

## Planning Code of Practice for Members

### Introduction

Hackney has adopted a development plan that sets out how the Council intends the borough to evolve; this plan along with the Supplementary Planning Guidance describes what developments are likely to be permitted.

The planning process exists to ensure that developments are in line with the Borough's policies and while many minor applications are dealt with by officers under delegated authority, major schemes and those raising substantial objections are determined by Planning Sub-Committee made up of elected Members.

The Planning Code of Practice for Members provides guidance on how elected Members of the Council's Planning Sub Committee must conduct themselves when determining any application before them, both in the lead up to and at the Sub-Committee meeting itself.

This Code is based on the Council's Members' Code of Conduct which sets out the parameters of acceptable behaviour for Members. The Planning Code of Practice and the Members' Code of Conduct should therefore be read side by side. The Members' Code of Conduct can be found within the Council's Constitution.

The key objectives of this Code are to ensure that Members of the Planning Sub-Committee act reasonably and openly when dealing with matters that are before them and protect the Council and individual Members from allegations of unfairness, findings of maladministration and any legal challenge.

If at any time it appears that the rules and procedures set out in this document are not being followed, the Legal Adviser and/or Governance Services Officer will bring this to the attention of the Chair, who will take appropriate action. The matter may also be brought to the attention of the Corporate Director of Legal, HR and Regulatory Services.

#### **1. How to avoid a conflict of interest and still assist your constituents**

1.1 Planning Sub-Committee Members have to retain an open mind on any application as they are a part of the decision making process and cannot be seen to side with either the applicant or those who are making representations at the meeting at which the application would be determined. Adhering to the following rules will also ensure that public confidence in the Sub-Committee is maintained and serve to minimise the prospect of non-planning related matters affecting the judgment of Sub-Committee Members.

1.2 As decision makers, Sub-Committee Members should neither be seen

to be pre-judging the application, nor to be influenced by those with whom they have a special relationship such as fellow Council Members, at any stage prior to determination. Sub-Committee Members should similarly avoid making public statements as to their support of, or opposition to, any application.

- 1.3 Where Sub-Committee Members receive lobbying material through the post or by email about an application coming before the Planning Sub-Committee they should forward it to Governance Services as soon as they realise it is lobbying material. If a Sub-Committee Member is approached by an individual or an organisation in relation to a particular application on the agenda of an upcoming meeting, the Sub-Committee Member should advise the person or organisation that it is not appropriate for them to personally comment on the application but that the person or organisation may:
- write to the Planning Service concerning the particular application who will then respond and update the person or organisation accordingly.
  - contact Governance Services to request to speak at the Sub-Committee meeting. Such representation must be received by 4 pm the day prior to a Sub-Committee meeting. Any request to speak may be refused if the representation is not received by the deadline;
  - contact an alternative Member of the Council who is not to be part of the Sub-Committee meeting at which the application will be heard.
- 1.4 Council Members should represent the best interests of residents. Sometimes they may find themselves in a difficult situation where they are sent lobbying material. If a Council Member finds themselves in such a situation they need to decide whether they wish to sit on the Sub-Committee and hear the application or to represent the interests of their residents.
- 1.5 Sub-Committee Members can hear applications from within their particular ward.
- 1.6 If a Member is offered an inducement, or is placed under pressure or is intimidated to make a decision in a particular way on an application, they must notify the Corporate Director of Legal, HR and Regulatory Services.
- 1.7 If Sub-Committee Members are under any doubt as to the implications of a view which they might have expressed or a role which they might have played on a planning matter before going to the Sub-Committee meeting, they should seek advice from the Corporate Director of Legal, HR and Regulatory Services in advance of the relevant

meeting or from the Legal Adviser to the Planning Sub-Committee before the meeting begins.

## **2. When to declare an interest?**

2.1 In line with the provisions of the Council's Code of Conduct for Members, every Member of the Council has a duty to notify the Council's Monitoring Officer in writing of any disclosable pecuniary interests they may have within 28 days of:

- (a) the Code being adopted by the Council; or
- (b) the Member's election or appointment (if that is later).

In addition, subject to agreement with the Monitoring Officer that the interest is a sensitive one as defined in the Members' Code of Conduct, a Member or voting co-optee has a duty, within 28 days of becoming aware of any new pecuniary interest or any change to any pecuniary interest notified to the Monitoring Officer, to notify the Council's Monitoring Officer in writing of that new pecuniary interest or change.

## **2.2 Disclosable pecuniary interest**

2.3.1 As a member of the Council, you have a disclosable pecuniary interest if it is of a description specified in regulations made by the Secretary of State and either:

- (a) it is an interest of yours, or
- (b) it is an interest of:
  - (i) your spouse or civil partner;
  - (ii) a person with whom you are living as husband and wife, or
  - (iii) a person with whom you are living as if you were civil partners

and you are aware that that other person has the interest.

## **3. Pecuniary interests in matters considered at meetings**

3.1 If you attend a meeting including a Planning Sub-Committee meeting and are aware that you have a disclosable pecuniary interest in any matter to be considered, or being considered, at that meeting, you must - subject to paragraph 6.1 below – disclose that interest to the meeting.

3.2 If any doubt exists in a Sub-Committee Member's mind, they are advised to seek advice from the Corporate Director of Legal, HR and Regulatory Services or their representative in advance of the Sub-

Committee meeting, or from the Legal Adviser to the Sub-Committee before the start of the meeting. In the final analysis, the duty to declare and the decision as to whether an interest should be disclosed rests with the Member, not with Officers.

#### **4. What to do when a disclosable pecuniary interest is declared?**

4.1 Once you have disclosed a pecuniary interest at the meeting, you may **not** – unless you have obtained a dispensation from the Council's Monitoring Officer – (i) participate, or participate further, in any discussion of the matter at the meeting; or (ii) participate in any vote, or further vote, taken on the matter at the meeting.

4.2 Additionally, you will be excluded from a meeting while any discussion or vote takes place that you are not permitted to participate in, as a result of paragraph 4.1 above.

4.3 Restrictions in paragraphs 4.1 and 4.2 above do not apply where you attend the meeting for the purposes of answering questions or otherwise giving evidence relating to that decision, action or matter.

#### **5. Dispensation**

5.1 As a Member of the Council, you may submit a written request to the Monitoring Officer well in advance of the meeting for dispensation relieving you from the restrictions on a participation in and voting on a disclosable pecuniary interest subject to the provisions set out in the Members' Code of Conduct. Some requests may need to be referred to Standards Committee for a decision. (See separate procedure for granting dispensation).

5.2 It is important to note that the rules relating to declarations of interest apply equally to any Councillor who may from time to time wish to attend a meeting of the Planning Sub-Committee and speak on a particular matter. Each Member who attends a meeting must make an assessment of whether they have an interest in the matter under discussion, whether they intend to participate in proceedings or not. However, if a Member has a disclosable pecuniary interest they must withdraw from the meeting room for the duration of the discussion on that item subject to paragraph 4.3 above where a Member wishes to answer questions or give evidence. However, if a Member who has a disclosable pecuniary interest does not wish to speak, they must leave the room when the agenda item is under discussion.

#### **6. Predetermination or bias**

6.1 Members must hear all planning applications with an open mind. They must not make up their mind on an application before they have heard the full application and any representations made for or against it.

- 6.2 Where you have been involved in campaigning in your political role on an issue which does not impact on your personal and/or professional life, you should not be prohibited from participating in a decision in your political role as a Member. You may have even directly or indirectly expressed a view on a matter which may be relevant to a decision. However, you should avoid placing yourself under any financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
- 6.3 When making a decision in such situations, you should consider the matter with an open mind and on the facts before the meeting at which the decision is to be taken. If a Member has made up their mind before the meeting they should therefore not hear the application.
- 6.4 Where a planning matter is under consideration relating to EITHER
- an external body that you sit on as a Member, or
  - an individual whom you actively engage in supporting, or
  - an organisation which you actively engage in supporting,

then such an interest must be declared and you should not participate in the meeting to discuss or vote on the matter. See 'When to Declare an Interest' in paragraph 2.1 above. By becoming involved in a planning application prior to the Sub-Committee meeting other than to read the Planning Officer's report and any additional documentation, the Member risks the Sub-Committee decision being challenged or overturned on appeal.

## **7. Decision Making – Permitted Considerations**

- 7.1 Members should only consider the merits of an application as set out before the Sub-Committee, as allowed for under the relevant legislation, before determining whether or not to approve an application with or without additional conditions. Sub-Committee Members must not give weight to non-planning matters that may be raised by any party involved in the Sub-Committee meeting.
- 7.2 Further, an applicant or objector may not raise any substantial new information at a meeting (including by way of correspondence, other documents or photographs) at the Sub-Committee meeting without due notice and agreement by the Chair of the Sub-Committee and all parties attending the meeting. Any attempt by applicants or objectors (or their agents) to introduce such information without the necessary agreement is not permitted.
- 7.3 Applications must be determined in accordance with the relevant legislation and the Council's policy statement.
- 7.4 If a decision of the Planning Sub-Committee is seen to be made on

other than sound permitted grounds it could be open to legal challenge, and if the court deems the decision to be flawed, it may be overturned. This could have serious cost implications for the authority.

- 7.5 Any decision by the Sub-Committee which is not in accordance with the Officer's recommendation(s) must be substantiated by reasons, based on the relevant legislation and the Council's policy statement, and these must be agreed by the Sub Committee and included in the minutes of the meeting by the Governance Services Officer. The Legal Adviser will provide appropriate advice to the Sub-Committee as required.

## **8. Site Visits Protocol**

- 8.1 Members can ask a planning officer to arrange site visits in respect of applications to be determined by the Sub Committee, Such visits may be with or without a planning officer in attendance.
- 8.2 If a site visit is required the Member attending should advise Governance Services of the time/date of the site visit, those Members in attendance and any other relevant information.
- 8.3 Members are reminded that they are required to retain an open mind on applications and must not discuss or make a decision when undertaking site visits.

## **9. Members' Training**

- 9.1 All Members of the Planning Sub Committee **MUST** attend appropriate and ongoing training before exercising their right to be involved in the decision making process at a Sub-Committee meeting.

## **10. Behaviour at Meetings**

- 10.1 Members of the Sub-Committee who are not present for the entirety of a particular item for whatever reason must refrain from participating in the discussion on that item and must not be involved in the decision making process.
- 10.2 Members must be seen to act fairly. They must not discuss, or appear to discuss, any matter with members of the public during the course of the meeting or in the lead up to it. Nor should Members accept letters or documents from members of the public at any time before or during the meeting, in case this is misinterpreted.
- 10.3 Councillors who are not Members of the Planning Sub-Committee may only speak at a Sub-Committee meeting if they have made a representation or are acting on behalf of someone who has. Councillors should sit separately from the Members of the Planning Sub-Committee and they should declare whether they have had any

contact with the applicant/objector/property owner or their agents and whether they are speaking on behalf of a third party and if so, who.

- 10.4 Councillors who are not Members of the Planning Sub-Committee must not communicate with the Members who are part of the Sub-Committee in any other manner than that described above in the lead up to or during the course of the Sub-Committee meeting.

## **11. Political Whips**

- 11.1 Proceedings are quasi-judicial and should never run on party political lines. Members should neither be whipped nor lobbied by other Members. Members are advised that any political group meeting prior to the Planning Sub-Committee meeting must not be used to decide how Members determine items before the Planning Sub-Committee meeting.

## **12. Members as Community Advocates**

- 12.1 Members who are not sitting on the Planning Sub-Committee may represent the interests of their constituents at that Planning Sub-Committee meeting.
- 12.2 A Member may advocate on behalf of their constituents and may stay in the meeting room after making representations.
- 12.3 A Member who has a disclosable pecuniary interest in an application before the Planning Sub-Committee may speak at the meeting about their objection and their constituents' objections to the application. The Member must however, then leave the meeting room when the application is being considered unless they have been granted dispensation.

## **13. Breach of the Code**

- 13.1 Where a Member believes the Code has been breached, this must be brought to the attention of the Corporate Director of Legal, HR and Regulatory Services.

## **14. Offences**

- 14.1 It is a criminal offence if a Member or voting co-optee fails, without reasonable excuse, to disclose their own or their spouse's or civil partner's pecuniary interest within 28 days of their taking office or fails to disclose a disclosable pecuniary interest that they are aware of at a meeting where any matter to be considered relates to their interest.

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