

## Appendix 1

### LEICESTER CITY COUNCIL

#### CODE OF PRACTICE FOR MEMBER INVOLVEMENT IN DEVELOPMENT CONTROL DECISIONS

This Code applies to Members appointed to serve on the City Council's Planning and Development Control Committee or Ward Members who attend at committee to make representations in relation to any planning application / planning contravention considered by the committee. ~~It should be read in conjunction with the Council's Political Conventions.~~

#### 1 General

- 1.1 At the start of each four-year local election cycle Members who wish to serve on the Planning and Development Control Committee must undertake initial training in planning and their decision-making role. This training is also recommended for all Members.
- 1.2 Committee Members (and any substitute Members) must participate in annual refresher training. Training will be provided either by officers or via external training agencies.
- 1.3 Members will respect the role of officers to make professional recommendations to the Council and will not put pressure on individual officers to secure a specific recommendation on a particular application or report.
- 1.4 If Members wish their views to be considered and reported as part of the recommendation and decision-making process, representations must be made in writing to the Head of Planning Management and Delivery.
- 1.5 ~~**[NEW]** Compliance with Government targets means that most planning applications are considered by officers under delegated powers in accordance with the Council's Constitution. The focus role of the Planning and Development Control Committee is now has changed in recent years with the focus being more on consideration of the more significant/strategic planning applications.~~
- 1.6 ~~**[EXPANSION OF THE EXISTING PROVISION CURRENTLY CONTAINED IN THE INTRODUCTION]** This Code should be read in conjunction with the Council's Political Conventions and the statutory Model Code of Conduct applicable to Members. Members are reminded that under the statutory Code a Member (whether or not s/he serves on the Committee) cannot participate at all in any aspect of decision-making where s/he has a personal and prejudicial interest.~~
- 1.7 ~~**[NEW]** As a reminder, the basis of the planning decision-making is the consideration of private proposals against the wider public interest. Often much is at stake and conflicting views may be held by relevant parties. While Ward Members may take account of such views, Committee Members should not favour one person, company, group or locality or put themselves in a position where this may arise so they can freely consider the wider public interest.~~

- 2 Pre-application Presentations by Applicants/Developers
- 2.1 The Head of Planning Management and Delivery will arrange for appropriate presentations to be made in respect of significant planning applications, which will be open to all Members. Such presentations will be of a fact-finding nature to enable Committee and Ward Members to become familiar with development proposals and to ask questions. Provided Committee Members do not at such presentations express a view about the proposals, they will be able to participate in any subsequent committee meeting when the planning application is discussed. Committee Members, however, will be required to declare, in accordance with paragraph 6.1, that they have attended a presentation.
- 3 **[NEW HEADING]** Referral of Applications for Decision to the Planning and Development Control Committee Decisions Taken by Officers Under the Scheme of Delegation
- 3.1 **[AMENDMENT]** Members should contact the Head of Planning Management and Delivery as soon as possible of any applications in their ward being considered by Planning Management and Delivery on the weekly list of planning applications circulated to them that they consider should be the subject of a committee decision.
- 3.2 The contact will need to be in writing, to include e-mail, and specify the planning reason(s) for the request.
- 3.3 Planning ~~Management and Delivery and Development Control~~ case officers are able to assist Members with the formulation of reasons which might include such things as design considerations, highway implications and implications for local residents (amenity), etc.
- 3.4 **[AMENDMENT]** Members are asked to note that decisions may need to be taken soon after the circulation of the weekly list and they are advised to check with the specific case officer the earliest date when a decision may be made.
- 4 **[NEW HEADING]** Prohibition of Committee Member Contact with Applicants, Agents and Third Parties
- 4.1 **[AMENDMENT]** Where Committee Members are ~~contacted~~~~lobbied~~ to support or oppose any planning application or a particular recommendation, they should explain ~~to the lobbyist~~ that they cannot get involved or indicate ~~a personal view on the application or recommendation or~~ the likely decision the Council (at either committee or officer level) will take because they ~~might~~~~will be~~ takeing part in ~~any subsequent committee deliberations and~~ the decision-making process.
- 4.2 ~~The courts have decided that indicating a view on an application or particular recommendation can constitute a predetermined position, ie, meaning that the Member does not have an open mind. A predetermined position requires a declaration of interest under paragraph 12(b).~~
- 4.2 **[AMENDMENT]** Where, for whatever reason, a Committee Member wishes to make representations in respect of an application or report to be considered by the Committee, s/he will not be able to participate as a Committee Member at a Committee meeting when the report on the application, etc, is to be considered. Such a Member would be expected to arrange for a substitute trained Member to attend the Committee meeting. In such circumstances the Committee Member may

attend the Committee meeting as a Ward Member to make representations on the application subject to making an appropriate declaration with regard to their involvement in accordance with paragraphs 7.1 – 7.3.

~~4.3 There is no restriction in relation to Members not appointed to serve on the Planning and Development Control Committee (Ward Members) from expressing their views on an application or recommendation or to assist constituents seeking assistance in relation to any application or recommendation they will be affected by. If the Ward Member subsequently makes representations either before or at committee, s/he will be required to make a declaration with regard to their involvement in accordance with paragraph 7.5.~~

4.3 **[AMENDMENT]** Committee Members should not advise applicants, prospective or otherwise, agents or third parties about the likely acceptability of planning proposals. They should advise them to contact a fellow Ward or other Member and the appropriate officer for advice. ~~Any response must take account of paragraphs 4.1–4.3 of this Code.~~

4.4 Committee Members should not arrange to meet applicants or agents prior to or during the processing of an application unless an officer is present. Where any meeting has taken place with a Committee Member, s/he should refer to any such meeting if they speak about the matter. In accordance with paragraph 6.3, any such meeting would need to be declared at the start of the committee meeting. The position with regard to Ward Members meeting with applicants or agents is covered in paragraph 7.8.

4.5 Where the Chair or Vice-chair have been contacted about a matter being considered by committee, s/he will tell the committee of the contact and explain to committee the issues which were discussed.

4.6 Committee Members should not act as agents or submit planning applications for other parties or voluntary bodies. Members (including Members not on the committee) will not address committee as the applicant's agent.

## 5 Committee

5.1 Political group meetings held prior to a committee meeting should not be used to decide how Members should vote on a particular planning application. The Local Government Ombudsman has previously expressed the view that the use of political whips to seek to influence the outcome of a planning application could amount to maladministration.

5.2 All matters on the agenda for discussion will be the subject of an officer report containing all relevant information and an officer recommendation to enable a decision to be taken.

5.3 Committee Members are required to read the report in advance of the meeting so as to be able to understand the issues.

5.4 **[AMENDMENT]** To enable any last-minute issues to be considered, the Head of Planning Management and Delivery prepares an Addendum Report. Committee Members will be provided with the report which will be available in the group rooms from 4.00 pm on the date of the committee meeting. Where the last-minute issues would lead to a change of recommendation, ~~for approval of an application~~

~~recommended for refusal in the agenda~~ the Addendum Report will recommend deferral of that application unless the possibility is clearly identified in the recommendation to the original report. As necessary, the presenting officer will refer to the Addendum Report during consideration of any specific report in the committee meeting.

- 5.5 Representations received after the Addendum Report has been finalised will be summarised orally.
- 5.6 Where requested, written representations from applicants, objectors and third parties will be circulated to Committee Members by the Director (Legal Services) only if the necessary copies are provided or paid for and adequate notice is given to Committee Services Section. Written representations will not be accepted at the meeting.
- 5.7 If Committee Members receive letters or any other written information about a matter due to be reported to committee, they will ensure that a copy is made available to the Head of Planning Management and Delivery for inclusion in the Addendum Report and make the appropriate declaration under paragraph 6.3.

## 6 Declarations of Interest and Representations

- 6.1 **[AMENDMENT]** At the start of each committee meeting Committee Members are required to make any formal declaration of interest in relation to the matters specified on the agenda. Such a declaration will be in accordance with the provisions of the Local Government Act 2000, as amended, the requirements of the Statutory Model Member Code of Conduct and also under the terms of this Code.
- 6.2 When a Committee Member's interest is personal and prejudicial, the Member concerned will leave the room when the matter comes to be considered by the committee and not take part in the decision-making process.
- 6.3 **[AMENDMENT]** Where Committee Members declare they have received representations, they need to identify what those representations were, eg, letter, e-mail, ~~following~~ attendance at a ~~public~~ meeting, presentation, meeting with applicant, etc.
- 6.4 **[AMENDMENT]** Where Committee Members have previously expressed ~~a general or specific~~ any view about any application or report so as not to have an "open mind"; eg, as part of any lobbying process (to include presentations by developers), they will be considered to have a predetermined view and therefore will be required to declare the interest, and when the matter comes to be considered by committee they will leave the room and not take part in the decision-making process.

~~In such circumstances a Committee Member may, with the Chair's permission, make representations to the committee as if s/he were a Ward Member by complying with paragraph 15, subject to the Committee Member then leaving the room and not taking part in the decision-making process.~~

- 6.5 Committee Members who have been appointed by the City Council to serve on any body that has an advisory role in relation to planning applications (eg, CAP) are required to declare whether or not they have previously been involved in any discussion of an application/report before the committee, and where the Member concerned has previously expressed a view or opinion supporting or opposing any

application/report, they will be considered to have a predetermined view and therefore will declare the interest, leave the room and not take part in the decision-making process.

~~6.5 — Declarations of interest are also required to be made by any Member not appointed to the committee who attends to make representations in accordance with paragraph 14.~~

6.6 **[AMENDMENT]** Members are reminded that failure to make appropriate declarations could constitute a breach of the statutory Model Code of Conduct.

6.7 **[AMENDMENT]** Declarations of interest are for Members to make and at times will very much depend on particular factual circumstances. The Director (Legal Services) Town Clerk or his representative (eg, the committee solicitor) will be able to provide advice, but Members are encouraged to seek advice at an early stage and wherever possible not in the immediate run up to the start of a committee meeting.

## 7 Attendance of Members Not on the Committee (Ward Members)

7.1 **[AMENDMENT]** ~~Unlike Committee Members~~~~For the avoidance of doubt,~~ Ward Members may meet with constituents who are applicants, ~~or~~ agents or objectors prior to or during the processing of any application and such a meeting does not require an officer to be present. ~~—, but~~Where a Ward Member subsequently attends committee to make representations, a declaration of interest will be required in accordance with paragraphs 6.3 and/or 6.4 where the Ward Member wishes to make any representations at the committee meeting.

7.2 Ward Members who do not serve on the committee and who wish to make representations at committee in respect of any report shall notify the Committee Chair and/or Democratic Services~~Committee Services~~ no later than 12.00 noon on the day of any committee meeting.

7.3 At the discretion of the Committee Chair, the report(s) the Ward Member's representation refers to will be considered by the committee at the beginning of the meeting and so may be taken "out of order".

7.4 Ward Members will sit in the public gallery, and the Chair will call them to the committee table to sit in the designated place.

7.5 The Chair will use his/her discretion taking into account the particular circumstances if more than one Ward Member wishes to make representations on the same report.

7.6 **[AMENDMENT]** Before making any representations the Ward Member will be required to make a declaration of interest in accordance with paragraphs 6.1 – 6.3 and also indicate whether or not the Member concerned has had any meetings with any applicant and/or agent or local residents as the case may be. ~~When a~~ Ward Member with declares a personal and prejudicial interest is not able to attend the meeting to make any representations, s/he will leave the room.

7.7 **[AMENDMENT]** A Ward Member making representations~~addressing the committee~~ is expected to keep his/her presentation to within five minutes. The Chair will exercise discretion to allow such additional time as may be required for all valid points to be given an airing. Where a Ward Member wishes to provide written information to the committee, s/he will comply with paragraph 5.6. The Chair will

invite officers to respond to any information or views expressed by Ward Members and give the Ward Members an opportunity to reply. After that reply and before the committee considers the report, the Member will return to the public gallery.

- 7.8 As a matter of courtesy, where a Ward Member is approached to make representations / attend at the committee meeting on behalf of an applicant who does not reside in their ward but in a ward represented by a Committee Member, the Ward Member concerned will notify the Committee Member to make them aware of the other Member's involvement.

## 8 Section 106 Agreements

- 8.1 An agreement under section 106 of the Town and Country Planning Act can only be required to meet an identified planning need arising from the development envisaged by the application.

- 8.2 **[AMENDMENT]** Where the committee resolve that a section 106 agreement is required, but this has not been recommended by the Director, Planning and Economic Development, Policy Head of Planning Management and Delivery, the application will be deferred for an officer report on the appropriateness and content of the agreement. The report will be brought back to committee as soon as possible in order to comply with statutory or other demonstrably material consequential Government targets.

## 9 Deferrals and Site Visits

- 9.1 **[AMENDMENT]** The Committee will decide on planning grounds, which will need to be moved, seconded and agreed by the Committee and which will be included in the minutes of the meeting, whether to defer a decision for a site visit taking into account the reasons given by the Committee or Ward Members as well as statutory or other demonstrably material consequential Government targets and the use of IT that enables Committee Members to see photographs of sites covered by committee reports, together with site plans and drawings.

- 9.2 Site visits following a deferral do not have any decision-making status and will be solely an opportunity for Committee Members to visit the site with an officer.

- 9.3 **[AMENDMENT]** Third parties including objectors are not entitled will not be invited to attend site visits, ~~either by officers or Members~~. They will be advised to make any representations in writing to the Head of Planning Management and Delivery or through Ward Members.

- 9.4 Applicants and agents cannot use a site visit as an opportunity to state their case to Committee Members. They will be advised to make written representations to the Head of Planning Management and Delivery or to Committee Members before the site visit or before the committee meeting at which the matter will be reconsidered.

## 10 Departures from Officer Recommendations

- 10.1 Committee Members wishing the committee to consider a different recommendation from that made by the Corporate Director must move an amendment, giving planning reasons, and have it seconded. The Chair will then clarify the planning reasons~~invite an officer response~~ and, as necessary, the amended recommendation will then be voted on. Should it be accepted by the committee, the planning reasons will be included in the minutes of the meeting.

## 11 Decision-making **[AMENDMENTS]**

Committee Members ~~undertaking this~~ should approach this ~~do so~~ in accordance with the following:

- 11.1 By considering the material (written or oral) provided by the presenting officer(s).
- 11.2 On the basis of material planning considerations relevant to each report with particular emphasis on identified Development Plan policies.
- 11.3 Approach decision-making with an open mind.~~—Committee Members who have a predetermined view could cause any decision to be struck down by the courts and/or, depending on the nature of the predetermined view and how it has arisen, be in breach of the Member Code of Conduct.~~

## 12 Delegation of Decisions to Officers

- 12.1 **[AMENDMENT]** Provided consideration of the application in question will meet statutory or other demonstrably material consequential Government targets in relation to decision-making, the committee may agree to delegate any further decision-making (eg, finalisation of the conditions to be attached to the grant of planning permission) to the Head of Planning Management and Delivery~~relevant Corporate Director~~ in accordance with the departmental scheme of delegation~~consultation, as necessary, with the Chair and Vice-chair.~~

## 13 Briefing Meeting

- 13.1 The Head of Planning Management and Delivery, or his representative, will brief the Chair, Vice-chair and party spokespersons in advance of every committee meeting to explain the basis of the officer recommendations and to go through the Addendum Report.

## 14 City Council Applications

- 14.1 The City Council's own planning applications must be dealt with on the same basis as all other applications. Recommendations and decisions must be based only on material planning considerations and must not have regard to any other benefit which may accrue to the Council as a result of a particular decision on such an application.

## 15 Member Applications

- 15.1 Where a Member has a personal interest in a Planning Application (eg, it relates to land owned by them or is made as part of an appointed role of the City Council), they must take no part in the processing of the application, not attend at the committee or participate in the decision-making process. If a Committee Member's application has to be considered by the committee, the Committee Member(s) will declare a personal and prejudicial interest in accordance with paragraph 6.2 by reference to the Member Code of Conduct and when the report on the application is considered the Committee Member will leave the room and not take part in the decision-making process.

## 16 Appeals

- 16.1 Officers will prepare, and where necessary present, the City Council's case in an appeal based on the terms of the decision and the material considerations on which that decision was made. They will present the best possible arguments and available evidence in support of the decision, whether or not that decision was in accordance with the Corporate Director's recommendation.
- 16.2 In cases where the decision was not in accordance with the recommendation and where the appeal is to be determined at a hearing or inquiry, the Corporate Director will invite the Chair or, in consultation with the Chair, another appropriate Committee Member to put forward evidence on behalf of the committee.

## 17 Complaints

- 17.1 Where a complaint is made under the Council's Complaints Procedure about a committee decision, a reply will be prepared by officers in consultation with the Chair.

AJC/DG

6.8.09