

CODE OF CONDUCT FOR MEMBERS AND OFFICERS DEALING WITH PLANNING MATTERS

This Code has been prepared having regard to:-

- the recommendations of the Nolan Committee (1997)
- the Local Government Association's "Probity in Planning" (1997)
- the Members' Code of Conduct
- "The Role of Elected Members in Plan Making and Development Control" - a study commissioned by the Royal Town Planning Institute from Oxford Brooks University (1997)
- the Royal Town Planning Institute's "Code of Professional Conduct" (2001)
- the Government's "General Principles of Conduct in Local Government" (2001)
- relevant Government Circulars at the time of writing.
- ACSes Model – Members' Planning Code of Good Practice (2003)

The Code was adopted by Melton Borough Council on 30 April 2003.

1. INTRODUCTION

- 1.1 Planning decisions affect everyone, influencing the shape of the physical environment and the profitability of businesses. Planning decisions often attract considerable public interest, representations and objections, and can have a huge impact on land values, with the potential to make or lose substantial sums of money for owners.
- 1.2 Planning authorities have an important task in assuring the public that they maintain high standards of conduct. Councillors are governed by the developing National Code of Conduct and must have regard to this in all their actions. Officers are affected by specific codes or professional practice rules issued by their own professional bodies such as the Royal Town Planning Institute. The Code that follows is not intended to replace or contradict the contents of these documents, but is intended to supplement and provide additional guidance. Throughout, the terms "Councillors" and "Members" are used inter-changeably.
- 1.3 The purpose of the Code is to ensure that the manner in which planning decisions are reached is, and is seen to be, fair, open and impartial and that only relevant matters are taken into account.
- 1.4 The Code covers decisions relating to the making of development plans and supplementary planning guidance, the determination of planning applications, decisions on enforcement matters, and the managing of planning obligations.
- 1.5 Only Officers and Members of the Council who are prepared to observe the guidance contained within this Code should be involved in making decisions on planning matters. Failure to follow the recommendations of the Code would be taken into account in investigating cases of possible maladministration, and have implications for the standing of both Councillors and Officers.

2. THE GENERAL ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS

- 2.1 Councillors and Officers have different, but complementary, roles. Both serve the public but Councillors are responsible to the electorate while Officers are responsible to the Council as a whole. Officers advise Councillors and the Council and carry out the Council's work. They are employed by the Council, not by individual Councillors, and it follows that instructions may only be given to Officers through a Council or Committee decision. A successful relationship between Councillors and Officers can only be based upon mutual trust and understanding of each other's positions. This relationship and the trust which underpins it must never be abused or compromised.
- 2.2 Councillors once elected serve all their Ward constituents and the people of the District as a whole and not just those who may have voted for them. In dealing with planning applications Members must fulfil a number of roles both as representatives of the people and as decision makers, objectively considering the facts and deciding upon them. This is particularly pertinent to Councillors serving on a planning committee or who become involved in making a planning decision. In the past the Courts have tended to emphasise the quasi-judicial part of their function. However a number of recent Court judgments together with the guidance given by Lord Nolan show that whilst this remains important it is also right for Members to take into account

considerations relating to public concern, representations they have received and their assessment of what may be appropriate or inappropriate for an area.

- 2.3 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 are often strongly held by those involved. Whilst Officers and Councillors should take account of those views, they should not favour any person, company, group or locality and not put themselves in a position where they appear to do so. Councillors who do not feel that they can act in this way should consider whether they are best suited to serving on a planning committee. Officers and Councillors should also be very cautious about accepting gifts and hospitality. The Council maintains a register of gifts and hospitality. Advice can be obtained from the Chief Executive or the Solicitor to the Council.
- 2.4 Decisions should be based on an assessment of the provisions of the Development Plan (the Structure Plan and the Local Plan) and all material planning considerations. The Town and Country Planning Act 1990 (as amended) requires that decisions should be made in accordance with the Development Plan, unless material considerations indicate otherwise. The provisions of the Development Plan are therefore the starting point of the decision making process. Material considerations include the siting, design, and external appearance of buildings, and the means of access to them. They also include landscaping, impact on the neighbourhood or street scene, and the availability of infrastructure. They rarely include the personal circumstances of the applicant.
- 2.5 About 75% of planning application decisions are delegated to the Head of Regulatory Services. Delegation is a Chief or other Senior Officer taking executive action on behalf of the Council, and determining planning applications and related matters, in accordance with clearly stated and published rules. Delegation is not a process that will change the outcome of an application, or a transfer of power from elected Members to Officers. The purpose of delegation is to:-
- simplify procedures;
 - speed up the processing and decision making on applications;
 - minimise the costs of the development control service;
 - leave Committee Members more time to concentrate on major or controversial planning issues.

The current Scheme of Delegations to Officers is set out in Part 3 of the Constitution.

- 2.6 Not all planning decisions are 'technical' in the sense that only one outcome is dictated by planning law or policy. Many decisions require an element of judgement. In deciding how to determine applications Members must retain a fair and open-minded approach to the decision making process.
- 2.7 Council Officers have a number of roles to fulfil. Much of the Officers' work is done behind the scenes before an application is determined. Planning Officers in particular carry a very heavy caseload of applications dealing on a

day to day basis with applicants, objectors, Members and other professional agents. Again they must have a fair, open-minded and objective approach and attempt to give as much assistance as possible to any member of the public who requires it whether in a capacity as an objector or as an applicant. Officers of the Council will also advise on policy, law and procedure both at Council meetings and outside.

3. TRAINING

- 3.1 It is recognised that planning is a complex area and that newly appointed Members may have little background knowledge to help them with their responsibilities. The Nolan Committee recommended that all Members should receive adequate training to assist them in the performance of their duties.
- 3.2 The Chief Executive in conjunction with the Head of Regulatory Services will ensure that training is available and that all Members receive a proper grounding in the area of planning law, policy and practice and that update seminars/training are arranged. The Council expects that all Members who will make planning judgements will receive training. An appropriate level of training in the basic essentials of the planning system will be given to new Members before they serve on any decision making body dealing with planning matters.

4. INTERESTS

- 4.1 Conflicts of interest will arise not only when an issue affects the wellbeing of the Member, but also when it affects their family, friends, or any organisation with which they are associated. Councillors and Officers should therefore be guided by the advice contained in the following paragraphs.
- 4.2 It is a fundamental point of principle that decisions should not be made by those who have a pecuniary interest in the outcome. The Council is committed to this approach in order to avoid public confidence in the planning system becoming eroded.
- 4.3 Councillors who have substantial property interests, or other interests which would prevent them from voting on a regular basis, should avoid serving on the Planning Committee.
- 4.4 Guidance on what constitutes a pecuniary interest is contained in the Members' Code of Conduct and in the Ombudsman's Guidance. The general rule is that a Member or Officer should not use his/her position to further a private or personal interest, rather than the general public interests, or give grounds for such suspicion.
- 4.5 Seminars will be held to give guidance to Members on the declaration of interests, and any other issues in the Code. In the interim, the Chief Executive or the Monitoring Officer will give guidance. In the final analysis, however, only the Member can have a full appreciation of the nature of his or her interest and the responsibility for applying the test to any particular interest must rest with the Member.
- 4.6 Members with a pecuniary interest should not speak or vote in the decision making process. If they insist on so doing the decision reached by the

Planning Committee may be held to be void if challenged in Court on the basis of being contrary to the rules of natural justice.

- 4.7 Members should also be aware of the perception that members of the public often expect them to be advocates of their views in a representative capacity. This can be incompatible with the quasi judicial nature of the determination of planning applications and as an interest, although entirely non pecuniary in nature, Members should not participate in decisions that significantly affect, or have raised significant levels of representation (i.e. greater than 10) from their ward. This does not prejudice Members rights to contribute to the decision from the stand point of a Ward Member addressing the Committee under our speaking arrangements for planning committee.
- 4.8 Members who indicate before a meeting of the Planning Committee that they have reached a conclusive view on an application, should carefully consider whether their continued involvement in determining the application would prejudice the integrity of the planning process. Their continued involvement could amount to maladministration.
- 4.9 Officers should also act in accordance with the above Code.