

**LEICESTER CITY COUNCIL
GOOD PRACTICE GUIDANCE FOR MEMBER INVOLVEMENT IN PLANNING
AND DEVELOPMENT MANAGEMENT DECISIONS
JUNE 2015**

1. WHY GOOD PRACTICE GUIDANCE IS REQUIRED

- 1.1 As an Elected Member one of your key tasks may be to get involved in planning matters through representing your Constituents; or as a Member of the Council's Planning & Development Management Committee deciding planning matters (e.g. applications and enforcement); or as an Executive Member considering development of the Council's planning policies.
- 1.2 The key purpose of Planning Committee decision making is the consideration of private proposals and balancing these against the wider public interest. Committee Members should consider themselves strategic decision makers. Planning decisions can be controversial and sometimes questions are raised about planning decision making. The aim of this Guidance is to demonstrate that in the planning process in Leicester there has been objective transparency and any decision is justified based on material and relevant planning considerations.

2. WHEN THE GOOD PRACTICE GUIDANCE APPLIES

- 2.1 This Guidance applies at all times to Committee Members involved in the planning decision making process. This includes meetings of the Committee, meetings in connection with any pre-application process, meetings with Officers or the public e.g. consultative meetings.
- 2.2 It also applies to non-Committee Members when they have any involvement in a planning matter be it either their own Planning Application, or that of somebody else's (whether it affects their own property or not), or through being lobbied.
- 2.3 If you have any doubts about the application of the Guidance, you should take advice from the Head of Planning and/or the Monitoring Officer.

3. RELATIONSHIP WITH THE MEMBER CODE OF CONDUCT

- 3.1 The City Council's Member Code of Conduct (this is the document which, by law, must set out expected standards of behaviour of all Elected Members, breaches of which are reported to the Monitoring Officer and are dealt with under the Standards arrangements) must be complied with throughout the Committee decision making process therefore:
 - Do apply the rules in the Member Code of Conduct first at all times. Members should pay particular regard to the rules concerning declaration of interests.

- Do then apply the advice contained in this Guidance which seeks to supplement the Members Code of Conduct for the purposes of planning decision making or involvement in planning matters as a non-Committee member.

3.2 If you do not follow this Guidance the following risks arise:

- The City Council is at risk of legal proceedings (Judicial Review) on the legality of any decision taken; and/or a complaint to the Ombudsman for maladministration and
- As a Member a complaint could be made against you regarding your conduct.

3.3 In the event of a conflict between this Good Practice Guidance and the Members' Code of Conduct the latter will prevail.

4. MEMBERS' OWN PLANNING APPLICATIONS

4.1 For obvious reasons any person who has a significant interest in the outcome of a planning decision should not take part in the decision making process. There is no objection to a Member (as a citizen) making their own planning application, but they should be open and transparent about it and declare the existence and nature of their interest.

4.2 Where a Member intends to submit a planning application the following applies:

- Consider employing an agent to act on your behalf in dealing with Officers and in relation to any public speaking at the Committee (but see below).
- Do not allow the application to be submitted on your behalf in a third parties name (including that of any agent engaged by you). Use your own name as the applicant.
- Ensure that you complete the Authority Employee/Member section of the planning application form
- Notify the Council's Monitoring Officer in writing of the application no later than submission of the proposal.

4.3 Once the application has been submitted, or where Pre-application advice is sought from the local authority:

- Do not participate or give the appearance of trying to participate in the making of any decision on the application by the City Council. This is a Disclosable Pecuniary Interest (DPI) and under the Localism Act 2011 participation is a criminal offence.
- Do not get involved in the processing of the application.
- 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 Member.

- Always be open and transparent about the application particularly in your dealings with Planning Officers and do not assume the Officer knows that you are a Member.
- You should:
 - Note that the application/other relevant planning matter will always be reported to the Committee for decision. It is permissible for you to make written representations to Officers about your proposal.
 - Think very carefully about whether you attend the Planning Committee that considers the matter. In circumstances where an Applicant has a right to speak, you will need to arrange for someone to speak on your behalf, save in circumstances where the Monitoring Officer has granted you a dispensation in accordance with the Member Code.

4.4 For obvious reasons any person who has a significant interest in the outcome of a planning decision should not take part in the decision making process. As such members should also follow the above guidance where they have a significant interest in a planning application which has been submitted but which is not their own application. If you are unsure whether you have a significant interest in the outcome of a planning application you should seek advice from the Council's Monitoring Officer prior to taking any steps in relation to such an application.

5. COMMITTEE MEMBERS' OTHER INTERESTS

- 5.1 For Committee Members, and depending on the factual circumstances, an interest arising may require declaration or mention in accordance with the Member Code of Conduct, either as a DPI, an Other Disclosable Interest (ODI) or a concern about apparent bias or predetermination. In accordance with the Code of Conduct and the Council's Constitution where a Member has a DPI or a 'prejudicial' ODI you may not vote or participate in a decision on the matter in respect of which the interest arises and must leave the room unless they have been given a dispensation by the Monitoring Officer in accordance with the Member Code of Conduct.
- 5.2 Declarations of bias and predetermination should also require the Member to refrain of taking part in decision-making, or the influencing of decisions (see section 8 below).
- 5.3 A declaration of a non-prejudicial ODI will merely require the Member to declare the interest but they may lawfully remain in the meeting and proceed to contribute to the decision-making.

- 5.4 Where a planning matter directly affects a Committee Member or their family/friends (e.g. a Planning Application next door to where the Member lives; or an application lodged by a family member), then advice should be taken from the Council's Monitoring Officer about involvement. There are obvious dangers in the Member taking part in the planning decision-making process (see 5.1). Where a Committee Member has a DPI (note that a DPI can arise not only from a Member's own application but also one that directly affects them e.g. next door neighbour's application) or prejudicial ODI, as well as leaving the room they will also be unable to address the Committee on the application. However the Member can arrange for a representative to address the Committee on their behalf and such representations should be expressed as being made on behalf of Councillor X as a person directly affected by the application. Similarly if the Committee Member wishes to submit a written representation, it should be expressed to be submitted from or on behalf of Councillor X as a person directly affected by the application. This practice should also apply to Committee Members who make declarations in respect of predetermination and apparent bias (see section 8).

6. ATTENDANCE OF NON-COMMITTEE MEMBERS

- 6.1 Elected Members who are not Members of the Planning Committee do, in certain circumstances, have the right to speak at a Committee meeting.
- 6.2 Where a non-Committee Member wishes to make representations to the Committee s/he needs to notify the Committee Chair and Democratic Services no later than 12 noon of the day of any Committee Meeting. It is a matter for the Chair's discretion to allow non-Committee Members to speak if they have not given the required notification.
- 6.3 Non-Committee Members will be required to make an appropriate declaration.
Members who have a DPI or prejudicial ODI may only attend and speak if they have received a dispensation granted at the discretion of Monitoring Officer in accordance with the Member Code.
- 6.4 Non-Committee Members will sit in the public gallery and the Chair will call them to the Committee table to sit in the designated place.
- 6.5 A Member who wishes to speak must follow the public speaking protocol where applicable. A non-Committee Member is expected to keep his/her representations within 5 minutes, as are all public speakers. After the non-Committee Member has spoken, the Chair will invite Officers as appropriate to respond but the non-Committee Member will not have a right of reply.
- 6.6 Subject to the DPI/ODI provisions of paragraph 6.3 above, exceptionally a Committee Member may wish to stand down to make representations to Committee as a Non-Committee Member. The same provisions as above will apply to Committee Members in these circumstances. The Committee Member will need to take extra care to ensure that they make the appropriate declarations.
- 6.7 Where a planning matter directly affects a non-Committee Member as an

individual, such that they have a DPI or prejudicial ODI, it is not permissible for the Member to address Committee. As with clause 5.2 above (in respect of Committee Members) the Member can arrange for a representative to address Committee on their behalf.

7. MEMBER INVOLVEMENT IN WARD ISSUES

- 7.1 All Members will respect the expectation that in relation to planning issues in any Ward the primary responsibility for dealing with them is on the relevant Ward Members.
- 7.2 In the case of a Member who is also a Committee Member it is suggested that they should not deal with planning issues in their Ward. In such circumstances a fellow Ward Member should be asked to assist. Should the issue result in a Member attending at a Committee to make representations the Chair will enquire of the Member whether or not they have had contact with the relevant Committee Member and if there has been no contact the Chair has discretion whether or not to allow the representations to be made.
- 7.3 There are circumstances where an applicant or objector may want to contact a Member outside of their Ward (e.g. in a situation where an objector does not have the support of Ward Members). Where any Member is approached to make representations to, or attend a Planning Committee meeting on behalf of any one individual in relation to any planning issue not in their Ward, they are expected as a matter of courtesy to notify the Ward Members concerned. In the absence of such notification, the Chair has discretion whether or not to allow the Member concerned to attend and speak for that purpose at any Committee Meetings. Any non-ward Members speaking at Committee in this capacity shall be speaking as a Member. According to law Members cannot choose to shed their elected Member status when addressing a Committee of their Council.

8. DECISION MAKING - BIAS AND PREDETERMINATION

- 8.1 Planning Committee decisions must only be made on the basis of material and relevant planning considerations/merits.
- 8.2 Predetermination arises when someone has a closed mind so that they cannot consider any subsequent information presented and they have made their mind up. This can lead to legal challenges.
- 8.3 To participate in decision making on planning matters, Committee Members must not have a closed mind. Decisions can only be taken once all Committee Members present have read, seen and heard all the information presented including the Officers Report, any Addendum Report and information provided under the public speaking provisions.
http://www.cabinet.leicester.gov.uk/documents/s52419/PublicSpeakingLeaflet_Jun12_Copy2a1.pdf.
- 8.4 The Localism Act 2011 makes it clear that a Member does not have a closed mind

on a particular issue just because they have indicated what view they may or may not take before the issue is decided. This means that a Committee Member is not prevented from participating in decision making in relation to a matter which they have campaigned on a particular issue or have made public statements about any approach provided at the time of decision making the Committee Member has not closed their mind.

- 8.5 For Committee Members to refrain from having a closed mind they must be amenable to changing their views in the light of all the information presented to them. In order to avoid perceptions of and challenges of pre-determination it is advisable for Committee Members to avoid making categorical public statements in relation to applications for Planning Permission, Listed Building and conservation area matters if they subsequently intend to participate in the decision making process at Committee.
- 8.6 Great care is needed where any application before the Committee involves the Council as developer/landowner. Council applications should not be given any preferential treatment.
- 8.7 Although a Committee Member can make representations (either on their own behalf or on behalf of a constituent) on an application that is anticipated to be decided by officers under delegated powers, should this application in the event be referred to Committee then the Councillor should not take part in the decision making.
- 8.8 Where an Elected Member makes representations or contact on a planning application (whether orally or in writing) which is to be decided either by Committee or by Officers, that Elected Member shall always make it known that they are a Member of the Council. If the purpose of the representation/contact is to articulate a view in a personal capacity they shall identify themselves as a Member, but go on to make it clear that they are writing in a personal (i.e. non-Council) capacity.

9. PRE-APPLICATION PRESENTATION/MEETINGS WITH APPLICANTS, DEVELOPERS AND OBJECTORS

- 9.1 It is recognised that pre-application discussions assist with the planning process provided they take place within clear parameters and governance arrangements.
- 9.2 Member engagement in pre-application discussions on major developments (10 or more dwellings or 1,000 square metres commercial or other floor space) is encouraged. The following safeguards have been developed to prevent any allegation of bias or predetermination being made against Committee Members:
- Do not agree to any formal meeting with applicants, developers or groups of objectors without consulting the Head of Planning (for ad hoc/informal meetings refer to Section 11 "Lobbying" below).
 - A Planning Officer must always be present at any planned meetings. It will be for

the Officer to explain the constraints on Members. The Officer will prepare a written note of the meeting which will be publicly available (in circumstances where any applicant/developer asked for proposals to be treated as confidential any public note will cover non- confidential issues only and general advice given).

- Remember to follow the advice on lobbying (see below).
- Committee Members can ask questions and make preliminary comments on any proposals but should not give the impression/appearance from any such questions etc. that they have a predetermined view.
- Do report any prior significant contact with any applicant or other parties to the planning case officer or Head of Planning and explain the nature and purpose of the contacts and your involvement and ask him/her to ensure that this is recorded on the planning file.
- Do make it clear that at any meeting/presentation it is not part of the formal decision making process and any view expressed by you as a Member is both personal and provisional since not all relevant information will be to hand and the views of other interested parties may not have been obtained.

9.3 The Head of Planning 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 all Committee Cabinet Members to become familiar with what the application proposes and to ask questions. As mentioned above Committee Members can ask questions and make preliminary comment on any proposals but should not give the impression/appearance from any such questions etc. that they have a closed mind. In this way there is no objection or bar to them subsequently sitting on the Committee and making a decision on the application as presented.

10. REFERRAL OF APPLICATIONS FOR DECISIONS TO THE PLANNING AND DEVELOPMENT CONTROL COMMITTEE

10.1 Members should contact the Head of Planning as soon as possible about any applications included on the weekly list of applications circulated to them that they consider should be the subject of a Committee decision. This should be because they consider that there is a planning reason why the matter needs to be considered by the Committee rather than under delegated powers. The referral process should not be used simply to produce a different outcome from that anticipated from an officer delegated decision

10.2 This request is separate from the making of representations – for or against - that a Member may also make on their own or another's behalf. A committee referral request does not in itself indicate the Member's own view on the application. A member may or may not choose to express their own view on the proposals (see also 6.8 above). Contact should be written and preferably by e-mail. The planning reasons for the request must be given. Where appropriate a Planning Officer is able to assist Members with the formulation of reasons which can include design,

highway issues and impact on amenity of local residents.

- 10.3 Members need to be aware that to meet Government targets decisions on applications are taken quite quickly after the circulation of a weekly list and they are advised therefore to check with case officers of timescales to ensure any requests they make can be considered.
- 10.4 If any Member wishes their particular view to be considered and included in the Planning Officer's Report such representations must be made in writing to the planning officer as soon as practicable after the Member has been alerted to the existence of the Planning Application.

11. LOBBYING OF COMMITTEE MEMBERS

- 11.1 Lobbying by the public or other Members is a legitimate political activity. When Committee Members are lobbied, care needs to be taken to avoid any challenge of predetermination or bias or an allegation of breaching the Member Code of Conduct.

11.2 So:

- While you can listen to what people want to say to you about planning proposals and you can always give procedural advice as to how applications should be taken forward and agree to pass any comments on, it would be better when contacted directly to pass the matter on to a fellow Ward Member not on the Committee or indicate that contact be made with the Head of Planning or appropriate Planning Officer (see section 7).
- Do not favour any person, company, group or locality or make any commitment to a particular point of view on a planning application prior to its consideration by the Committee.
- Do not make up your mind or give the impression of making up your mind (particularly in relation to an external interest or lobby group) prior to the Committee Meeting and to hearing the Officer presentation and all information presented to the Committee. You should carefully consider whether accepting membership of, or attending external interest, advisory or lobby groups might lead to a position of conflict, or appearance of conflict, with your neutral decision making responsibility as a Committee Member (see 12.1 below).
- When you have received any direct representations in connection with any Planning Application before the Committee you need to declare the nature of those representations e.g. e-mail received, photographs or drawings received, attendance at meeting, any presentations, any meetings with the applicant or third party etc. You should also disclose to the Committee the general tenor of your response (i.e. supported/opposed/remained neutral and gave procedural advice/referred to another Councillor etc). Where the lobbying results in your having a closed mind you should, in addition, withdraw from sitting on the Committee for that item, preferably by prior arrangement.

- 11.3 Political group meetings prior to the Committee Meeting should not be used to determine how you or other Members should vote. The Ombudsman has ruled that the application of a group whip to a planning matter could constitute maladministration.

12. MEMBERSHIP OF OUTSIDE BODIES

- 12.1 If you are a Committee Member do not become a member of any organisation whose primary purpose is to promote, oppose or advise on development proposals, in Leicester, whether generally or specifically. The reason for this is the obvious risk of bias or predetermination.
- 12.2 As a Member there is no prohibition on joining general interest groups which might reflect your areas of interest and which concentrate on issues beyond particular planning proposals such as CPRE or local groups such as the Civic Society. Where you are a Committee Member it is suggested that you do not get involved in any representations made by an external interest groups you are involved in and make the appropriate declaration at any subsequent Committee Meeting. Such a declaration should explain the precise nature of your involvement or engagement with the item/application, and should include a description of the views that you expressed on the matter.

13. COMMITTEE ADDENDUM REPORT

- 13.1 To enable any last minute issues to be considered, the Director prepares an Addendum Report. Committee Members will be provided with the report by e- mail and it will be available in the Group Rooms from 16.00 hours on the date of the Committee. Where the last minute issues lead to a fundamental change of recommendation (e.g. from refusal to approval or vice versa), the Addendum Report will recommend deferral unless the possibility has already been identified in the original report.
- 13.2 As necessary the Director or Planning Officer presenting the Report will refer to the Addendum Report when relevant as part of the oral presentation in connection with reports before the Committee.
- 13.3 Representations received after the Addendum Report has been finalised, will be summarised orally.
- 13.4 Written representations and supporting materials of applicants, objectors and/or third parties, including those arising from public speaking will only be circulated to members if they have been provided to Democratic Services by 1600 hours on the day before the meeting

14. RUNNING ORDER OF COMMITTEE AGENDA

- 14.1 The Chair has discretion to determine the order in which Committee Reports are considered and s/he will consider this in relation to the number of members of the

public/Members who are present who wish to speak on any particular report.

- 14.2 The Council has introduced public speaking protocol for public speaking the Planning Committee which can be found here:

http://www.cabinet.leicester.gov.uk/documents/s52419/PublicSpeakingLeaflet_Jun12_Copy2a1.pdf

This sets out the process and procedure to be followed including the Order of speakers. Prior to any summing up by the Committee Chair, the Head of Planning will be entitled to provide final Officer comment.

- 14.3 Members of the Committee may seek points of factual clarification on the application under consideration from applicants (or their agents), Statutory Consultees or people making representations to the Committee meeting. It is not appropriate for Committee members to seek to negotiate to secure amendments to the application as the application is presented for determination at the meeting. In the event that the Chair feels a point of clarification is not appropriate then they will have the discretion to intervene.
- 14.4 Other than in accordance with the protocol for public speaking and in the circumstances described at 14.3 above an applicant shall have no general free-standing right to speak at Committee

15. VOTING

- 15.1 Voting at the Planning Committee will be by a show of hands. The other provisions in the Council's Constitution with regard to voting (request for recorded vote, chairs casting vote etc.) will apply.

16. DEPARTURES FROM OFFICER RECOMMENDATIONS

- 16.1 Committee Members wishing the Committee to consider a different recommendation from that made by the Director must move an amendment giving planning reasons and have it seconded. As necessary the Chair will then seek clarification for the planning reasons and take advice from the Head of Planning and Solicitor. The planning reasons will be recorded in the minutes.
- 16.2 Where no amendment is moved and seconded but the Committee votes to reject the Officer recommendation, the Chair will ask the committee to clarify the planning reasons for the vote, which will form the basis of a second vote. If this is not possible, the application will be deferred until the next meeting of the Committee. At that subsequent meeting the Director will table his understanding of the reasons why the Committee rejected the recommendation and the Committee will then vote to confirm the reasons put forward by the Director or not as the case may be.

17. DELEGATION OF DECISIONS TO OFFICERS

- 17.1 The Committee may agree to delegate any further decision (e.g. finalisation of conditions or section 106 Agreements to be attached to the grant of Permission) to the Director even where the decision would normally be reserved to the Committee under the Scheme of Delegation of Development Control Decisions to Officers.

18. SITE VISITS

- 18.1 Officers will seek to ensure that full details and context of proposals can be reasonably ascertained from the information in the Committee Report and the photographs and plans available from the screen presentation.
- 18.2 Exceptionally site visits may be required where there is a need to view particular site factors in terms of the weight to be attached to them in making the decision.
- 18.3 Where, in such circumstances, a Committee Member feels a site visit is necessary it must make the request for a site visit to [the Head of Planning] no later than two days of the publication of the Agenda Papers (ie by 1700 on the Thursday following publication) to allow arrangements to be made for the visit to be undertaken on the Monday preceding the meeting of the Committee.
- 18.4 All requests for site visits must detail the planning reasons and aspects of the site or the proposal which are considered to merit a site visit; the requests will be determined by the Head of Planning in consultation with the Chair in with respect of the availability of appropriate presentational material and photographs.
- 18.5 Exceptionally, where there is a recommendation by Members during a meeting of the Committee Meeting to defer the application to allow for a site visit to take place, this must be moved and seconded and agreed by the Committee with valid planning reasons being given for the decision, which will be minuted
- 18.6 Site visits do not have decision making status and will be arranged by the Head of Planning. All Committee Members will be notified of the visits by Democratic Support. A Planning Officer will be present throughout. Site visits are for Committee Members only, and no other Members will be permitted to attend.
- 18.7 On no account should any Committee Member present at a site visit express a view on the merits of the application and wherever possible not engage in any dialogue with the Applicant/Owner, or any other third parties during the visit.
- 18.8 The expectation will be that the Committee Members will attend the site visit and 1300hrs the Monday preceding each Planning Committee will be the time generally reserved for visits. Where a Committee Member is not able to attend the site visit s/he may visit the site separately although Members should not enter onto the site without the Owner's consent. As with an organised site visit an individual Member should not engage in any dialogue about the application etc.

19. ATTENDANCE AT COMMITTEE

- 19.1 Planning Applications may in some cases come before the Committee on more

than one occasion. For example, the Committee may decide to defer an application for further information.

19.2 It is important that Committee Members taking decisions are in possession of all the facts. Attendance of Members on all occasions when an application has been considered by Committee will not only demonstrate that Committee Members are fully informed but will also ensure high quality consistent and sound decisions are made minimising the risks of any legal challenge.

19.3 If as a Committee Member you have not been able to attend meetings in connection with an application that has been deferred you should only take part in such a decision making process if you are satisfied that you can reasonably and properly do so in all the circumstances. Advice on involvement can be obtained from the Head of Planning and the Monitoring Officer.

20. OFFICERS

20.1 Members and Officers have different but complementary roles. Both serve the public but Members are responsible to the electorate while Officers are responsible to the Council as a whole. Accordingly:

- 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 Head of Planning or the Director.
- In the first instance any contact by Members (Committee or non- Committee) about planning issues should be with the Head of Planning or other Officers authorised by the Director to have contact with Members. Note that any contact between a Member and Officer will be recorded in the Council's file.

21. APPEALS

21.1 The Director 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 the decision was made. The best possible arguments and available evidence in support of the decision will be presented whether or not the Committee's decision was in accordance with the Director's recommendation.

21.2 Where the Committee's decision was not in accordance with the Director's recommendation and any subsequent appeal is to be determined at a Hearing or Public Inquiry the Chair or as appropriate an alternative Committee Member may be required to be the Council witness. The Head of Planning will arrange appropriate Officer support but in accordance with professional requirements, will be provided in a way so as Officers are not put in a conflict of interest situation arising from their professional opinion on the matter in question.

22. TRAINING

- 22.1 It is mandatory that Members serving on the Committee must attend annual refresher training and where appropriate initial training. Substitute Members have to comply with the training requirement.
- 22.2 Initial basic training will be provided at the start of each Council Municipal Cycle (2015 etc.). Mandatory annual refresher training will be arranged to take place as soon as possible after the Council's Annual General Meeting in May.