

## Part 5 Codes and Protocols

### 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) and revised Guidance Notes 2009
- 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 Brookes 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)~~

- Standards Board for England 2007 members guide on the code of conduct and occasional paper on predisposition, predetermination and bias;
- Association of Council Secretaries and Solicitors Model member's planning code of good practice 2007;
- Planning Advisory Service Effective engagement advice.

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 (~~Local and Neighbourhood Plans~~)(~~the Structure Plan and the Local Plan~~) and all material planning considerations including National policy and Planning Practice Guidance. 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 ~~80~~<sup>75</sup>% 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.

3.3 Members may not participate in decision making at meetings dealing with planning matters unless they have attended the mandatory planning training sessions.

3.4 They should endeavour to attend any other specialised training sessions provided, since these will be designed to extend their knowledge of planning law, regulations, procedures, codes of practice and development plans, which will assist them in carrying out their role properly and effectively. Follow up training may also be regularly offered on probity and ethical issues, as may be required to reflect changes in legislation and major changes in policy and other material considerations..

### 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 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.

4.8 Officers should also act in accordance with the above Code.

## 5. DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS AND OFFICERS AND COUNCIL DEVELOPMENT

5.1 Proposals to their own authority by serving and former councillors, officers and their close associates and relatives can easily give rise

to suspicions of impropriety. So can proposals for a council's own development. Serving Councillors and Officers of this Council should never submit or promote applications or act as agents (paid or unpaid) for individuals (including a company, group or body) pursuing a planning matter within this Council's area. If Councillors or Officers submit their own development proposal to the Council, they should take no part in its processing. Moreover, Members or Officers, who are seeking to influence the Development Plan or supplementary planning guidance to further their own private interest should play no part in its preparation. The Council's Monitoring Officer should be informed of all such instances as soon as possible.

- 5.2 Proposals for the Council's own development (or a development involving the Council and another party) should be treated in the same way as those by private developers ~~and in accordance with guidance given in Circular 19/92. This Circular outlines that~~ the same administrative process, including consultation, should be carried out in relation to the Council's own planning applications, and that they should be determined against the same policy background (i.e. the Development Plan and any other material planning considerations). This paragraph also applies to applications in respect of Council owned land (e.g. prior to a land sale being agreed or negotiated). Decisions must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Council if the development is permitted. It is important that the Council is seen to be treating such applications on an equal footing with all other applications as well as actually doing so.

5.3 Proposals submitted by Councillors and Officers must be reported to Committee and not dealt with by Officers under delegated powers. As part of the report the fact that the application is a Councillor's/Officer's should be highlighted. Also ~~as part of~~ the report ~~the Monitoring Officer~~ should confirm whether it has been processed normally.

5.4 The consideration of a proposal from a Councillor is considered as a prejudicial interest and as such the councillor would be required withdraw from any consideration of the matter. The Councillor should not seek improperly influence a decision about the matter'. It is important to emphasis that this does not imply that a Councillor should have any fewe rights than a member of the public in seeking to explain and justify their proposal to an officer in advance of consideration by a Committee. However, whilst a member with a prejudicial interest may address the Committee under the code if the Member should consider whether it would be wise to do so in the circumstances of the case, including the nature of the interest and the relationship of the Councillor with the remainder of the Committee.

## 6. LOBBYING OF AND BY COUNCILLORS AND ATTENDANCE AT PUBLIC MEETINGS

6.1 If Members are to undertake fully their constituency roles it is inevitable that they will be, subject to lobbying particularly on planning applications. Great care will often then be essential to maintain the integrity of the planning process, the Council and the Member concerned. Lobbying can lead to the impartiality of a Councillor being called into question. However, lobbying can lead to the impartiality and integrity of a councillor being called into question. When being lobbied, councillors (members of the planning committee in particular) should take care about expressing a n opinion that may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. The information provided by lobbyists and others is likely to represent an incomplete picture of the relevant considerations governing a planning matter. The views of consultees, neighbours and the assessment of the application by the planning officer all need to be considered before a member of Planning Committee is in a position to make a balanced judgement on the merits of the particular planning matter.

6.2 There is nothing improper in Members receiving comments and representations from their ward constituents, but Members should adopt an impartial stance in dealing with both applicant and objectors in planning matters. Members should avoid giving any indication of support or opposition for a matter since this would be inappropriate until they have had the opportunity of hearing both sides of the case, normally ~~at after~~ the debate at the Committee. Committee decisions can only be taken after full consideration of the Officer's report, information dissemination, and discussion at the Committee.

6.3 Members should not favour, or appear to favour any person, company, group or locality. Members who commit themselves to a particular view on a planning application prior to its full consideration at Committee or Council must consider whether the public, or any other person, would believe that they have prejudiced their position and can take part in a debate on the full facts before determining the application. To do so without all relevant information and views would be unfair and prejudicial and may amount to maladministration by the Council. Similarly Members of the Planning Committee who are also

members of a town/parish council and who may be required to participate in discussion regarding responses to notifications of planning applications or other planning matters should be careful in expressing an opinion in advance of having heard all the relevant evidence and arguments. A planning committee member who

represents a ward affected by an application may be in a difficult position if it is a controversial matter on which a lot of lobbying takes place. If the member responds to lobbying by deciding to go public in support of a particular outcome - or even campaigning actively for it - they will have predetermined their position when the committee comes to take a decision on the application. The risk of perceived bias means that the proper course of action for such a member would be to ~~If the Member decides to support openly the town/parish view - or even campaigns actively for it - it will be very difficult for that Member to argue convincingly when the Committee comes to take its decision that he/she has carefully weighed up the evidence and arguments presented, and is considering the matter in the interests of Melton Borough as a whole. In these circumstances, the proper course of action would be for the Member to declare an interest and not vote.~~

~~6.4 If a Member involved in determining planning applications has responded to lobbying by openly advocating a particular course of action prior to a Committee meeting that Member should~~ make an open declaration of this and not take any part in the decision making process.

6.5 Individual Members must reach their own conclusions on an application rather than follow the lead of another Member. In this regard, any political group meetings prior to Committee meetings should not be used to decide how Councillors should vote on planning matters.

6.6 A ward councillor who is also a member of the planning committee wishing to campaign for or against a proposal could speak at a planning committee on behalf of their constituents, having declared their pre-determined position. A pre-determined councillor can continue to represent those ward interests as a spokesperson for their local community, notwithstanding their planning committee membership. If that councillor speaks on behalf of a lobby group at the decision-making committee, they should withdraw once any public or ward member speaking opportunities had been completed. (this is to counter any suggestion that members of the committee may have been influenced by their continuing presence).

6.6 The Chairman (~~or~~ Vice Chairman if in the Chair) should attend a briefing with Officers prior to Committee to help them give an effective lead in Committee.

6.7 Members involved in decision making on planning applications and on Development Plan matters and supplementary planning guidance issues should not participate in or organise support or opposition to a proposal (including petitions), lobby other Members, act as an advocate or put pressure on Officers for a particular recommendation (see paragraph 6.8). However, at the Planning Committee other Members (who are not part of the decision making process) within that Member's Ward can make representations and address the Committee with the agreement of the Chairman.

6.8 Development proposals will often necessitate Member contact with the Officer dealing with the planning application concerned. Attached at Appendix 1 is a



protocol which sets out the parameters of that contact with regard to planning and related applications and also with regard to planning enforcement.

- 6.9 Members (and in particular Members involved in determining planning applications) who find themselves being lobbied, should actively take steps to explain that whilst they can listen to what is said, it prejudices their impartiality to express a firm point of view or an intention to vote one way or another.
- 6.10 Officers involved in the processing or determination of planning applications should only attend public meetings in connection with development proposals (i.e. pre-application or submitted planning applications) as observers or to impart factual information. To do otherwise could lead to allegations of bias or prejudice in relation to a particular point of view.
- 6.11 Similarly, Members involved in the determination of planning applications should take great care to maintain impartiality when attending public meetings in relation to planning matters. They should consider carefully whether it is appropriate to attend in the first place. If they do wish to attend it is advisable to invite the relevant Officer also. At such meetings it is preferable for no view on the merits or otherwise of a proposal to be given.
- 6.12 If Members consider that they have been exposed to undue or excessive lobbying or approaches, these should be reported to the Monitoring Officer.
- 6.13 Where the Monitoring Officer believes that a Member has prejudiced his/her position by expressing a conclusive view on an application before its determination by the Committee, the Monitoring Officer will offer advice to the Member on whether it would be inappropriate for him/her to take part in the debate or vote on the application.

## 7. PRE-APPLICATION DISCUSSIONS

- 7.1 The Borough Council recognises that discussions between a potential applicant and the Council prior to the submission of a planning application - and after its submission - can be of considerable benefit to both parties. In recognition of the need to allow and encourage councillors to be champions of their local communities Councillor engagement in preapplication discussions on major development is necessary to allow Councillors to fulfil this role. However, it would be easy for such discussion to be seen to become part of the lobbying process. To avoid this, many discussions with applicants or potential applicants should take place within the guidelines set out below at paragraphs 7.2 - 7.6.
- 7.2 To maintain impartiality, it is preferable that Members do not take part in pre-application discussions. Should there be occasions when Members are involved in such discussions/presentations/visits, they should be accompanied and advised by the appropriate professional Officers of the Council, which will include a ~~Senior~~ Planning Officer. The involvement of Councillors in such matters will be recorded as a written file record.
- 7.3 † It will be made clear that no commitments can be made which could bind or otherwise compromise the Planning Committee or any member of it. It will also be made clear that not all relevant information may be to hand, nor may formal consultation with interested parties have been completed. ~~n relation to pre-application and pre-decision-making discussions on planning issues, it will always be made clear at the outset, that such discussions will not bind the~~



~~Council to make a particular decision, and that any views expressed are personal and provisional.~~ Thus an Officer, whilst clearly making no commitment, may, on the basis of the Development Plan and policy documents, give a personal view on what the likely outcome of an application would be. The Officer should make it clear that this opinion may not be shared by the Planning Committee when determining the application.

- 7.4 Advice given should be consistent and based upon the Development Plan (i.e. Structure and Local Plan) and other material considerations. Every effort will be made to ensure that there are no significant differences of interpretation of planning policies between Planning Officers. Members should only receive information and should not be drawn into negotiations. This includes the basis, terms, purposes or financial quantum of any agreement for developer contribution.
- 7.5 A written note will be made of pre-application discussions and at least two Officers will attend potentially contentious meetings, with a follow-up letter sent, particularly when material has been left with the Council.
- 7.6 Every effort will be made to ensure that advice is not partial, nor appears to be.

## 8. AGENDAS

- 8.1 In the first instance the Head of Regulatory Services will decide the content of planning agendas. Should there be any dispute, the final decision will rest with the Chief Executive in consultation with the Chairman, Head of Regulatory Services and Monitoring Officer.
- 8.2 The Council's Delegation Scheme allows Members to require applications for development to be determined by Committee. Members should give written reasons for this where Officers would otherwise use delegated power to determine the application.
- 8.3 Additionally, if Members have concerns regarding other planning matters they can through resolution of the Committee request the Head of Regulatory Services to produce a report for the relevant Committee on the subject of concern/interest. ~~The precise content of reports, however, is not a matter for Members, since Members are unlikely to be in possession of all relevant information.~~
- 8.4 A matter not on the agenda for a Committee meeting may be raised by a Member or Officer at the meeting if the Chairman is of the opinion that by reason of special circumstances it should be considered as a matter of urgency. The special circumstances should be specified in the minutes of the meeting.

## 9. OFFICERS' REPORTS TO COMMITTEE

- 9.1 Reports on planning applications must be accurate and cover all relevant points. Reports will include a full description of the site and any related planning history, and will refer to the provisions of the Development Plan and other relevant material planning considerations.
- 9.2 All reports will have an assessment of the proposed development which clearly justifies the stated recommendation and a written recommendation of

action/decision. Officers will be solely responsible for the content of and recommendations within the reports.

- 9.3 All reasons for refusal must be clear, unambiguous and justified by the evidence of the case. Conditions to be attached to permissions should be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects, following the guidance. ~~More detail is~~ contained in National Planning Practice Guidance Circular 11/95 (NPPG).
- 9.4 Agenda items to Committee should contain a section listing the financial, legal and environmental implications of the report where appropriate.

**Comment [JW1]:** Will need amendment following to implemenation of the Hpuising and Planning Bill 2016

## 10. THE DECISION-MAKING PROCESS AND DECISIONS CONTRARY TO OFFICER RECOMMENDATION AND/OR THE DEVELOPMENT PLAN

- 10.1 The law requires that where the Development Plan is relevant, planning decisions must be taken in accordance with it, unless material considerations indicate otherwise.
- 10.2 It follows that if the Officer's report recommends approval of a departure to the provision of the Development Plan, the justification for this should be clearly set out within the report.
- 10.3 Since responsibility for the Committee's decision rests with Members there may be occasions when a decision is reached which is contrary to the advice tendered by Officers. There is nothing inherently wrong in this unless the decision is not based on material planning considerations or is clearly contrary to law. There is a well defined appeal process whereby decisions can be tested. Members will need to be mindful, however, of the need for clear reasons for such decisions and Officers will give such assistance as they can in these circumstances.
- 10.4 Appellants and local authorities can claim their costs of dealing with the appeal if either party has acted unreasonably. Examples of unreasonable behaviour are set out in NPPG at Appendix 2. ~~More detail is contained in Circular 8/93~~. Including the need for refusal of planning permission to be supported by evidence.
- 10.5 Councillors must not instruct Officers to take a particular course of action or make a particular recommendation other than through a decision of the Council or one of its Committees. Officers must always act impartially and advise the Council of their professional opinion. Chartered Town Planners must abide by the Royal Town Planning Institute's Code of Professional Conduct. Whilst Chartered Town Planners appearing as the Council's expert witnesses at planning inquiries have a duty to set out the Council's case, they must, if asked, give their own professional view in accordance with the Royal Town Planning Institute's Code of Professional Conduct.
- 10.6 In discussing and then determining a planning application Members should conduct their business in a fair and sensitive manner and should confine themselves to the planning merits of the case. The reasons for making a final decision should be clear and convincing, and supported by planning evidence.

If Members wish to refuse an application, or impose additional conditions to a permission, the reasons for refusal or the additional conditions to be applied must be clearly stated at the time propositions are moved at the meeting.

- 10.7 If a resolution is passed which varies from or is contrary to a recommendation of the ~~Head of Regulatory Services~~ (whether for approval or refusal or in relation to conditions) a detailed minute of the Committee's reasons will be made and recorded in the minutes and will be reflected in full in the final planning decision Notice and a copy placed on the application file.

## 11. SITE INSPECTIONS

11.1 Site inspections are subject to an existing Code of Practice which is attached at Appendix 3. Site inspections can cause delay and additional costs and should only be used where the expected benefit is substantial. Reasons should be given where site inspections are requested by Committee and recorded in the minutes. Examples of when site visits might be appropriate would be:-

- where the impact of the proposal is difficult to visualise from the plans and supporting material
- where there is considerable local concern about the proposal, allied to planning reasons for carrying out a visit (e.g. the physical relationship of the site to other sites in the neighbourhood).

11.2 The purpose of a site visit is for Members to gain factual knowledge and make a visual assessment of the development proposal, the application site and its relationship to adjacent sites.

11.3 Members should avoid discussion of the merits of the case at such meetings. The appropriate place to do this is at the Planning Committee itself.

11.4 It is essential that Members and Officers ensure that anyone who sees them visit the site is not led to believe that a decision has been taken on the visit, or that conclusive views have been reached.

## 12.0 REVIEW OF THE DECISIONS

12.1 Throughout the year, arrangements will be made for Members to visit about 10 sites of implemented planning permissions throughout the Borough in order that the quality of ~~outcomes decisions~~ can be assessed and reviewed.

12.2 The outcome of this review will be formally considered by the Planning Committee and any amendments to ~~existing policy or~~ practice will be identified.

12.3 It should include examples from a broad range of categories, such as:-

- major and minor development
- permitted departures
- upheld appeals
- listed building works and
- enforcement cases.

### 13. COMPLAINTS AND RECORD KEEPING

- 13.1 In order that any complaints can be fully investigated, record keeping will be complete and accurate. In particular, every planning application file will contain a full and accurate account of events throughout its life, particularly the outcomes of meetings or significant telephone conversation. It should be possible for someone not involved with the application to understand what the decision was and how and why it was reached.
- 13.2 The same principles of good record keeping will be observed in relation to enforcement and Development Plan matters. Monitoring of record keeping will be undertaken on a continuous basis by the relevant Managers.

(N.B. The Council's complaints system applies to all planning related complaints).

### 14. CONFIDENTIALITY

- 14.1 It will rarely be necessary or wise to discuss planning matters on a confidential basis. All discussion and decision making should be carried out in an open and transparent way, in order that the public can be confident about the integrity of the planning system. Where it is necessary to report confidential business full reasons will be given and all involved in the decision making process will be expected to respect the confidentiality.

### 15. PLANNING OBLIGATIONS

- 15.1 A planning authority may seek to secure modifications or improvements to proposals submitted for planning permission. It may grant permission subject to conditions and, where appropriate, seek to enter into planning obligations with a developer regarding the use or development of the land concerned or of other land or buildings. To retain public confidence, such arrangements must be operated in accordance with the fundamental principle that planning permission may not be 'bought or sold'. This principle is best served when negotiations are conducted in a way which is seen to be fair, open and reasonable. A copy of the signed agreement should be placed on the public register.
- 15.2 Planning obligations are governed by Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010(as amended) should only be agreed sought where, ~~amongst other things,~~ they are:-

(a) necessary to make the development acceptable in planning terms;

(b) directly related to the development; and

(c) fairly and reasonably related in scale and kind to the development. ~~(a) necessary to make the proposal acceptable in land use terms~~

~~(b) relevant to planning~~

~~(c) directly related to the proposed development~~

~~(d) fairly and reasonably related in scale and kind to the proposed development~~

~~(e) reasonable in all other respects.~~

Unacceptable development should never be permitted because of unnecessary or unrelated benefits offered by the applicant nor should such provisions be used to compensate for shortfalls in exiting levels of provision unrelated to the development proposal.

15.3 Used properly, obligations may enhance the quality of development and ensure that infrastructure which is necessary to serve the development is in place at the appropriate time. Infrastructure includes facilities providing public services such as schools, NHS properties, highways capacity roads, pedestrianisation, cycleways, street furniture and lighting, community facilities, amenity areas and landscaping.

~~15.4 Further detail can be found in Circular 1/97 "Planning Obligations" and the "Statement of Requirements for Developer Contributions in Leicestershire" produced by the County Council, Leicestershire District Councils and other service providers in the County, and approved by Melton Borough Council in June 2001.~~

### **MEMBERS' PROTOCOL DEALING WITH PLANNING MATTERS**

Planning issues, and in particular, development proposals often raise concern locally. As such, there is a need for Members to have direct contact with Case Officers, to obtain the factual information quickly. This Protocol sets out the parameters for such contact.

#### **Planning and Related Applications:**

Contact with the Case Officer should be limited to requests for factual information with regard to development proposals. Advice may also be sought as to the progress of the application and the nature of consultation responses received.

Whilst Members are encouraged to discuss their concern with the Case Officer, no pressure should be put on that Officer to make a particular recommendation.

If Members have concerns as to the information received or advice given by the Case Officer, then the matter should be discussed in the first instance with the Head of Regulatory Services and, if unresolved, then the Chief Executive.

Given the nature of the job, Officers are often out on site. Members are therefore advised to telephone to make an appointment before calling in.

#### **Planning Enforcement:**

It is the Government's view that the integrity of the development control process depends on the local planning authority's readiness to take effective enforcement action when it is essential and to this end, the Government has provided a range of powers for enforcement.

The circumstances surrounding a breach of planning control vary considerably and a course of action needs to be carefully planned before it is embarked upon.

In considering the need for enforcement action, Members should bear in mind that it is not an offence to carry out development without first obtaining planning permission. Whilst this is clearly unsatisfactory, there may be occasions, particularly in the case of householder development, where works have been undertaken under the impression that they are "permitted development". Before initiating formal action therefore there is always a need to understand the background to any case and to provide the opportunity for the owner or occupier to remedy any breaches voluntarily.

Our Enforcement Concordat also requires the Council to provide businesses with the opportunity to remedy breaches of planning control without recourse to legal action.

Enforcement investigation has the potential to become a criminal matter. As such, any action taken during the course of investigations must comply with the relevant legislation or the Council could be prosecuting the case by default. In order to protect the Council's position when dealing with enforcement matters, Members are strongly advised to:

- ensure that at no time does any action on their part prejudice the Council's position.
- restrict any enquiries relating to specific issues to matters of fact or general progress of the case.
- acknowledge that enforcement cases are dealt with in accordance with the Council's adopted enforcement policy.

~~The role of the Enforcement Officer is to establish the facts and ascertain whether any matter brought to his/her attention is actionable under planning legislation. The action taken is determined either by Committee or, The Head of Regulatory Services under delegated powers Enforcement Officer or the Solicitor to the Council using their delegated powers.~~

If Members are unhappy with the way a case is progressing, the matter should be discussed with the Head of Regulatory Services or the Solicitor to the Council, as appropriate, in the first instance and, if unresolved, then the Chief Executive.



## APPENDIX 2

### **UNREASONABLE BEHAVIOUR: A SUMMARY OF THE CRITERIA FROM NATIONAL PLANNING PRACTICE GUIDANCE EXTRACT FROM CIRCULAR 8/93**

**Appellants** are at risk of an award of costs against them if, for example, they:

- ~~(1) fail to comply with normal procedural requirements for inquiries or hearings; do not provide a pre-inquiry statement when asked to do so, if the proceedings have to be adjourned or are unnecessarily prolonged; or are deliberately or wilfully unco-operative, such as refusing to discuss the appeal or provide requested, necessary information (paragraph 3 of Annex 2, and Annex 4);~~
- ~~(2) fail to pursue an appeal or attend an inquiry or hearing (paragraph 5 of Annex 2);~~
- ~~(3) introduce new grounds of appeal, or new issues, late in the proceedings (paragraph 3 of Annex 2);~~
- ~~(4) withdraw the appeal, or legal grounds in an enforcement appeal, after being notified of inquiry or hearing arrangements, without any material change in circumstances (paragraph 13 of Annex 1, paragraphs 6 to 11 of Annex 2 and paragraphs 4 to 5 of Annex 4);~~
- ~~(5) pursue an appeal which obviously had no reasonable prospect of success, incurring one which clearly "flies in the face" of national planning policies (paragraph 11 of Annex 1 and paragraphs 1 to 6 of Annex 3).~~

**Planning authorities** are at risk of an award of costs against them, on appeal, if for example, they:

- ~~(1) (1) fail to comply with normal procedural requirements for inquiries or hearings, including compliance with relevant Regulations (paragraph 4 of Annex 2, and Annex 4);~~
- ~~(2) Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:
  - ~~• preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.~~
  - ~~• failure to produce evidence to substantiate each reason for refusal on appeal~~
  - ~~• vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.~~
  - ~~• refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead~~
  - ~~• acting contrary to, or not following, well-established case law~~~~

•persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable

•not determining similar cases in a consistent manner

•failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances

•refusing to approve reserved matters when the objections relate to issues that should already have been considered at the outline stage

•imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions and obligations

•requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework, on planning conditions and obligations

•refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal

•not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.

•if the local planning authority grants planning permission on an identical application where the evidence base is unchanged and the scheme has not been amended in any way, they run the risk of a full award of costs for an abortive appeal which is subsequently withdrawn

- ~~(2) — fail to provide evidence, on planning grounds, to substantiate each of their reasons for refusing planning permission, including reasons relying on advice of statutory consultees (paragraphs 8 to 20 of Annex 3), or to demonstrate that they had reasonable grounds for considering it expedient to issue an enforcement notice (paragraphs 23 and 24 of Annex 3);~~
- ~~(3) — fail to take into account relevant policy statements in departmental guidance or relevant judicial authority (paragraphs 10 and 11 of Annex 1 and paragraphs 8 and 22 of Annex 3);~~
- ~~(4) — refuse to discuss a planning application or provide requested information, or seek additional information, as appropriate (paragraphs 26 to 28 of Annex 3);~~
- ~~(5) — refuse permission for a modified scheme when an earlier appeal decision indicated this would be acceptable, and circumstances have not materially changed (paragraph 16 of Annex 3); —~~

- ~~(6) fail to carry out reasonable investigations of fact, or to exercise sufficient care, before issuing an enforcement notice (paragraphs 22 and 28 of Annex 3);~~
- ~~(7) at a late stage, introduce an additional reason for refusal, or abandon a reason for refusal, or withdraw an enforcement notice unjustifiably (paragraphs 4 and 12 to 16 of Annex 2, and paragraph 22 of Annex 3);~~
- ~~(8) impose conditions which are unnecessary, unreasonable, unenforceable, imprecise or irrelevant (paragraph 20 of Annex 3);~~
- ~~(9) pursue unreasonable demands or obligations in connection with a grant of permission (paragraphs 16 and 17 of Annex 1 and paragraphs 11 and 18 of Annex 3);~~
- ~~(10) fail to renew an extant or recently expired planning permission, without good reason (paragraph 19 of Annex 3);~~
- ~~(11) unreasonably refuse to grant permission for reserved matters or pursue issues settled at outline stage (paragraph 17 of Annex 3).~~

## APPENDIX 3

### PROTOCOL FOR THE REQUESTING AND CONDUCT OF SITE INSPECTIONS

#### PART 1: REQUESTING OF SITE INSPECTIONS

1. Members will request a site inspection as early as possible in the application process – and preferably at the same time it is 'called in' to the Committee (where applicable). A site inspection will only be requested at the Committee itself if a physical aspect of the application is not already addressed by the report is raised.
2. Members will explain why a site inspection is considered to be necessary. The reasons might be:
  - (a) To ensure an understanding of the details of the application in respect of other buildings (e.g. window-window relationships).
  - (b) To acquaint the Committee with the proposals prominence in the landscape.
  - (c) To ensure that the Committee is familiar with the context within which an application is proposed (e.g. the surroundings of an 'infill' plot in a Conservation Area).

#### PART 2: CONDUCT OF THE SITE INSPECTION

1. Site visits will be carried out prior to the Committee Meeting and will not constitute a part of the meeting.
2. The site visit will consist of an inspection by Members of the Planning Committee and the Ward Member(s) only, accompanied by the Head of Regulatory Services (or their representative). The inspection should be uninterrupted (ie. without participation of the applicant/agent and or objectors/supporters or any representatives of the local community although they may be present).
3. The Chairman will invite the Head of Regulatory Services (or his representative) to describe the proposal. She/he will explain:
  - What is proposed
  - Where it will be positioned on the site (including details of access, windows)
  - What physical features that will be affected by the proposal (e.g. any trees or hedges requiring removal, any demolition etc.)
4. Members of the Committee will be invited to ask any questions of clarification of the Head of Regulatory Services (or their representative) or any other party, but should not express their opinion on the merits of the application, nor enter into any debate on the merits of the application with other Members.
5. For particularly contentious applications objectors/supporters may be at the site (or gathered on public land nearby) and will be looking to make representations verbally to Members or to hand out material to support their case. In these instances Members (supported as necessary by officers) should explain that the purpose of their visit is to view the site and its surroundings and that they cannot enter into any discussion in respect of the merits of the application, and cannot accept any written or other material.

However Members may wish to receive suggestions of further vantage points from the persons present.

6. If the applicant/agent needs to be present to provide access to the site, they should be requested to allow Members to view unaccompanied. An exception to this would be where the applicant/agent is required to show the Members around – for instance for security purposes or where the inspection involves looking inside an occupied building. In such cases the applicant/agent will be asked not to speak on any issues concerning the merits of the application.
7. The Chairman will ask the Committee if they wish to view the site from any other vantage points.

