

**Central Bedfordshire Council
Ethical Handbook**

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Part 2: Members' Planning Code of Good Practice

1. Background

- 1.1 This Code of Good Practice has been prepared in *the context of* the introduction of the new ethical framework and the Local Government Association's Guidance Note "*Probity in Planning*". It is based on the Model Code produced by the Association of Council Secretaries and Solicitors *and the codes operated by the Legacy Authorities which were drafted* in consultation with the District Audit Service, the Local Government Ombudsman and Standards for England.
- 1.2 *Planning has a positive and proactive role to play at the heart of local government. It helps the Council achieve the ambitions of our communities. Good planning stimulates growth and promotes innovation. The planning system works best when the roles and responsibilities of all those involved in the process are clearly understood. It is vital that members and officers understand their roles and the context and constraints in which they operate.*
- 1.3 *Planning decisions involve balancing the needs and interests of individual constituents and the community with the need to maintain an ethic of impartiality in decision making on what can be highly controversial proposals.*
- 1.4 *The LGA Guidelines provides refreshed advice on achieving this balance. It also better reflects the local authority role as a place shaper and the enhanced role of members as champions of their local communities. It recognises members ability to participate in discussions prior to the receipt of a planning application on behalf of their communities and engage in spatial planning*

2. Introduction

- 2.1 **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.
- 2.2 **The key purpose of Planning:** To control development in the public interest.
- 2.3 **Your role as a Member of the Planning Authority:** To make planning decisions openly, impartially, with sound judgement and for justifiable reason.

- 2.4 **When the Code of Good Practice applies:** This Code applies to members at all times when they are involved in the planning process. (This includes, where applicable, when part of decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to Planning Enforcement matters or site specific policy issues as it does to planning applications.
- 2.5 The Code does not only apply to members of the Council's Development Management Committee. Some aspects of the Code apply generally to members in whatever capacity they may be acting. Other aspects may apply to members acting as Ward/Local Members. Some provisions apply specifically to members when they are involved in the planning process in a personal capacity, for instance when they or organisations to which they belong submit planning applications to the Council.
- 2.6 **If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or one of his/her staff, and preferably well before any meeting takes place.**
- 2.7 **At certain points the Code refers to "the Planning Authority", to "the Development Management Committee" and to "the Committee". In each case, these references are to the Council or a committee of the Council exercising the Council's functions as local planning authority.**

3. Relationship to the Code of Conduct for Councillors

- 3.1 **Do** apply the rules in the Members' Code of Conduct first which must always be complied with.
- 3.2 **Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct.

If you do not abide by this Code of Good Practice, you may put:-

- 3.2.1 The Council at risk of proceedings on the legality or maladministration of the related decision; and
- 3.2.2 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 *against you*.

4. Development Proposals and Interests under the Code of Conduct for Councillors

4.1 *The Local Government Act 2000 and the Members Code of Conduct place requirements on Members to register and declare interests. The requirements must be followed scrupulously and Members should review their position regularly. Planning proposals (be they planning applications or development plan proposals) submitted by Members to the Council can easily give rise to suspicions of impropriety. It is perfectly legitimate for such proposals to be submitted. However it is vital to ensure that they are handled in such a way that gives no grounds for accusations of favouritism.*

4.2 **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. If possible disclose your interest at the beginning of the meeting at the relevant time when the Agenda deals with interests and not just at the commencement of discussion on that particular matter.

4.3 **Where your interest is personal and prejudicial:-**

4.3.1 **Do not** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.

4.3.2 **Do not** try to represent ward/local views, get another ward/local member to do so instead.

4.3.3 **Do not** get involved in the processing of the application.

4.3.4 **Do not** 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.

- 4.3.5 **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. You may make use of the Public Participation Scheme to address the meeting on a proposal in the same manner that would apply to a member of the public, after which you must leave the room whilst the meeting considers the matter. You may not remain to observe the meeting's considerations on the matter from the public gallery.
- 4.3.6 **Do** notify the Monitoring Officer in writing of your own applications and note that:-
- 4.3.6.1 Notification to the Monitoring Officer should be made no later than submission of the application;
 - 4.3.6.2 The application will always be reported to the committee as a main item and not dealt with by officers under Delegated Powers; and
 - 4.3.6.3 It is advisable that you employ an Agent to act on your behalf on the application in dealing with officers and any public speaking at committee.

5. Fettering Discretion in the Planning Process

5.1 When you are involved in determining a planning application:

- 5.1.1 **Do not** fetter your discretion and therefore your ability to participate in planning decision making **processes** 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.

5.1.2 **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.

5.1.3 **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. Through your 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.

5.1.4 **Do** also be aware that, whilst the Code of Conduct for Councillors provides generally 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 much greater caution when you are taking part in a meeting of the planning authority that is determining any approval or consent. In such cases, where:-

5.1.4.1 You have been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of:-

5.1.4.1.1 Another local or public authority (including a town or parish council) of which you are a Member; or

5.1.4.1.2 A body to which you have been appointed or nominated by the Council as its representative; or

5.1.4.2 You are a Trustee or Company Director of the body submitting the proposal and were appointed by the Council;

You should always disclose a personal and prejudicial interest and withdraw from the meeting.

5.1.5 **Do** consider yourself able to take part in the debate on a proposal when acting as a member of a consultee body (for example, where you are also a member of a parish council,), provided:-

- 5.1.5.1 That the proposal does not substantially affect the well being or financial standing of the consultee body; and
- 5.1.5.2 You make it clear to the consultee body that:-
 - 5.1.5.2.1 Your views are expressed on the limited information before you only;
 - 5.1.5.2.2 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 planning authority and you have considered all of the relevant information; and
 - 5.1.5.2.3 You will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee.
- 5.1.5.3 You disclose a personal interest regarding your membership of the consultee body or role when the planning authority comes to consider the proposal.
- 5.1.6 **Do not** speak and vote on a proposal where you have fettered your discretion. You are recommended to withdraw from the meeting.
- 5.1.7 **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.
- 5.1.8 **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:-

- 5.1.8.1 Advise the Proper Officer or chairman that you wish to speak in this capacity before commencement of the item;
- 5.1.8.2 Remove yourself from the Member seating area for the duration of that item ; and
- 5.1.8.3 Ensure that your actions are recorded in the minutes of the meeting.

6. Contact with Applicants, Developers and Objectors

- 6.1 *Discussions between potential applicants and the Council prior to submission of an application can be of considerable benefit to both parties and are encouraged. However it would be easy for such discussions to become or to be seen by objectors to become part of a lobbying process on the part of the applicant. With the recognition of the need to allow and encourage members to be champions of their local communities' there is a realisation that member engagement in pre-application discussions on major developments may be necessary to allow members to fulfill this role. In this context member involvement in pre-application discussions can be beneficial provided it is done within carefully established limits to protect the Council and its members.*
- 6.2 **Do** refer those who approach you for planning, procedural or technical advice to officers
- 6.3 **Do not** agree to any formal meeting with applicants, developers or groups of objectors where you *consider it inappropriate to meet.* . Where you feel that a formal meeting would be useful in clarifying the issues, you should *not* seek to arrange that meeting yourself but should request the Assistant Director of Development Management to organise it. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the planning 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.
- 6.4 ***Do not** give separate advice on the development plan or material considerations unless you are aware of all the issues at an early stage. Do not become drawn into any negotiations. These should be dealt with by officers to ensure the Council's position is coordinated.*
- 6.5 **Do** otherwise:-
 - 6.5.1 Follow the rules on lobbying (see paragraph 8 below);

- 6.5.2 Consider whether or not it would be prudent in the circumstances to make notes when contacted; and
- 6.5.3 Report to the Assistant Director of Development Management 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.

7. Presentations by Applicants/Developers

- 7.1 **Do not** attend a planning presentation unless an officer is present and/or it has been organised by officers.
- 7.2 **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- 7.3 **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.
- 7.4 **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.

8. Lobbying of Councillors

- 8.1 *Lobbying is a normal and perfectly proper part of the political process. Those who may be affected by a planning decision will often seek to influence it through an approach to their elected member or to a member of the Development Management Committee. However lobbying can lead to the impartiality and integrity of a member being called into question unless care and common sense is exercised by all the parties involved. When being lobbied members should take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before being exposed to all the evidence and arguments.*
- 8.2 *Members of the Development Management Committee in particular need to avoid bias and predetermination and take account of the public's (and the Ombudsman's) expectation that a planning application will be processed and determined in an open and fair manner. To do this members taking the decision will take account of all the evidence presented to it before arriving at a decision and will avoid committing themselves one way or another before hearing all the arguments. To do otherwise makes them vulnerable to an accusation of partiality bias or the appearance of bias.*

8.3 When **you are or may be involved in determining a planning application:-**

8.3.1 **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 planning authority's determination of the matter for you to express an intention to vote one way or another or such a firm point of view that it amounts to the same thing.

8.3.2 **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.

8.3.3 **Do not** 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 where its value is £25 or more in accordance with the authority's rules on gifts and hospitality.

8.3.4 **Do** copy or pass on any lobbying correspondence you receive to the Assistant Director of Development Management at the earliest opportunity.

8.3.5 **Do** promptly refer to the Assistant Director of Development Management any offers made to you of planning gain or constraint of development, through a proposed Section 106 Planning Obligation or otherwise.

8.3.6 **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.

8.3.7 **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:-

8.3.7.1 Listening or receiving viewpoints from residents or other interested parties;

- 8.3.7.2 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;
 - 8.3.7.3 Seeking information through appropriate channels; or
 - 8.3.7.4 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.
- 8.4 *Do not vote on a matter where there is a real risk of perceived bias such as where you have decided to “go public” in support of a particular outcome.*

9. Lobbying by Councillors

- 9.1 **Do not** 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. You will only be entitled to make use of the Public Participation Scheme to address the meeting on a proposal in the same manner that would apply to a member of the public, after which you must leave the room whilst the meeting considers the proposal.
- 9.2 **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.
- 9.3 **Do not** 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.

- 9.4 **Do not** decide or discuss how to vote on any application at any sort of political group meeting, or approach any other member to do so. Political Group meetings should never dictate how members should vote on a planning issue.

10. Site Visits

The advice contained in this section has particular relevance to members of the planning authority who are or may be involved in determining an application for planning permission.

- 10.1 It is often desirable before determining a planning application that members of the planning authority visit an application site to view it in its surroundings and have relevant features drawn to their attention. The Council has adopted a Code of Practice for such inspections with which it will comply. This is attached at Appendix "A" to this Code. Debate and decisions on applications must take place in a committee meeting, therefore any discussion that does take place during these site visits should not lead into a debate on the merits of the application.

10.2 Remember

- 10.2.1 **Do not** request a site visit if you have a personal and prejudicial interest in the matter. For the avoidance of doubt the principles in paragraph 4 of this Planning Code of Good Practice shall apply.
- 10.2.2 **Do not** attend a site visit where you have a personal and prejudicial interest in the site **or the matter in hand**.
- 10.2.3 **Do not** request a site visit unless you feel it is strictly necessary because:-
- 10.2.3.1 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
 - 10.2.3.2 There are significant policy or precedent implications and specific site factors need to be carefully addressed.

- 10.2.4 **Do** attend site visits organised by the Council, where possible, where you are an appointed member of the site visit team, or the ward/local member for the area where the site is.
- 10.2.5 **Do** ensure that any information which you gained from the site visit is reported back to the planning authority, so that all members have the same information.
- 10.2.6 **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- 10.2.7 **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- 10.2.8 **Do not** hear representations from any other party with the exception of the ward/local member(s) whose comments 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.
- 10.2.9 **Do not** express opinions or views to anyone.
- 10.2.10 **Do not** 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:-
 - 10.2.10.1 You feel it is essential for you to visit the site other than through attending the official site visit;
 - 10.2.10.2 You have first spoken to the Assistant Director of Development Management about your intention to do so and why (which will be recorded on the file); and
 - 10.2.10.3 You can ensure you will comply with these good practice rules on site visits.

11. Public Participation at Meetings

11.1 The Council recognises that it can make better decisions and respond to people's aspirations if it involves others in its decision making process. It has therefore developed a scheme which provides the opportunity for those involved in any particular planning application to address the meeting(s) at which the proposal is being considered. This scheme seeks to balance the needs of expedition in the administration of the system with the aspirations of objectors, applicants/supporters, local councils and the Council. The scheme is attached at Annex 4 to Appendix A of Part A4 of the Council's constitution. A leaflet explaining the scheme is supplied to all applicants and is also available on request.

11.2 Remember

Where you are involved in determining a planning application:-

11.2.1 **Do not** 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.

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

12. Officers

12.1 **Do not** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Assistant Director of Development Management, which may be incorporated into any committee report).

12.2 **Do** recognise that officers are part of a management structure and you should only discuss a proposal, outside of any arranged meeting, with a Director or an officer who is authorised by his/her Director to deal with the proposal at a member level.

- 12.3 **Do** recognise and respect the fact that officers involved in the processing and determination of planning applications 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.

13. Decision Making Process and Decisions Contrary to Officer Recommendation

- 13.1 Prior to the consideration of any planning application the Assistant Director of Development Management will tell the committee of any relevant information received since his/her report was prepared. If the Council has circulated letters or other information at or shortly before the meeting to councillors those will be referred to by the Assistant Director of Development Management or by the chairman. If members are aware of any other letters or information which they believe have been circulated to all councillors and which have not been referred to, they should disclose that fact to the meeting in order that all are aware of relevant information and on which information any decision may be made. Any information to be considered by the committee should be presented to officers by midday 3 working days prior to the meeting, to allow for the information to be considered. No new information will be allowed to be presented later than this or during the meeting.
- 13.2 The Development Management Committee has full delegated powers to approve applications.
- 13.3 The Council is required by law to state clearly and precisely its full reasons for refusing any application or imposing conditions to which a planning permission is subject thus allowing all interested persons to understand the reasons for the decision. A disappointed applicant will therefore know why his/her application was refused.
- 13.4 In order to explain the Council's decision when approving an application contrary to advice, the reasons for that decision should be clear and carefully recorded.
- 13.5 **Remember when acting as a member of the Planning Authority:-**

- 13.5.1 **Do** ensure that, if you request a proposal to go before the committee rather than be determined through officer delegation, that your reasons are recorded and repeated in the report to the committee.
- 13.5.2 **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- 13.5.3 **Do** make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- 13.5.4 **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.
- 13.5.5 **Do not** 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.
- 13.5.6 **Do** have recorded the reasons for committee's decision to defer any proposal.
- 13.5.7 **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.
- 13.5.8 **Do** give *the officer an opportunity to explain the implications of a decision and* be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

14. Training

- 14.1 **Do not** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.

- 14.2 **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.
- 14.3 **Do** participate in the annual review of a sample of planning decisions to ensure that members' judgements have been based on proper planning considerations.

Code of Practice for Conduct of Site Inspections

1. A site inspection will only be carried out in the circumstances set out below:-

(a) Prior to Consideration by Committee

Any member of the Council may request that an item contained in the draft index of applications to be considered at the next meeting of the committee, should be the subject of a site inspection prior to that meeting.

Such requests must be submitted to the Assistant Director of Legal and Democratic Services by the date and time specified in the draft index.

The Assistant Director of Legal and Democratic Services will notify the Assistant Director of Development Management and the chairman of the committee of the request. The request may be refused if the Assistant Director of Development Management, following consultation with the chairman, does not consider that a site inspection is justified in respect of the application.

A member with a Personal and Prejudicial Interest in the site **or the matter in hand** should not request a site visit. Do not try to represent ward/local views, but ask another ward/local member to do so instead. Always act in accordance with paragraph 10 of the Planning Code of Good Practice.

(b) Following Consideration at Committee

Where the Development Management Committee wishes to address site specific issues, it may determine to hold a site inspection, the purpose of which will be to familiarise members with the site.

2. A member with a Personal and Prejudicial Interest in the site **or the matter in hand** must not attend the site visit.
3. No lobbying or debate on issues relating to determination of the application shall take place during the site visit (any such discussion could be regarded as prejudicial to the committee's decision on the matter).

4. The timing and arrangements for the conduct of site inspections shall be agreed by the Assistant Director of Legal and Democratic Services and the Assistant Director of Development Management, in consultation with the chairman of the committee. *Site visits will normally be undertaken from public vantage points and the land and premises the subject of the application. Only in exceptional circumstances will the visit take place on private third party land. If it is considered exceptional circumstances exist the site visit request must include a specific reference to the third party land and the reasons why it is necessary to visit that land.*
5. The number of members to conduct site inspections will normally be limited to:-
 - 5.1 The chairman and vice-chairman of the committee or their nominees; plus
 - 5.2 No more than three other members of the committee; plus
 - 5.3 The representative(s) of the ward in which the site is located.
6. Where necessary and, after consultation with the Chairman or Vice-Chairman, the Assistant Director of Legal and Democratic Services shall be authorised to appoint substitute members to conduct the site inspections.
7. Members of the Development Management Committee conducting the site inspection are encouraged to share transport wherever possible, as long as drivers who provide shared transport hold adequate insurance cover.
8. (a) No person other than officers of the Council, ~~representatives of the Highway Authority~~ or invited representatives of consultee bodies, shall accompany members during an inspection;

(b) If a person with an interest in land to be inspected or his/her representative accompanies members to enable access or ensure safety, no lobbying or discussion with that person will be permitted.
9. Provision will be made in the committee agenda to enable the separate consideration of any matter which has been the subject of a site inspection.

