specific policy issues as it does to planning applications. It also seeks to provide guidance to officers who are involved in the planning process.

## ***Planning decisions and legal challenge***

Planning is not an exact science. It relies on informed consideration and judgement within a firm policy and legal context, together with appropriate opportunities for input from the public and other relevant consultees. Indeed, it is this openness that is important for continued acceptance of the constraints imposed on individuals by the planning process. It is important that decisions are legally robust, as any challenge (even where unsuccessful) is resource consuming and inevitably leads to increased costs for the Council and prolonged uncertainty for developers and concerned residents.

The primary requirement for decision-makers in planning matters is contained in Section 38(6) of the Planning and Compulsory Purchase Act 2004, which states:

'If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.'

If decision-makers fail to comply with this basic requirement, then any decision reached may be overturned on appeal or by judicial review.

In addition, public law makes various demands upon decision-makers in exercising their discretion. These may be summarised as follows:

- ❑ **Reasonableness:** decisions must not be such that no rational, properly informed authority could reach those conclusions;
- ❑ **Proper information:** decisions must only be taken at the conclusion of any matter, in consideration of all relevant facts and policy and without reference to irrelevant ones;
- ❑ **Bias:** decisions must be taken fairly and without favour to any person by way of unbalanced access or bias. Members must make their decision on the merits of the application and come to the meeting with an open mind. This doesn't mean you cannot form a provisional view about the matter before the meeting but if you have formed a provisional view you must have regard to all material considerations, consider all arguments presented at the meeting and be open to persuasion on the merits of the case. If you are not, your decision might be open to legal challenge because of the common law concept of predetermination.

Finally, the right to peaceful enjoyment of possession (including property) under the Human Rights Act 1998 applies to planning as it both restricts the rights of owners to develop their land and has an effect on the amenity of neighbouring occupiers. As such, any interference in these rights must be proportionate to the public interest and follow lawful procedures.

Because of these constraints, it is the role of officers to ensure that members are properly advised at all times of the relevant policy and legal context of any decision being brought to the Planning Committee. This advice, together with the views of consultees, is provided by means of a report, together with an officer's recommendation. Whilst it should be emphasised that the decision is to be taken by members and that the recommendation is not binding, members must ensure that their determination is made in compliance with the above principles.

To assist you in ensuring that your decisions are robust and beyond a challenge, the remainder of this code sets out clear advice on how you should act when dealing with any planning matter. It also attempts to strike a balance between being comprehensive and being easy to use. Inevitably, there will, however, be times when members or officers need further assistance and it is again emphasised that senior officers are always willing to provide clarification and specific advice in this regard. Finally, members and officers should be fully aware that it remains at all times their personal responsibility to declare interests and act in compliance with the Council's general codes of conduct for members and officers.

Unless otherwise stated, this advice is aimed at all committee and non-committee members and officers whenever they are dealing with planning matters.

## 2. Relationship to the Members' Code of Conduct and the Officers' Code of Conduct

**Do** apply the rules in the Members' Code of Conduct or Officers' Code of Conduct first. These must always be complied with.

**Do** then apply the rules in this planning Code of Practice, which seek to explain and supplement the Members' and Officers' Codes of Conduct for the purposes of planning control. If you do not abide by this Code of Practice, you may:

- Put the Council at risk of proceedings on the legality or maladministration of the related decision
- Put yourself at risk (as a member) of a complaint being made to the Monitoring Officer/ St Albans City and District Council's Standards Committee that you have failed to comply with the Members' Code of Conduct;
- Put yourself at risk (as an officer) of disciplinary proceedings.

## 3. Hospitality and gifts

With regard to the acceptance of gifts and hospitality, neither members nor officers should, under any circumstances, accept gifts and should, wherever possible, avoid accepting any hospitality. If, however, a degree of hospitality is unavoidable, it should be ensured that this is the minimum and its receipt is declared as soon as possible. All offers of hospitality, whether accepted or not, must be entered in the hospitality record book within 28 days of receipt. Members should also be aware of the need to register with the Monitoring Officer details of any gifts or hospitality with a value of £50 or over.

## 4. Development proposals and interests under the Members' Code of Conduct

**Do** be aware of the definitions of interests in the Members' Code, which is attached to the Council's Constitution.

**Do** make oral disclosure of the existence and nature of your interest at any relevant meeting, including at informal meetings or discussions with officers and/or members. Disclose your interest at the beginning of the meeting and not just at the commencement of the discussion on that particular matter. You must also declare any interests even if you are not a member of the committee itself but are attending the meeting as an officer or ward councillor or in a personal capacity. Your oral declaration should clearly set out what your interest is, whether or not it is pecuniary and whether or not you will be leaving the meeting room during consideration of the matter.

**Do** then act accordingly. **Where your interest is personal and pecuniary:**

- Do** declare your interest and the nature of that interest. Following the adoption by Council of the revised Members' Code of Conduct on 11 July 2012, the position of members with a personal and pecuniary interest speaking at Planning Committee meetings is as follows:

This Code of Conduct aims to provide members with the same rights as ordinary members of the public to speak on certain matters, despite having a pecuniary interest. If a member of the public is allowed to speak on an application at a Planning Committee meeting, you will have the same opportunity. You will therefore be able to make representations for up to five minutes. It is good practice to leave the room once you have finished or when the Committee decides you have finished (if that is earlier). You cannot take any further part in the discussion or determination of the item and cannot vote.

- ❑ **Do** arrange for another member to represent the views of your constituents on matters in which you have a pecuniary interest.
- ❑ **Do** consider whether it is appropriate for you to serve on a Planning Committee or as an officer making delegated decisions if you hold substantial and diverse property interests, which would require you to declare a pecuniary interest on frequent occasions.
- ❑ **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and pecuniary 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. You should therefore be very careful to ensure that you cannot be accused of undue influence or access and it is therefore recommended that you employ an agent for the purposes of such discussions.
- ❑ **Do** notify the Head of Planning and Building Control and the Monitoring Officer in writing of your own planning applications no later than submission of the application and be aware that the proposal will always be reported to Committee as a main item and not dealt with by officers under delegated powers.

The Council recognises the public interest in ensuring that any application by an existing or former member or officer or their relation is dealt with in the same way as any other and without favour or prejudice. The proposal will always be reported to Committee as a main item and not dealt with by officers under delegated powers.

Similarly, any application in respect of Council-owned land (whether by the Council itself or a developer) will be considered in the normal way at the Planning Committee as a main item and not dealt with by officers under delegated powers. Members of the Committee and officers must disregard any benefit accruing to the Authority in making their decision.

- ❑ **Do** consider using a professional representative to make a planning application on your behalf.
- ❑ **Don't** seek to improperly influence a decision in which you have a pecuniary interest. You must not use your position or attempt to use your position improperly to further your own interests in a way that is not open to ordinary members of the public.
- ❑ **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority. This rule applies to all members (regardless of whether or not they serve on the Planning Committee) and officers.
- ❑ **Don't** attempt to influence the officers' or members' decision on the matter by lobbying or discussing it.
- ❑ **Don't**, as an officer, make or advise on any delegated decision or recommendation to members.
- ❑ **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 or an officer. This would include, where you have a personal and pecuniary interest in a proposal, using your position to discuss the proposal with officers or members when other members of the public would not have the same opportunity to do so.

## **5. Fettering discretion in the planning process**

### ***Planning Committee members***

**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 includes situations where 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** 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.

**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 hearing the officers' 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.

**Don't** speak as a committee member and vote on a proposal where you have fettered your discretion. In such circumstances, you should withdraw from the meeting when the application is being considered.

### ***Non-Committee members***

**Don't** say or do anything that may make it appear that the Council has reached a conclusion on any planning matter prior to the formal decision being made by Committee or officers.

### ***Officers exercising delegated powers***

**Do** ensure that any delegated decision or recommendation to Committee is made with an open mind and in full consideration of all relevant material considerations.

**Don't** fetter your discretion by giving any indication to members, applicants or the public as to what your delegated decision or recommendation will be until all relevant information has been gathered and considered.

## **6. Contact with applicants, developers and objectors**

In view of the overriding need to protect the integrity of planning decisions, members of the Planning Committee should be subject to tighter restrictions in this regard than other members of the Council.

### ***Planning Committee members***

**Do** not attend any presentations of planning matters with any person other than a fellow member or an officer.

**Do** refer those who approach you for planning, procedural or technical advice to officers.

**Do** take care when speaking, if contacted, to explain that you cannot form a firm view until you have heard all information on the application and that, in any event, your views are not those of the Authority.

**Do** remember that your overriding duty is to the whole community, not just to the people in your ward 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.

**Do** inform the Head of Planning and Building Control and 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 up the matter.

**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 Committee of the planning authority.

**Do** be aware that a presentation is a form of lobbying and you must not express any strong view or state how members might vote.

**Do** copy or pass on any lobbying correspondence you receive to the Head of Planning and Building Control at the earliest opportunity.

**Do** promptly refer to the Head of Planning and Building Control any offers made to you of planning gain or constraint of development, through a proposed Section 106 Planning Obligation or otherwise.

**Don't** act as agent for any person in a planning matter.

**In addition, in respect of presentations by applicants or developers:**

**Don't** attend a planning presentation unless an officer is present and/or it has been organised by officers. In the event of any presentation:

## ***Pre-application discussions between developers and officers***

The Council recognises the benefits of pre-application discussion between developers and appropriate officers, provided the following rules are complied with:

- It is made clear at the outset and throughout that any discussion cannot bind the Council as to its final decision;
- Advice given must be impartial and consistent with the Development Plan and any material considerations. If more than one officer is involved in discussions, then every effort must be made to ensure that advice given is consistent; and
- A written note is to be made of all discussions, and any high profile or potentially contentious meetings shall be attended by two or more officers.

## ***Pre-application discussions involving members***

It is recognised that pre-application discussions which involve members can have benefits for all parties. If you attend such discussions, the following rules must apply:

- Ideally, such discussions should occur within a wider stakeholder group, such as an exhibition or public presentation. Where discussions are held in a smaller group, you must always ensure that there is an officer present.
- It must be made clear that any views expressed by you are your personal views, based on the information available at that time, and that such views are not those of the Council and do not bind the Council in terms of the determination of any subsequent planning application(s), nor do those views bind the member in any way.
- Where formal pre-application discussions are held between the developer and the Council, any confidential information that is given by either party, including matters that are commercially sensitive, must not be disclosed to any Third Party without the express permission of the developer.

## **7. Lobbying by members**

**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 pecuniary interest and have to withdraw from the Planning Committee meeting.

You may join general interest groups that reflect your areas of interest and that 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. This is particularly relevant in relation to planning committee members attending area committee or other consultee bodies.

**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.

**Do** be aware that it is legitimate for non-committee members to represent their constituents by speaking at committee meetings.

If you are a member of Planning Committee, you are required to verbally declare, at the appropriate Planning Committee meeting, that you have been lobbied in respect of a particular planning application. Such a declaration of lobbying will not, in itself, require a further declaration of interest

## 8. Site Inspections

### *Planning Committee and non-committee members*

Site inspections are often a useful and necessary way for members to better understand material considerations relating to a planning application that would otherwise perhaps not be so apparent through an officer presentation at Committee. Site inspections should focus on those factors “on the ground” that are material and relevant to the decision and that might not otherwise be able to be given due weight in the absence of such a site inspection.

**Do** be aware that members can make site inspections but need to take care if approached by others on site. Regard should be had to proper conduct and the rules set out in this Code of Practice must be complied with at all times. Unlike some Councils, this Authority does not prevent members from visiting sites independently. Committee site inspections are rarely undertaken.

Members familiarising themselves with a site before the meeting at which they will be asked to determine the planning application should :-

- Ensure that you treat the site inspection only as an opportunity to seek information and to observe the site.
- Avoid being persuaded to carry out site inspections at the instigation of, or in the company of a party to the planning application i.e. the applicant and/or their agent.
- If visiting sites with other residents/objectors you should be careful not to offer a firm opinion on the matter and should follow the advice outlined in this Code.
- Remember you cannot enter onto private land without first obtaining the permission of the owner and should endeavour whenever possible to familiarise yourself with a site from a public viewpoint. Whilst you might be invited to enter the site by the owner, it is not good practice to do so on your own, as this can lead to the perception of predetermination
- Not hear representations from any other party (including applicants), whilst visiting a site.

If you are approached by the applicant or a third party during a site inspection, direct them to the Council planning officers in order for officers to deal with the issue. You may also be required to verbally declare such approaches as lobbying when the application is considered at Committee.

**Don't** express opinions or views to anyone.

## 9. Public speaking at meetings

### *Committee members*

**Don't** allow non-committee members, members of the public or applicants to communicate with you during the Committee's proceedings (visually, orally, electronically (by phone, tablet or other device) or in writing) other than through the scheme for public speaking, as this may give the appearance of bias. In addition, the submission or display of written, photographic, electronic or other material by or on behalf of applicants during the Committee's proceedings is not permitted, including by public speakers and non-committee members.

### *All members and officers*

**Do** encourage people to make their views known at Committee. The Committee has an open policy towards allowing public participation, based on the view that this approach most encourages confidence in the planning process. In general, members of the public will be entitled to speak for a total of three minutes for or against a proposal, although in exceptional cases the Chair may vary this period.

**Do** ensure that you comply with the Council's procedures in respect of public speaking.

**Do** advise speakers that their comments should be restricted to the planning merits of the application being considered. Officers will clarify when non-material considerations have been raised by public speakers or other parties. The Committee can only make its decision based on material planning considerations; to do otherwise would be unlawful.

## 10. Members' relationship with officers

**Don't** put pressure on officers to put forward a particular recommendation. This does not prevent you from asking questions or non-committee members from submitting views to the Head of Planning and Building Control, which may be incorporated into any committee report.

**Do** recognise that officers, whilst available to discuss proposals, may feel pressured if approached by members. Please ensure that the level of questioning or query is at the appropriate officer level.

**Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Officers' Code of Conduct and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. 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. Officers' relationship with members

**Do** recognise and respect that committee members are entitled to reach a different decision from that recommended by officers, provided they comply with their duties under planning and public law.

## 12. Decision-making

### *Planning committee members*

**Do** ensure that if, via the call-in procedure, you request a proposal to go before the Committee rather than be determined through officer delegation, your reasons are recorded and repeated in the report to the Committee. All call-ins must be based on clear and material planning reasons.

**Do** ensure that there are sound and sustainable planning reasons for all decisions and be prepared to explain your reasoning at Committee.

**Do** come to the meetings with an open mind and demonstrate that you are open-minded.

**Do** comply with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.

**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 be supplied. If necessary, defer the decision, but only if this is absolutely necessary as applicants are entitled to a decision.

If, prior to the Committee meeting, you have a predisposition that might lead you to vote against the officer recommendation, discuss potential reasons for refusal or putative planning conditions with officers, to allow them to be drafted prior to the meeting. You are entitled to have a predisposition in respect of any planning application and, as long as you have not fettered your discretion and consider the application with an open mind, this does not constitute predetermination.

**Do** disregard any benefit accruing to the Council when you are considering planning applications submitted by the Authority. Such applications must be determined in the same way as those submitted by any other developer.

**Do** record the reasons for the 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, 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 or others may have to justify the resulting decision.

In order to ensure that members are properly advised as to the planning basis of their decision, when Committee proposes to determine an application contrary to planning officers' recommendations, it is recommended that officers be given the opportunity to explain any potential consequences of such action, and also to advise on the reasons or conditions that the Committee may be seeking to attach.

To assist in the decision-making process, the Chair and Vice-Chair of the Planning Committee will attend a briefing prior to the Committee meeting. The meeting serves to inform those members as to the matters on the agenda and shall not be used to seek to persuade members to vote in any particular way other than to explain the basis of officers' recommendations. Other members of the Committee may attend the briefing with the permission of the Chair. Members attending the meeting should be aware of their duty not to fetter their discretion during any discussion therein.

**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 and any public speakers, including non-committee members.

## ***Member Briefings for Planning Committees***

Pre-Committee Briefings with officers provide for:

- A forewarning to officers that recommendations might not be acceptable to the Committee, giving the officers time to formulate appropriate advice in case it is needed; the alternatives (such as deferral, adjournment or spur of the moment responses) are obviously much less satisfactory.
- Informal advice as to possible unwelcome consequences if Councillors are minded to go against an officer recommendation. This advice will also be reiterated to the Committee before a decision is taken.
- Informal advice to Councillors who wish to go against or to modify a recommendation as to the appropriate wording to use, so that it is possible for the Committee to consider their views (this may also involve informal advice to individual Councillors, outside any pre-Committee meeting).
- An opportunity to discuss agenda management with the Committee chair.
- Such Briefings are not an opportunity for Members to seek to influence or change an officer recommendation.

Such Briefings are held at a time and date agreed with the Chair, usually in the week preceding the Committee meeting. The Chair and Vice-Chair, along with the planning spokesperson for each political group, are invited to attend.

Councillors who are not members of a Planning Committee, who have specific concerns in relation to a planning application that will be considered by that Committee, should inform their planning spokesperson of those concerns where possible, so that officers can be made aware of them prior to the Committee meeting itself. This is good practice and assists sound decision-making, based on consideration of all material planning considerations.

Councillors should not meet in party groups prior to any Planning Committee, to avoid any perception of a "group decision" on any planning application.

## ***Officers making recommendations or delegated decisions***

**Do** ensure that committee reports are accurate and cover all relevant issues including objections and consultees' views. The report should include the Development Plan position, site or related history and other material considerations. The report should contain a written recommendation justified by a technical appraisal, including a detailed description of material considerations that justify departure from the Development Plan where appropriate. Oral reporting (except to update a report) should be avoided and be carefully minuted when it does occur.

**Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision.

**Do** comply with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.

**Do** disregard any benefit accruing to the Council when you are considering planning applications submitted by the Authority. Such applications must be determined in the same way as those submitted by any other developer. Do ensure that the relevant additional statutory requirements in respect of such applications are complied with.

**Do** comply with the relevant sections of the Royal Town Planning Institute's Code of Professional Conduct. You should comply with the Institute's code regardless of whether or not you are a member of it.

## **13. Training for committee members**

**Do** attend the mandatory planning training provided by the Council. If you have not undertaken the training, you are not qualified to participate in decision-making at Planning Committee meetings.

**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 Plan 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 sample planning decisions (Members' Coach Tour) to ensure that members' judgements have been based on proper planning considerations.

## ***Further information***

This advisory leaflet is intended to be a helpful and useful source of information and not binding on any party. The Council offers no guarantee or warranties concerning the accuracy of the information supplied.

For more information about the contents of this document contact:

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Produced by St Albans City and District Council

Issued January 2015. PH27(a)