

CARLISLE CITY COUNCIL

Report to:- **Carlisle City Council**

Date of Meeting:- **6 November 2007**

Agenda Item No:-

Public

Title:- **MEMBERS PLANNING CODE OF GOOD PRACTICE**

Report of:- **DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES**

Report reference:- **LDS.94/07**

Summary:-

This report recommends amendments to the Council's Members Planning Code of Good Practice to make it consistent with the Carlisle City Council Code of Conduct for Members, which the Council adopted on the 17 July 2007. This report has been considered by the Development Control Committee at its meeting on the 28 September 2007, where it was agreed that the revised Members Planning Code of Good Practice should be recommended to the City Council for adoption.

Recommendation:-

That the revised Members Planning Code of Good Practice, amended to make it consistent with the City Council's Code of Conduct for Members, as appended to Report LDS.94/07 be approved and adopted by the City Council.

J M Egan

Director of Legal and Democratic Services

18 October 2007

LDS.94.07 Members Planning Code of Good Practice

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: None

CARLISLE CITY COUNCIL

Report to:- **Development Control Committee**

Date of Meeting:- **28 September 2007**

Agenda Item No:-

Public	Information	Delegated: Yes
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Accompanying Comments and Statements	Required	Included
Environmental Impact Statement:	No	No
Corporate Management Team Comments:	No	No
City Treasurers Comments:	No	No
City Solicitor & Secretary Comments:	No	No
Head of Personnel Services Comments:	No	No

Title:- **MEMBERS' PLANNING CODE OF GOOD PRACTICE**

Report of:- **Director of Legal & Democratic Services**

Report reference:- **LDS.79/07**

Summary:-

This report recommends amendments to the Council's Members' Planning Code of Good Practice to make it consistent with the Carlisle City Council Code of Conduct for Members adopted on 17 July 2007.

Recommendation:-

That Members approve the revised Members' Planning Code of Good Practice as appended to this Report and recommend it to Council for adoption.

Contact Officer: **Mark Lambert**

Ext: **7019**

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: None

1.0 Introduction

Members will be aware that the Council adopted a new Code of Conduct for Members on 17 July 2007. Amongst other things the new Code of Conduct introduced revised rules relating to Members' right to remain in a meeting and speak despite having a personal and prejudicial interest providing that members of the public had the same right to make representations. Under the previous Code of Conduct Members did not have such a right and had to vacate the Meeting and were unable to make representations.

To be consistent with the new general Code of Conduct, the Members' Planning Code of Good Practice needs to be amended to reflect the changes outlined in the preceding paragraph. There is also a minor legislative change which needs to be reflected. A copy of the revised Members' Planning Code of Good Practice is attached to this Report with the amendments shown by tracked changes. The final version would not show the said tracked changes but would be a 'clean' document.

2.0 Recommendation

- 2.1 That Members approve the revised Members' Planning Code of Good Practice as appended to this Report and recommend it to Council for adoption.

John Egan
Director of Legal & Democratic Services

Contact Officer: Mark Lambert

Ext: 7019

CARLISLE CITY COUNCIL

MEMBERS' PLANNING CODE OF GOOD PRACTICE

Carlisle City Council – Members’ Planning Code of Good Practice

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Background

This Code of Good Practice has been prepared in response to the Local Government Association's Guidance Note, on the preparation of Local Codes of Good Practice on Planning Matters, in the light of the introduction of the new ethical framework and in consultation with the District Audit Service, Local Government Ombudsman and the Standards Board for England. It updates the City Council's former Supplementary Guidance Note for dealing with Planning Matters. [The Code has been further amended to reflect the Council's revised Code of Conduct as adopted on 17 July 2007.](#)

Introduction

The aim of this Code of Good Practice: to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

The key purpose of Planning: to control development in the public interest.

Your role as a Member of the Planning Authority: is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.

When the Code of Good Practice applies: this code applies to Members at all times when involving themselves in the planning process. (This includes, where applicable, when part of decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with Officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or one of his or her staff, and preferably well before any meeting takes place.

1.0 Relationship to the Members' Code of Conduct

- 1.1 **Do** apply the rules in the Members' Code of Conduct first, which must be always be complied with.
- 1.2 **Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not abide by this Code of Good Practice, you may put:
- the Council at risk of proceedings on the legality or maladministration of the related decision; and
 - yourself at risk of either being named in a report made to the Standards Committee or Council or, if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Standards Board for England.

2.0 Development Proposals and Interests under the Members' Code

- 2.1 **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with Officers and other Members. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter (though note that (unless your interest is prejudicial) you only need disclose a personal interest in a matter which relates to a body of which you are a member or in general control and to which you have been appointed by the Council or any body exercising functions of a public nature of which you are a member or exercising general control when you address the meeting on that business). Members may wish to use the disclosure form that is available for full Council meetings to ensure that the details of the minute are correct.
- 2.2 **Do** then act accordingly. Where your interest is personal and prejudicial:-
- 2.3 **Don't** participate, or give the appearance of trying to participate in the making of any decision on the matter by the Planning Authority.
- 2.4 ~~**Don't try to represent ward views, get another Ward Member to do so instead.**~~
- 2.45 **Don't** get involved in the processing of the application.
- 2.56 **Don't** 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 Councillor. This would include, where you have a personal and prejudicial interest in a proposal, using your position to discuss that proposal with Officers or Members when other members of the public would not have the same opportunity to do so.
- 2.67 **Do** be aware that you are able to attend the meeting of the Development Control Committee to make representations, answering questions or giving evidence provided it is an item of business that the public are also allowed to attend the Meeting for the same purpose. Once you have made your representations **do** leave the Meeting.~~**Do be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate Officer, in person or in writing, the Code places greater limitations on you in representing that proposal than would apply to a normal member of the public.**~~
- 2.78 **Do** notify the Monitoring Officer in writing of your own application and note that:

- notification to the Monitoring Officer should be made no later than submission of the application;
- the proposal will always be reported to the Committee as a main item and not dealt with by Officers under delegated powers; and
- it is advisable that you employ an agent to act on your behalf on the proposal in dealing with Officers ~~and any public speaking at Committee.~~

3.0 Fettering Discretion in the Planning Process

3.1 **Don't** fetter your discretion and therefore your ability to participate in planning decision making at this Council by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group) on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the Planning Authority and of your hearing the Officer's presentation and evidence and arguments on both sides.

3.2 **Fettering your discretion** in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination, or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

3.3 **Do** be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits).

~~3.4 Do also be aware that, whilst the Members' Code of Conduct provides for a presumption that you may regard yourself as not having a prejudicial interest in matters which relate to the organisations mentioned below, you must exercise your discretion in deciding whether or not to participate in each case and where you have been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of:~~

- ~~—another Local or Public Authority of which you are a member;~~
- ~~—a body to which you have been appointed or nominated by the Council as its representative; or~~
- ~~you are a trustee or company director of the body submitting the proposal and were appointed by the Council you should always disclose a prejudicial as well as personal interest and withdraw.~~

3.54 **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the parish council, for example, or both a District and County Councillor), provided:

- the proposal does not ~~substantially effect~~affect the ~~well-being or~~ financial standing of the consultee body or relate to the determining of any approval, consent, licence, permission or registration in relation to the consultee body;
- you make it clear to the consultee body that:
 - your views are expressed on the limited information before you only;
 - you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to

the whole community and not just to the people in that area, ward or parish as and when it comes before the Committee and you hear all of the relevant information;

- you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee; and
- you disclose the personal interest regarding your membership or role when the Committee comes to consider the proposal.

3.56 **Don't** speak and vote on a proposal where you have fettered your discretion. You do not have to withdraw, but you may prefer to do so for the sake of appearances.

3.67 **Do** explain that you do not intend to speak and vote because you have, or you could reasonably be perceived as having, judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes. Members may wish to use the disclosure form that is available for full Council meetings to ensure that the details of the minutes are correct.

3.78 **Do** take the opportunity to exercise your separate speaking rights as a Ward Member where you have represented your views or those of local electors and fettered your discretion, ~~but do not have a personal and prejudicial interest.~~

Where you do:

- advise the proper Officer or Chairman that you wish to speak in this capacity before commencement of the item;
- remove yourself from the member seating area for the duration of that item; and
- ensure that your actions are recorded.

4.0 Contact with Applicants, Developers and Objectors

4.1 **Do** refer those who approach you for planning, procedural or technical advice to Officers.

4.2 **Don't** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself, but should request that either the Director of Development Services, the Development Control Manager or Head of Planning Services organise it. The Officer will then ensure that those present at the meeting are advised from the start that the discussions will not bind the Authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.

4.3 **Do** otherwise:

- follow the rules on lobbying;
- consider whether or not it would be prudent in the circumstances to make notes when contacted; and
- report to either the Director of Development Services, the Development Control Manager or Head of Planning Services any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them and ensure that this is recorded on the planning file.

In addition in respect of presentations by applicants/developers:

4.4 **Don't** attend a planning presentation unless an Officer is present and/or it has been organised by Officers.

- 4.5 **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- 4.6 **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the Development Control Committee of the City Council.
- 4.7 **Do** be aware that a presentation is a form of lobbying and you must not express any strong view, or state how you or other Members might vote.

5.0 Lobbying of Councillors

- 5.1 **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and therefore your ability to participate in the Committee's decision making to express an intention to vote one way or another, or such a firm point of view that it amounts to the same thing.
- 5.2 **Do** remember that your overriding duty is to the whole community not just to the people in your ward area and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- 5.3 **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and remember to register the gift or hospitality [and declare it as a personal interest as required by the Code of Conduct.](#)
- 5.4 **Do** copy or pass on any lobbying correspondence you receive to either the Director of Development Services, the Development Control Manager or Head of Planning Services at the earliest opportunity.
- 5.5 **Do** promptly refer to either the Director of Development Services, the Development Control Manager or Head of Planning Services any offers made to you of planning gain or constraint of development through a proposed Section 106 Planning Obligation, or otherwise.
- 5.6 **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate Officers to follow the matter up.
- 5.7 **Do** note that, unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this Planning Code of Good Practice through:
- listening or receiving viewpoints from residents or other interested parties;
 - making comments to residents, interested parties, other Members or appropriate Officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
 - seeking information through appropriate channels; or
 - being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

6.0 Lobbying by Councillors

- 6.1 **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby, promote or oppose planning proposals. If you do, you will

have fettered your discretion and are likely to have a personal and prejudicial interest and have to withdraw [\(subject to your right to make representations to the Committee described in paragraph 2.6\)](#).

- 6.2 **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society, but disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal.
- 6.3 **Don't** excessively lobby fellow Councillors regarding your concerns or views, nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- 6.4 **Don't** decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue.
- 7.0 Site Visits**
- 7.1 **Do** try to attend site visits organised by the Council where possible.
- 7.2 **Don't** request a site visit unless you feel it is strictly necessary because:
 - particular site factors are significant in terms of the weight attached to them relative to other factors, or the difficulty of their assessment in the absence of a site inspection; or
 - there are significant policy or precedent implications and specific site factors need to be carefully addressed.
- 7.3 **Do** ensure that any information which you gained from the site visit is reported back to the Committee, so that all Members have the same information
- 7.4 **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- 7.5 **Do** ask the Officers at the site visit questions, or seek clarification from them on matters which are relevant to the site inspection.
- 7.6 **Don't** hear representations from any other party, with the exception of the Ward Member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the Authority and direct them to or inform the Officer present.
- 7.7 **Don't** express opinions or views to anyone.
- 7.8 **Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
 - you feel it is essential for you to visit the site other than through attending the official site visit,
 - you have first spoken to either the Director of Development Services, the Development Control Manager or Head of Planning Services about your intention to do so and why (which will be recorded on the file); and
 - you can ensure you will comply with these good practice rules on site visits.

8.0 Public Speaking at Meetings

- 8.1 **Don't** allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- 8.2 **Do** ensure that you comply with the Council's procedures in respect of public speaking.
- 9.0 Officers**
- 9.1 **Don't** put pressure on Officers to put forward a particular recommendation. This does not prevent you from asking questions or submitting views to either the Director of Development Services, the Head of Planning Services or the Development Control Manager, which may be incorporated into any Committee report.
- 9.2 **Do** recognise that Officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with the Director of Development Services, the Head of Planning Services or those Officers who are authorised by either of them to deal with the proposal at a Member level.
- 9.3 **Do** recognise and respect that Officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, Planning Officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.
- 10.0 Decision Making**
- 10.1 **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through Officer delegation, that your reasons are recorded and repeated in the report to the Committee.
- 10.2 **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- 10.3 **Do** comply with [Section 54A of the Town and Country Planning Act 1990](#) [Section 38\(6\) of the Planning and Compulsory Purchase Act 2004](#) and make decisions in accordance with the Development Plan, unless material considerations indicate otherwise.
- 10.4 **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you request that further information. If necessary, defer or refuse.
- 10.5 **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the Officers' introduction to the matter.
- 10.6 **Do** have recorded the reasons for Committee's decision to defer any proposal.
- 10.7 **Do** make sure that if you are proposing, seconding or supporting a decision contrary to Officer recommendations or the Development Plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

11.0 Training

- 11.1 **Do** endeavour to attend any specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans and thus assist you in carrying out your role properly and effectively.
- 11.2 **Do** participate in the review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations.

**EXCERPT FROM THE MINUTES OF THE
DEVELOPMENT CONTROL COMMITTEE
HELD ON 28 SEPTEMBER 2007**

DC.102/07 MEMBERS' PLANNING CODE OF GOOD PRACTICE

The Head of Legal Services submitted report LDS.79/07 concerning the Members' Planning Code of Good Practice.

The Council had adopted a new Code of Conduct for Members on 17 July 2007 which introduced, amongst other things, revised rules relating to Members' right to remain in a meeting and speak despite having a personal and prejudicial interest providing that members of the public had the same right to make representations. Under the previous Code of Conduct Members did not have such a right and had to vacate the meeting and were unable to make representations.

The Head of Legal Services reported that the Members' Planning Code of Good Practice needed to be amended to be consistent with the new general Code of Conduct and reflect the changes outlined above. In addition, a minor legislative change required to be reflected. Members were advised that the Code of Good Practice was for guidance purposes and the definitive document was the Code of Conduct.

A copy of the revised Members' Planning Code of Good Practice was attached to the report with the amendments shown in tracked changes.

RESOLVED – That the revised Members' Planning Code of Good Practice, as appended to report LDS.79/07, be approved and recommended to the City Council for adoption.