

## Tonbridge and Malling Borough Council Members` Planning Code Of Good Practice

### 1. Introduction

1.1 This code of good practice gives advice to members when they are:

- acting as members of an area planning committee;
- taking part in a debate on a planning application or other development control matter in another area planning committee;
- acting as members of the full Council when it is determining a planning application or other development control matter;
- involved outside the committee on a planning application or other development control matter, including informal occasions such as meetings with officers or public and consultative meetings,

and use of the expression "area planning committee" should be taken to refer to the forum for any of these activities.

This code also applies to members when dealing with site-specific issues in connection with the Local Development Framework.

1.2 The aim of this code is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or is not well founded in any way. Members must make planning decisions openly, impartially with sound judgement and for clear and justifiable reasons.

1.3 This is particularly important, as planning matters will be subject to close scrutiny both because large sums of money will be at stake for applicants for planning permission and because the quality of the built and natural environment in which local residents and the wider community live and work may be irrevocably affected.

1.4 The introduction of the Human Rights Act 1998 has had implications for the planning system and has created enhanced requirements for procedural fairness, transparency and accountability in determining planning applications.

1.5 This code is intended to minimise the prospect of legal or other challenge to planning decisions. However, non-compliance without good reason could be taken into account in investigations into possible maladministration or may have implications for the standing of councillors and the council as a whole. It could also lead to a complaint to the Standards Board for England against an individual member.

## **2. Relationship with the members` code of conduct**

- 2.1 The members` code of conduct must always be complied with and the rules in that code must be applied before considering this code.
- 2.2 This code is not intended to form a part of the adopted members` code of conduct, but is a separate document, which is both supportive of the members` code and a source of expanded guidance in the particular area of planning.

## **3. Declaration of interests**

- 3.1 The members` code places requirements on councillors on the registration and declaration of their interests and participation in the business of the council in light of those interests. These requirements must be followed scrupulously and councillors should review their situation regularly. Whilst the Standards Board for England produces general guidance, and advice can always be sought from the Monitoring Officer or one of the Council's solicitors, ultimate responsibility for compliance rests with individual councillors. Part A of the Annex to this document contains information taken from the Council's code of conduct about the matters which members are required to include in their written declaration of interests and Part B contain information about personal and prejudicial interests.
- 3.2 A councillor can have a personal and prejudicial interest in a planning application, which affects him/her and/or his/her friends, relatives or employer. Examples include, but are not limited to
  - applications for minor developments relating to a property in close proximity to one owned/occupied by the councillor, a friend, relative or employer;
  - applications for major developments a more substantial distance from properties owned or occupied by one of those persons;
  - applications made by a member or a friend, relative or employer of the member.
- 3.3 If a councillor has a personal and prejudicial interest in an application then he/she:
  - must declare the existence and nature of the interest as soon as they become aware of this: wherever possible this should be done at the start of the meeting;

- must leave the room when that item is being discussed (it is not permissible to sit in the public gallery) and must not participate in, or give the appearance of trying to participate in, the making of a decision;
- must not represent ward or local views – they will need to get another member to do so instead;
- must not get involved in processing the planning application;
- must not seek any preferential treatment: this includes not using their position as a councillor to discuss a proposal with officers when other members of the public would not have the same opportunity to do so.

3.4 A personal and prejudicial interest should also be made known at informal meetings or discussions including those held with officers and other councillors.

3.5 Whilst having a personal and prejudicial interest does not prevent a councillor from seeking to explain a proposal in which they have such an interest to an appropriate officer, the members` code does mean there are greater limitations on councillors than on a member of the public.

3.6 The members` code provides that the following are not automatically personal and prejudicial interests:

- matters relating to another relevant authority of which they are a member or another public authority where they hold a position of management or control;
- matters relating to a body the councillor has been nominated to as a representative of Borough Council.

However the above remain personal interests and a councillor who has taken a leading role in the submission or negotiation of a planning proposal for one of the above organisations would still have a personal and prejudicial interest. Regard should also be had to paragraph 4 of this code in deciding whether or not to participate.

3.7 A personal interest must be declared as soon as a councillor becomes aware of it. This should, wherever possible, be at the start of a meeting. A personal interest in itself does not prevent a member from speaking and voting .

#### **4. "Pre-determination" (fettering discretion) and "apparent bias"**

4.1 If a councillor has taken a firm view on the planning matter, or appears to have made up their mind before the formal consideration of a planning application, that councillor may have formed what is called "pre-determined view" on the

matter – this used to be described as having "fettered one's discretion". A member who makes a statement in favour of or against the planning proposal in advance of the committee which will decide that application will have fettered their discretion and will not be able to participate in the decision making process.

- 4.2 In some circumstances a member might reasonably appear to a member of the public to have a pre-determined view on an application, by reason of comments made or close contact with an applicant or representor, even though this is not the case. This is described as "apparent bias" and puts a member in the same position as one who has fettered their discretion. It is important to remember that it is the public's perception which is important here.
- 4.3 If a member who has fettered their discretion takes part in the decision that will put the council at risk of a finding of maladministration. It could also lead to legal proceedings on grounds of there being a danger of bias or pre-determination or a failure to take into account all factors enabling the proposal to be considered on its specific merits. It may also give rise to a complaint to the Standards Board for England.
- 4.4 As long as a councillor does not have a personal and prejudicial interest, he/she can still act as a ward councillor and address the committee in the usual way.
- 4.5 Areas in which members need to give particular consideration are set out below.

#### ***Membership of a parish council***

- 4.6 A councillor who is also a member of a parish council which has been consulted on a planning application is not automatically debarred from participating in a planning decision at the Area Planning Committee even when they may have sat on the relevant parish planning committee. However the following key principles must be observed if a councillor is to participate in the planning decision at Borough Council level:
  - the planning application must not substantially affect the well being or financial standing of the parish council.
  - careful consideration must be given to what a councillor says at the parish meeting so that a reasonable and informed member of the public would feel they were coming to the decision at Borough Council without a fixed view. Strong opposition or support to an application at the parish meeting will debar participation at the planning decision at Borough Council.

- if speaking at the parish meeting the councillor must make it clear that what is said is based on the limited information available and will be reconsidered in the light of all information available at the area planning committee.
- Borough Councillors who are members of a parish council should avoid voting when consulted on an application at parish level.

4.7 Membership of a parish council constitutes a personal interest where the area planning committee considers an application where that parish has been consulted and this must be declared in the usual way.

### ***Lobbying by other councillors***

4.8 If you lead, represent or are a member of a group whose primary purpose is to lobby to promote or oppose a planning application, you will have fettered your discretion. Depending on your involvement you will probably also have a personal and prejudicial interest. This may be so, even if you were appointed to the body by the Borough Council.

4.9 The position in paragraph 4.8 is distinct from membership of general interest groups, which reflect a councillor's area of interest, for example the RSPB, the Ramblers' Association or a local historical society. However a personal interest should be disclosed where that body has made representations on an application. If a councillor at the time of declaring that interest is able to say that they were not involved in preparing that representation and have reserved their judgement, then the councillor will not have fettered their discretion. If they cannot, they will have fettered that discretion and may also, depending on the level of involvement, have a personal and prejudicial interest.

4.10 Councillors should not excessively lobby other councillors regarding their views on planning applications. Nor should they, outside of the area planning committee meeting, try to persuade other councillors how to vote.

4.11 Councillors should not decide or discuss how to vote on planning applications at political group meetings or lobby other members to do so. Political group meetings should never dictate how members should vote on planning applications.

### ***Lobbying of Councillors***

4.12 Lobbying is a normal and perfectly proper part of the political process. Those who may be promoting or affected by a planning decision will often be seeking to influence it through an approach to their elected ward councillor, another councillor or a member of an area planning committee. However lobbying can, where a member is a member of an area planning committee which will determine the application, lead to the integrity and impartiality of a councillor

being called into question. This can, in turn, affect the validity of a planning decision.

4.13 A Councillor who wishes to participate in the determination of a planning application should explain to persons lobbying or attempting to lobby that whilst they can listen to what is said it would prejudice their impartiality and ability to participate in the decision if they give a firm statement of how they intend to vote or express strong sympathies with a point of view in advance of the meeting. For the avoidance of doubt a councillor will not have fettered their discretion:

- by just listening to viewpoints from residents or interested parties;
- making comments which fall short of prejudging the issue;
- seeking information through appropriate channels;
- acting as a vehicle for the expression of views as a ward councillor

providing they have not committed themselves to vote in accordance with those views or that they are not acting as an advocate for a particular viewpoint.

4.14 When a councillor participates in a planning decision, their overriding duty is to the community as a whole and not just people in their ward. As decisions need to be taken impartially a councillor should not improperly favour or appear to improperly favour any person, company, group or locality.

4.15 Councillors should not accept gifts or hospitality from any person involved in or affected by a planning application. It is advisable to let the Monitoring Officer know if they feel they have been exposed to excessive lobbying or offers of gifts or hospitality linked to a planning application. It may be wise, and in the interests of the councillor, to fill in a hospitality form to record that a gift or hospitality has been offered and refused.

4.16 It is good practice for councillors to:

- forward copies of lobbying correspondence to the Director of Planning and Transportation;
- advise the Director of Planning and Transportation of any offers of planning gain or constraint on development made to them;
- comply with guidance on lobbying or attending presentations or discussions set out in paragraph 5 of this code.

## **5. Contact with applicants, developers and objectors**

- 5.1 Councillors should refer those who approach for assistance on planning, procedural or technical matters to relevant officers.
- 5.2 Councillors should avoid agreeing to formal meetings with applicants, developers or groups of objectors. If in exceptional circumstances a formal meeting is considered necessary it should be organised by the relevant officers. All parties will be advised the meeting is not a decision-making meeting.
- 5.3 The following rules should be applied in respect of presentations by applicants or developers:
- Councillors should not attend planning presentations unless organised by an officer.
  - Questions should be limited to those necessary to clarify a councillor's understanding of proposals.
  - It must be remembered that the presentation is not a part of the formal planning process. The presentation is a form of lobbying and councillors who will be determining the application should not express views on how they will vote.

## **6. Site inspections**

- 6.1 Site inspections can be a valuable part of the planning process. However they should normally only be requested where there are definite benefits, for example:
- 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.
  - there are significant policy or precedent implications and specific site factors need to be carefully addressed.
- 6.2 No hospitality should be accepted at site inspections.
- 6.3 Councillors should endeavour to keep together as a group and not engage individually in discussions with any applicants, objectors or third parties who may be present.
- 6.4 Councillors who wish to take part in the planning decision should not express views to anyone present.

- 6.5 It is acceptable to ask officers at the site visit questions or to seek clarification on matters relevant to the site inspection.
- 6.6 The site visit should be properly recorded and reported back to the committee.
- 6.7 Councillors who wish to determine an application should not enter a site subject to a planning proposal, other than as part of an official site inspection, even in response to an invitation.

## **7. Contact with officers**

- 7.1 General guidance is given in the protocol on member/officer relations in Part 5 of the Constitution and that is not repeated here.
- 7.2 Councillors should not put pressure on officers to put forward a particular recommendation. However this does not prevent a councillor asking questions or submitting views to a relevant officer.
- 7.3 Officers must act in accordance with the employee code of conduct and any relevant professional codes of conduct, for example the Royal Town Planning Institute's code of professional conduct. As a result planning officers' views will be presented on the basis of their overriding professional obligation of professional independence which may on occasion be at odds with the views, opinions or decisions of the committee or its members.

## **8. Planning applications made by councillors and officers and council development**

- 8.1 Proposals to the council by serving and former councillors and officers and their close friends and relatives can easily give rise to suspicions of impropriety. So, indeed, can proposals for a council's own development. Proposals can take the form of either planning applications or development plan proposals.
- 8.2 Councillors and officers who submit proposals should notify the Monitoring Officer of the proposal and play no part in its processing or determination and avoid contact, whether direct or indirect, with members of the committee concerning the application.
- 8.3 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in such a way that gives no grounds for accusations of favouritism. Members should carefully consider using agents to submit and take forward their own applications. These applications should not be processed in any way differently from those of other applicants, as that would be discriminatory.
- 8.4 All such proposals shall be decided by the relevant area planning committee and not dealt with by officers under delegated powers. Members considering



an application must, of course, consider whether the nature of any relationship with the member submitting the planning application requires the declaration of a personal or a prejudicial interest.

- 8.5 When an application made by a councillor comes before an area planning committee, members must make certain decisions under the code of conduct. The requirement to declare a Personal Interest arises from paragraph 8 of the Code. Having regard to decided complaints on the subject, all members of the same political group as the applicant should declare a personal interest in the application.
- 8.6 In addition all members, whether or not they are a part of that political group, must also consider whether they regard the applicant as a “friend” within the meaning of the code. This will depend on their personal circumstances and much turns upon the nature and depth of the friendship in question. For this purpose, a friend can be defined as someone well known to another and regarded with liking, affection and loyalty by that person. The Standards Board for England has suggested that members might wish to consider the following questions when considering if such a friendship exists:
- How many times do the two people meet?
  - Where do they meet?
  - Do they regularly attend the same social events?
  - Do they know each other’s families?
  - Do they visit one another’s homes?
  - Are they close or connected in other ways?
- 8.7 These questions should never be taken in isolation: it is the cumulative evidence of a close relationship that will establish a friendship. A certain amount of caution should also be exercised: most members know each other and will often attend the same functions because of their positions in the community. A level of relationship above and beyond that which usually exists between colleagues and political associates will be required to establish the existence of such a friendship.
- 8.7 Second, the next test is whether, having declared a personal interest, that interest should also be considered as prejudicial, requiring that the member leaves the room and takes no part in the determination. Paragraph 10 of the code provides that
- “... a member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest.”

- 8.8 This test has to be applied to each personal interest that has been declared. If a member decides to declare a personal interest on the basis of friendship it is probable that “a member of the public with knowledge of the relevant facts” would consider that a friendship of that degree would be likely to be so significant as to affect “the member's judgement of the public interest”. However, a personal interest arising merely from membership of the same Association should be considered separately and each member will have to judge their own activities within that association and how they relate to the applicant before deciding whether or not their interest is prejudicial.
- 8.4 Serving councillors and officers should avoid acting as agents for people pursuing a planning matter and where they do should play no part in the decision making process for that proposal. Particular arrangements may need to be made in respect of councillors whose business is, or includes, making planning applications on behalf of others.

## **9. Decision-Making**

- 9.1 Under the Council's Constitution, most decisions on planning matters are delegated to the Director of Planning and Transportation except in certain circumstances set out in the table of delegations. One of those circumstances is where a member for the relevant ward in which the application site falls, or the relevant area planning committee chairman or vice-chairman has, with reasoned justification, required that the application be determined by the relevant area planning committee. In those cases, it is imperative that members state clearly their justification for requiring an application to be reported to committee. In every case, members are advised to frame their comments in such a way as not to give any appearance of pre-disposition in respect of the matter. Members comments may have to be disclosed to the public under the Freedom of Information Act.
- 9.2 Councillors making planning decisions must:
- come to meetings with an open mind and demonstrate they are open minded;
  - comply with section 54A Town and Country Planning Act 1990 and make decisions in accordance with the development plan unless material considerations indicate otherwise;
  - not vote or take part in the meeting's discussions on a proposal unless present to hear the entire debate including any officer introduction/presentation;
  - come to a decision only after due consideration of all information reasonably required upon which to base such a decision;

- request further information if it is felt there is insufficient information before the committee to reach a decision;
- where proposing, seconding or supporting a decision contrary to officer recommendations or the development plan identify the planning reasons behind the decision before the vote is taken which may have to be justified in the event of an appeal or other challenge.

## **10. Training**

- 10.1 Councillors should not participate in decision-making meetings dealing with planning matters unless they have attended any prescribed training.

**Part A: Registration of Financial and Other Interests**

Within 28 days of election, a member must register his/her financial interests in the register maintained by the Monitoring Officer by providing written notification of -

- (a) any employment or business carried on by him/her;
- (b) the name of the person who employs or has appointed him/her, the name of any firm in which he/she is a partner, and the name of any company for which he/she is a remunerated director;
- (c) the name of any person, other than a relevant authority, who has made a payment to him/her in respect of his/her election or any expenses incurred by him/her in carrying out his/her duties;
- (d) the name of any corporate body which has a place of business or land in the authority's area, and in which the member has a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body;
- (e) a description of any contract for goods, services or works made between the authority and him/herself or a firm in which he/she is a partner, a company of which he/she is a remunerated director, or a body of the description specified in sub-paragraph (d) above;
- (f) the address or other description (sufficient to identify the location) of any land in which he/she has a beneficial interest and which is in the area of the authority;
- (g) the address or other description (sufficient to identify the location) of any land where the landlord is the authority and the tenant is a firm in which he/she is a partner, a company of which he/she is a remunerated director, or a body of the description specified in sub-paragraph (d) above; and
- (h) the address or other description (sufficient to identify the location) of any land in the authority's area in which he/she has a licence (alone or jointly with others) to occupy for 28 days or longer.

In addition, within 28 days of election a member must register his/her other interests in the register of interests by providing written notification of his/her membership of, or position of general control or management in, any -

- (a) body to which he/she has been appointed or nominated by the authority as its representative;

- (b) public authority or body exercising functions of a public nature;
- (c) company, industrial and provident society, charity, or body directed to charitable purposes;
- (d) body whose principal purposes include the influence of public opinion or policy; and
- (e) trade union or professional association.

### **Part B: Personal and prejudicial Interests**

A member must regard him/herself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given to the Monitoring Officer (see Part A above), or if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, the well-being or financial position of him/herself, a relative or a friend or -

- (a) any employment or business carried on by such persons;
- (b) any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
- (c) any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
- (d) any body listed in sub-paragraphs (a) to (e) of paragraph 15 below in which such persons hold a position of general control or management.

In this context "relative" means a spouse, partner, parent, parent-in-law, son, daughter, step-son, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons and "partner" means a member of a couple who live together.

A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

A member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest.

However, a member may, in appropriate circumstances, regard him/herself as not having a prejudicial interest in a matter if that matter relates to -

- (a) another relevant authority of which he/she is a member;
- (b) another public authority in which he/she holds a position of general control or management;
- (c) a body to which he/she has been appointed or nominated by the authority as its representative;
- (d) the functions of the authority in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the member is in receipt of, or is entitled to the receipt of such pay from a relevant authority; and
- (e) the functions of the authority in respect of an allowance or payment made under sections 173 to 176 of the Local Government Act 1972 or section 18 of the Local Government and Housing Act 1989.