

E. PROTOCOL FOR MEMBERS AND RESERVE MEMBERS WHEN DEALING WITH PLANNING APPLICATIONS AND LOBBYING

1. Introduction

In making any determination under the Planning Acts, Members of the Council sitting on the Development Control Committee should have regard to the development plan (the Unitary Development Plan) and shall determine applications in accordance with the development plan unless material considerations indicate otherwise. Members must do this by balancing the needs and interests of the whole community and of individual constituents, alongside the need to maintain an ethic of impartial decision making on what may be highly controversial proposals.

The aim of this protocol is to ensure that in the planning process there are no grounds for suggesting that a decision is biased, is not impartial or not well founded in any way.

1.2 When does this Code apply?

This Code applies to members at all times when involving themselves in the planning process, including planning appeals and planning enforcement. While this will normally be relevant for members (and reserves) on the Development Control Committee, it will also apply to **all** Council members at Council meetings if they exercise any functions of the Development Control Committee in determining planning applications and other issues. It applies to planning enforcement matters as well as to planning applications

1.3 The requirement for Member training before serving on the Development Control Committee

Planning legislation and guidance can be complex. The Office of the Deputy Prime Minister (ODPM), the Local Government Association (LGA), the Nolan Committee and the Royal Town Planning Institute all recommend that Members who have to make planning decisions should be specifically trained. The ODPM published guidance on Member training in May 1998, and the LGA updated its general guidance for Probitry in Planning in 2002.

Members serving on the Development Control Committee must undergo training (which may be in a variety of alternative forms) validated and approved by the Planning Department before serving on the Committee, and must be updated regularly on changes to legislation or procedures. This training will be evidenced by records signed by the Member (e.g. attendance book)

2. Members' Interests and the Code of Conduct

2.1 Relationship of the Protocol to the Members' Code of Conduct

The Members' Code of Conduct applies to all their work as Councillors, so members must apply the rules in that Code to their activity as a member of the Development Control Committee. Breach of the Code of Conduct may result in a complaint to the Standards Board for England.

Members must also apply the rules in this Protocol to their activity as a member of the Development Control Committee. The Protocol is a locally agreed document, which means Harrow's Standards Committee will investigate any breach of the rules within it.

Failure to follow the recommendations within this Protocol may also lead to an investigation into possible maladministration by the authority.

2.2 The registration of interests

Members must complete a '*Register of financial and other interests*' form as set down in the Code of Conduct. Councillors must review their register entry regularly and notify the Monitoring Officer of any change within 28 days.

2.3 Hospitality

Councillors must be very cautious about accepting gifts and hospitality, especially in relation to planning applications. The Code of Conduct requires members receiving gifts or hospitality (in their capacity as members) over the value of £25, to provide details to the Monitoring Officer, for inclusion in the '*Register of gifts and hospitality*'. This notification must be made within 28 days of receiving the gift or hospitality.

2.4 Declaring an interest

Members must consider whether they have an interest in a matter under discussion, and if so, what type of interest it is.

A Member may have a **personal** interest in any matter under discussion:

*'If the matter relates to an interest in respect of which the member has given notice in the statutory register of members interests; or
if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, the well being or financial position of themselves, a relative or friend, or:*

- *Any employment or business carried on by such persons;*
- *Any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;*
- *Any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or*
- *Any body in which the member is required to register in the statutory register of interests, in which such persons hold a position of general control or management'.*

Where a member considers he or she has such an interest, he or she must declare it. The disclosure should state the existence and nature of the personal interest at any relevant meeting, including informal meetings with officers and other members. Declaring a personal interest does not debar the member from participating in the decision unless the personal interest is also prejudicial.

A member with a personal interest must consider whether that interest is also prejudicial.

The Code says that a personal interest becomes a **prejudicial** one:

'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 member's judgement of the public interest'.

If a member has such an interest, he or she should not participate in a discussion on the matter. The member must state that he or she has a prejudicial interest, state the nature of that interest and must then withdraw from the room and must not seek to improperly influence a decision on the matter.

There are some exemptions in paragraph 12.2 of the Code, which allow a member with a prejudicial interest to continue to participate in the decision. If this is the case the member must still declare the prejudicial interest, but state the exception which allows him or her to remain and discuss the matter in question.

However, in order to reduce any suggestion of bias, members should consider carefully whether or not it is sensible to continue to take part in a planning decision where their prejudicial interest is covered by an exemption.

2.5 Planning applications affecting Members of the Council

If a planning application affects a member, either because they or their family or friends own the land or part of the land affected, or the proposal will affect their land or that of their family or friends, or they wish to act as an agent for the person(s) making the proposal, that member must inform the Chief Planning Officer of the application immediately.

The notification must state the application which affects the member's land, and the nature of the interest. It must be in writing, by letter, fax or e-mail. The notification should be made not later than the submission of the application, or as soon as the Member becomes aware of it, if s/he acquires such knowledge after submission.

This will enable the Chief Planning Officer to ensure that the interest is included on the agenda sheet for the relevant meeting. The interest will be included under the 'Declaration of interests' heading. Members must also orally declare the interest at the meeting. This will help all members decide, early on, whether or not they can participate in a decision.

2.6 Members of the Council who are not members of Development Control Committee

Ward members wishing to speak in this capacity at Development Control meeting may do so provided they do not have a personal and prejudicial interest. They will also require the agreement of the Committee (Committee Procedure Rule 4.1 refers).

The member must tell the chair that they wish to speak in that capacity at the start of the meeting and must not sit in the member seating area during the meeting so that members of the public can clearly see which members are members of the Committee and which are not.

A space will be reserved for backbench members at the committee table, and when the relevant item is to be discussed, the backbench member will be called to sit at the table, will take part in the discussion of that item, and will then withdraw from the table before the decision is taken.

2.7 Interests of Cabinet and/or Executive Members

Where an application is made in which the Cabinet or Executive have an interest, any member of the Development Control Committee who is also an Executive Member must carefully consider whether they have a personal or prejudicial interest to declare.

3. The roles of members in planning decisions and the role of officers in supporting them

3.1 The role of elected Members

Elected members serving on the Development Control Committee determine planning applications and enforcement issues. When members are taking decisions relating to planning issues they will listen carefully to all the arguments in favour and against each proposal and will:

- Act fairly and openly;
- Approach each application with an open mind;
- Carefully weigh up all relevant issues;
- Consider the professional advice of officers;
- Determine each application on its own merits;
- Ensure that there are clear and substantial reasons for their decisions and that these are clearly stated;
- Ensure decisions are proportionate;
- Ensure respect for human rights.

The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views may be strongly held by those involved. Whilst councillors should take account of these views, they must not favour any person, company, group or locality, nor must they put themselves in a position where they appear to do so.

The setting of planning policy is the function of the Executive, and members of Cabinet must comply with the same criteria when taking planning policy decisions. Although this protocol is specifically intended for those members dealing with planning applications, it is generally as relevant to those sitting on the Executive, who should have training in planning matters before taking planning decisions.

3.2 The role of officers in relation to member decision making

Officers will advise and assist members in developing planning policy and in determining applications and enforcement issues by:

- Providing impartial and professional advice;
- Making sure all the information necessary for the decision to be made is given;
- Providing a clear and accurate analysis of the issues;
- Setting the applications and enforcement issues against the broader Unitary Development Plan policies and all other material considerations;
- Giving a clear recommendation;
- Carrying out the decisions of the Development Control Committee;
- Determining applications under powers delegated to them by the Council.

Where Members have factual questions about development proposals, it is very helpful for these to be put to officers, where possible, before the meeting. Not only can officers make sure all the information is obtained in response, but it also helps the effectiveness and efficiency of the committee meeting.

4. Lobbying (including representation and communication)

4.1 Lobbying of Councillors by applicants or objectors

It is quite common for applicants or other interested parties to wish to discuss a proposed development with elected members before the determination of a planning application. By the same token, those affected by a proposed decision may seek to influence it through an approach to their elected ward councillor or a member of the Development Control Committee.

Members who are likely to be directly involved in taking planning decisions must, therefore, explain to lobbyists that, whilst they may listen to what is said, it prejudices their impartiality to express a firm point of view or an intention to vote one way or the other when the application is considered by the Development Control Committee.

Lobbying can be perceived to affect the impartiality and integrity of a councillor. In order to avoid that perception, members are advised to:

- Avoid meeting an applicant, potential applicant, or objector alone;
- Listen to any representations made but not make it known in advance of the Development Control Committee meeting whether they support or oppose a proposal;
- Restrict any response they do give to procedural advice;
- Direct lobbyists or objectors, including written representations, to planning officers who can include reference to their opinions in the report;
- Not pressurise officers into making a particular recommendation in the report;
- Notify the Chief Planning Officer of the existence of any lobbying interests;
- Notify the Chief Planning Officer of any interest they have in the application.

Members of the Development Control Committee should not actively campaign either for or against planning applications.

Members should feel free to ask questions of officers in order to clarify their understanding of the proposals.

A member who feels they have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality) should tell the Monitoring Officer who can advise the relevant officer to take the matter up with the person concerned.

A Development Control Committee member who does not represent the ward affected will find it easier to take an impartial stance on an application. A member who represents the ward concerned, possibly one who has also been campaigning for or against the proposal will find it difficult to argue, when the decision is taken at the Committee, that they have weighed up the arguments for the first time at the meeting. They should therefore declare a prejudicial interest and not take part in the vote.

The responsibility for striking the right balance in this process lies with the individual member.

4.2 Discussions with potential applicants.

Potential applicants are encouraged to hold pre-application meetings with officers, but in order to avoid the perception that these are, or have become, a part of the lobbying process, these meetings:

- Should be at officer level;
- Will be at a forum prescribed for the purpose if they involve members;
- Where potentially contentious, will be attended by two officers including the Chief Planning Officer or his representative.

A note of the discussion will be taken and be kept on file and made available for inspection at the appropriate time

It will be made clear that the discussions will not bind the Council and that any views expressed are personal and provisional based on the Unitary Development Plan.

It will be made clear that at such meetings all the relevant information may not be at hand and formal consultations with interested parties will also be taking place.

It will be made clear whether or not members or officers will consider the application.

Members of the Development Control Committee should generally avoid meetings with applicants or potential applicants, and should seek officer advice before making any commitment to do so.

4.3 Member Site visits

Site visits can be useful to identify features of a proposal that may be difficult to identify from the plans and supporting material; where there are features of the proposal which are difficult to convey in a written report, or the proposal is particularly contentious. However, site visits may delay an application, and therefore will only be authorised where the expected benefit of so doing is substantial and/or where there are significant and complex policy implications.

The approach taken by Harrow Council is for site visits comprising an organised inspection by the committee members with officer assistance. Informal visits to view the site from the public domain can often be helpful to familiarise members with the issues to be considered, but members should avoid making contact with applicants, property owners or objectors in such circumstances.

Site visits by members alone at the request of applicants or objectors should not be undertaken and may lead to accusations of impartiality and maladministration.

A revised Procedure Note for Member Site Visits was agreed by Development Control Committee on 11 December 2002 and is attached as **Annex 1**.

5. Committee Meetings

5.1 Officer reports to Committee

To ensure that the Council is not accused of inadequate consideration of the issues, or inconsistent decision-making or non-existent reasoning behind a recommendation, the following rules will be followed in the preparation of reports for committee:

- Reports must be accurate and cover, amongst other things, the objections, the views of those consulted, and the officer response to consultations;
- Relevant information should include an outline of the relevant development plan policies; site description, proposal description, relevant planning history, applicant's statement (if any) and an appraisal of all relevant considerations;
- Reports must have a written recommendation;
- Information received after the report was finalised will be reported on the printed addendum circulated at the Committee meeting;
- Oral reporting (except where an update is required) should be avoided and carefully minuted where it is necessary;
- Reports must contain technical appraisals, including references to specific clauses of the UDP, which clearly justify a recommendation;
- If the report recommendation is contrary to the Development Plan, the material considerations that justify the departure must be clearly stated.

5.2 Public representations at Committee

Development Control Committee is held in public and the Council has a procedure for representations by applicants and objectors. The procedure applies only to applications for planning permission and consultations received from adjoining Councils that are to be determined by the Committee where the application is recommended for approval or 'grant'. It does not apply to applications which are recommended for refusal or those to be determined by the Chief Planning Officer under his delegated powers. The case officer dealing with the application will be able to say how the application is being determined and by whom, although in some instances this can change, where, for example, the nominated party member requests an application to be considered by the Committee.

The procedures to be applied are as follows:

- No later than 5.00pm on the day before the meeting, objectors should give the Committee Administrator (Tel: 020 8424 1269) notice of their wish to speak.

The following criteria will be applied:

- only one objector on each relevant planning application may normally address the Committee, but in exceptional circumstances two objectors may be allowed to speak;
- a group of objectors will be asked to nominate a spokesperson;
- the applicant or their agent may only make representations if an objector has addressed the committee (if there is none, the applicant or agent will not be permitted to speak);
- any person making representations may speak for a maximum of three minutes. On major or significant applications five minutes may be allowed, but this will be at the discretion of the committee;
- there will be no further verbal exchanges after the representation though members of the Committee may ask factual questions if clarification is needed.

Where the officer is recommending refusal of an application and the Committee is minded to disagree with that recommendation, the application will be deferred to the next meeting in order to allow renotification of consultees to advise them of the opportunity to make representations as outlined in this procedure.

The Committee Administrator will know whether objectors or applicants have asked to speak on an application, though the only sure way of knowing whether representations from objectors or applicants will be heard is to attend the meeting.

Copies of the agenda and reports for Development Control Committee meetings are available for inspection five clear working days before the meeting. These can be viewed in the Environmental Information Centre, the library next to the Civic Centre and on the Internet at www.harrow.gov.uk.

There is also a deputations procedure which applies to all other business discussed at Development Control Committee.

6. Making the decision

6.1 Making up your mind about planning applications

When members make their decisions at Development Control Committee they must be able to demonstrate that all the relevant facts and arguments have been taken into account. Members must not declare the way they intend to vote or express any opinion on the merits of the application before their attendance, and formal consideration, at the Development Control Committee.

Members should avoid giving a final view on an application before the Development Control meeting, as this may lead to the perception that the member has fettered their discretion. This places the Council at risk from a judicial review of the decision.

Even if a member has no personal or prejudicial interest in the matter, if they take a view on it prior to the Development Control Committee they should not attend the committee or participate in the decision.

A member with no personal or prejudicial interest may:

- Listen to and receive viewpoints from residents and other interested parties;
- Make comments to residents, interested parties, other members or appropriate officers provided they do not prejudice the issue and the member makes clear they are keeping an open mind;
- Seek information through the appropriate channels.

The overriding duty of members is to the whole community not just to the people in their ward, and, taking account of the need to make decisions impartially, members should not favour, or appear to favour, any person, company, group or locality.

6.2 Development proposals submitted by Councillors or Officers of the Council

Serving councillors who act as agents for members of the public or developers pursuing planning matters within the Council must play no part in the decision making process for those proposals.

Similarly, Councillors submitting their own proposals to the Council should play no part in its processing, though they may explain and justify their proposal to an officer in advance of the Development Control Committee meeting in the same way as any other applicant.

Such applications will be reported to Development Control Committee for decision, not determined by Officers.

Two particular sets of circumstances that have caused problems for members in the past are planning applications which involve the land of another member of that councillor's party. It is suggested that:

- i) where a planning application includes land owned by a member of the Council in a member's political party, they clearly have a personal interest in the matter. They should also consider themselves to have a prejudicial interest and not participate in the discussion of the application. This is clearly the safest option for members and ensures there can be no breach of the Code of Conduct;
- ii) If an application is made in respect of land adjacent to or nearby land owned by another councillor within a member's political party, they may be able to argue that they do not have either a personal or a prejudicial interest if they have no knowledge of the scheme, or the impact on the councillor other than that reported by officers, and they make no attempt to discuss the issue with anyone prior to the decision at Committee.

6.3 The party whip and discussions at group meetings

A decision on a Committee planning application will take place at the meeting of the Development Control Committee when all available information is to hand. This does not prevent members of the same party discussing proposed planning applications with each other, but a political group meeting prior to the Committee cannot be used to decide how representatives on the Development Control Committee should vote. The use of the party

whip to try to influence the outcome of a planning application may amount to maladministration.

6.4 Planning Applications by the Council in respect of Council land

The Council itself requires planning permission to carry out or authorise development on land it owns. These applications will be treated in the same way as those from private applicants.

On 15 January 2003 the Development Control Committee agreed that applications for minor development of up to 100m² of floorspace on land owned, or where the Council holds an interest, may be determined under the delegated powers of the Chief Planning Officer. This delegation is subject to the proviso that the proposals, in the opinion of the Chief Planning Officer, do not conflict with agreed policies, standards and guidance.

6.5 Reserve members

Where a reserve member attends a Development Control Meeting, that reserve must determine applications on their merits and cannot be mandated by the absent member.

6.6 Decisions contrary to Officer Recommendations

From time to time, Councillors may disagree with the advice of the Chief Planning Officer. In such cases it will be the Members' responsibility to clearly set out the reasons for refusal where the Officer recommendation is for grant. The planning reasons for rejecting the officer's advice will be clearly stated, whatever the recommendation, recorded in the minutes of the meeting and a copy placed on the application file.

The officer must be given the opportunity to explain any implications of the contrary decision.

Where an appeal arises against such a decision officers will support the Development Control Committee in preparing evidence for the appeal.

Where conditions included in an officer report are amended by the Committee, an officer should be asked to draft the new conditions and these will be approved by the Chair and nominated members via the non-Executive Action procedure. The date of the decision in these circumstances will be the date the non-Executive Action is signed by the last signatory.

7. Complaints

Any issues or concerns arising from this Protocol can be raised with the Monitoring Officer, the Chair of Development Control Committee or the Chair of the Council's Standards Committee.

The Urban Living Directorate also has a formal complaints system in operation which can be used if necessary.