

BARNESLEY METROPOLITAN BOROUGH COUNCIL
LOCAL CODE OF PLANNING CONDUCT AND GUIDANCE 2022

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1. Introduction

- 1.1 The successful operation of the planning system relies on a mutual understanding of the role of officers and Members. It also relies on each ensuring that they act in a way which is not only fair, honest and impartial but also clearly seen to be so.
- 1.2 Planning decisions can affect people's lives and therefore the community is entitled to expect the highest standards of probity and accountability in the decision making process. The process should leave no grounds for suggesting with any justification that a decision has been partial, biased or not well founded in any way.
- 1.3 Planning decisions rely on well informed judgment within a policy context provided by the statutory Development Plan. Planning law requires local planning authorities to determine all planning applications in accordance with the Development Plan (so far as material to the application), save where other material planning considerations indicate otherwise. This responsibility must be performed without undue influence or personal interest.
- 1.4 Members and local planning authorities also have a duty to take into account any representations made to the Council as a result of consultation with interested bodies or as a result of public notice or neighbour notification. In doing so it is necessary to decide which representations are material to the decision to be made, and, if so, what weight to attach to them. It is essential that each application is considered on its own merits and only material planning considerations are taken into account in reaching a decision.
- 1.5 This Local Code of Planning Conduct & Guidance applies to Members and Officers of the Council and its purpose is to ensure that decisions made are open, fair and transparent. It supplements the Council's general Codes of Conduct for Officers and Members by providing detailed guidance on the standards to be applied in relation to all planning related issues. It therefore accords with the Localism Act 2011 which requires Members to register pecuniary and other interests and for local authorities to promote and maintain high standards of conduct. It also reflects the Local Government Association's most recent guidance on Probity in Planning, which was published in December 2019.

2. The General Role and Conduct of Members and Officers

- 2.1 Members and officers have different, but complementary, roles. Both serve the public but Members are responsible to the electorate, while officers are responsible to the Council as a whole. Officers advise Members and the Council, and carry out the Council's work. They are employed by the Council, not by individual Members, and it follows that instructions may only be given to officers through a Council decision, which is often via delegated powers. Both Members and officers have responsibility to ensure that the policies of the Council are implemented wherever possible. A successful relationship between Members 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 The Localism Act 2011 introduced provisions which oblige local government members in England to register disclosable pecuniary and other interests. It makes the failure to register relevant interests or declare them when appropriate in meetings a criminal offence.

2.3 Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's (RTP) Code of Professional Conduct. Breaches of the Code may be subject to disciplinary action by the Institute. In addition to these codes, the Council's standing orders set down rules which govern the conduct of Council business.

2.4 The basis of the planning system is the consideration of private proposals for the proposed development and use of land against wider public interests. Much is often at stake in this process and opposing views are often strongly held by those involved. Whilst Members should take account of those views, they must not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.

3. The Role of Members

3.1 Under the Localism Act 2011 the monitoring officer of a Relevant Authority must establish and maintain a register of interests of members and co-opted members of the Authority. A member or co-opted member is also obliged to notify the Authority's monitoring officer of any disclosable pecuniary interests which the person has at the time the notification is given. A disclosable pecuniary interest is an interest of a relevant member or, where the relevant member is aware that the other person has the interest, an interest of their spouse or civil partner, a person with whom they are living as husband and wife and a person with whom they were living as if they were civil partners. It is a criminal offence where a member of a relevant authority fails without reasonable excuse to register or declare disclosable pecuniary interests and then duly takes part in council business or meetings.

3.2 The Council's Member Code of Conduct specifies that if a Member has a pecuniary or non-pecuniary interest in any matter to be determined at Planning Regulatory Board they must disclose that interest and give sufficient details of it so that the nature of their interest is clearly understood. Unless a dispensation has been granted, they should not take part in any matter to be determined at Planning Regulatory Board where their interest is a "disclosable pecuniary interest" which they are required to register in accordance with regulations made by the Secretary of State and should withdraw from the meeting during the consideration of that item.

3.3 A Member must not act in such a way as to bring their office or the Council into disrepute. In considering this broad obligation the following should be particularly borne in mind:

- The over-riding duty of a Member is to the whole local community.
- Members have a special duty to their constituents, including those who did not vote for them.
- Whilst Members may be strongly influenced by the views of others, and of their party in particular, it is their responsibility alone to decide what view to take on any question which Members have to decide.
- A Member should never do anything in their public role which could not be justified to the public. A Member's conduct, and what the public believe about their conduct, will affect the reputation of the Council, and of their party if they belong to one.

- It is not enough to avoid actual impropriety; you should at all times avoid any occasion for suspicion and any appearance of improper conduct.

3.4 The role of Members in dealing with both Development Plan and Development Management issues can often lead to difficulties with constituents who naturally expect their Elected Representative to represent their views. The following principles should be applied:-

- In considering Development Plan and policy issues Members must vote in the interests of the whole community, not for Ward, Party, Sectional or personal considerations.
- In considering Development Management matters, Members must act impartially and must not make up their minds until they have read the officers reports and heard the evidence and arguments for and against.
- When dealing with matters affecting their Ward, Members must make clear to constituents, applicants and objectors that they must act in accordance with the above two principles. This does not mean that a Member cannot comment or reflect local concerns about a proposal or even have a predisposition where they may be entitled to vote at the relevant committee but any such view or comment must not be, or be seen as being a pre-determination of the proposal.
- Similarly Members who are also Parish Councillors must make it clear that they may vote differently when sitting as a District Member and having heard the technical and legal background from officers.
- Members must always advise constituents, applicants and objectors of any known public consultation arrangements and the standard representation system and refer them to the appropriate Planning Officer in order that their views can be properly included in the officer's report.

Confidential matters may arise from time to time on planning applications but it is in discussions on enforcement matters in closed session where it is most likely that confidential information will be disclosed. Often the information will relate to the Council's legal position with regard to a particular planning contravention. Information on such matters, if disclosed to any member of the public, could eventually come to knowledge of the person responsible for the contravention and could seriously prejudice the Council in the event of an appeal or in legal proceedings. Members must therefore take particular care not to disclose such information. The Members Code of Conduct specifies that Members should not disclose information given to them in confidence by anyone or information that they reasonably believe or ought reasonably be aware is of a confidential nature.

4. **The Role of Officers**

4.1 The public is entitled to expect high standards of conduct, probity and courtesy by all persons holding public office but in particular when dealing with planning matters.

4.2 In making delegated decisions on applications, officers will:-

- Act fairly and openly
- Approach each application with an open mind

- Carefully weigh up all of the relevant material planning considerations
- Avoid undue contact with interested parties
- Ensure that reasons for decisions are clearly stated and recorded

4.3 In reporting to Planning Regulatory Board and in progressing non-delegated applications, officers will:-

- Provide professional and impartial advice
- Make sure that all information necessary for a decision to be made is given
- Set the application in the context of the Development Plan and all other material considerations
- Provide a clear and accurate written analysis of the issues within the written report
- Give a clear recommendation

4.4 Any material planning information which is received after the written report has been prepared will be presented orally to the Planning Regulatory Board by officers.

4.5 Officers are responsible for carrying out the decisions of the Planning Regulatory Board, whether or not those decisions are in line with officer recommendations.

4.6 Officers shall play no part in the processing of any application in circumstances where there is, or would be perceived to be, a conflict between their personal or financial interests, those of their families or friends, and their professional duty, and they shall formally register the existence of any such conflict in writing to the Executive Director of Place. Any interest the Executive Director of Place has in an application shall be declared to the Chief Executive.

5. **Declaration and Registration of Interests**

5.1 Members sitting on the Council's Planning Regulatory Board must disclose any pecuniary or non-pecuniary interest in respect of any application. The declaration must include the existence and nature of that interest at the beginning of discussing the matter to which it is relevant, or when the interest becomes apparent. A Member who makes a decision in relation to that matter must ensure that any written statement of the decision records the existence and nature of that interest. The Member need only declare the interest or interests which he knows about and does not need to investigate the business or other interests of friends and relatives. They can stay in the meeting, take part in the discussion and vote on the matter under question unless the interest is a disclosable pecuniary interest in which case you should withdraw from the meeting (see paragraph 5.6 below).

5.2 Members should review their situation regularly and should bear in mind that not only must impropriety be avoided but also any appearance, or grounds for suspicion, of improper conduct. The responsibility for this rests individually with each Member.

5.3 Given the sensitive nature of planning there are situations where the obligations placed upon Members go beyond the strict requirements of the Code of Conduct. In particular:

- (i) Members submitting applications on behalf of themselves or in respect of any person with whom they are related or with whom they are a close personal acquaintance, shall take no part in the processing of that application. Any such application must clearly show that it is submitted by a Member. Planning Regulatory

Board must be provided with a proposed recommendation and given the opportunity to comment before any decision is made under delegated powers and if the application has resulted in objections or the decision is, in the opinion of the Head of Planning & Building Control, finely balanced then the application should be determined by Planning and Regulatory Board.

(ii) Involvement of a Member of his/her family in a consultancy, agency or company which could be involved in land or property dealings of development within the Borough must be disclosed to the Executive Director of Place or equivalent.

(iii) Close working relationships/friendships or family connection with a consultancy, agency, developer, construction company or land or property owner which operate in the locality and have an interest in a planning application or development within the Borough must be disclosed to the Executive Director of Place.

(iv) Where a Member has advocated a particular course of action on a planning application in advance of it being considered by the Planning Regulatory Board and has a closed mind on this issue, that Member must not take any part in the determination of that application. However, allowances for members with "predispositions" are granted by section 25 of the Localism Act 2011 (see paras 9.4 and 9.5 below)

5.4 Members must declare any interests in applications coming before the Planning Regulatory Board at the start of the meeting. In order to be able to do that, they are encouraged to seek advice at an early stage from relevant officers of the Council in any situation of uncertainty. If for some reason it is not possible, however, for an interest to be declared by a Member at the outset of a meeting, or if it becomes clear at a later stage during the meeting that a Member has an interest in an item under discussion, then the Member should declare that interest at the first available opportunity.

5.5 If a Member declares a disclosable pecuniary interest, he or she must withdraw from the meeting while the matter concerned is under discussion. Withdrawal from the meeting involves physically leaving the meeting room. Moving to the public gallery is not sufficient. The chairman of the Planning Regulatory Board must suspend the proceedings of the Board briefly while the Member leaves the Council Chamber.

6. **Lobbying**

6.1 It is quite common for applicants and persons who could be affected by a planning decision to approach Members to discuss a proposed development, seek to influence the determination of a planning application or seek to influence the allocation of land in the Development Plan. Whilst this is a perfectly proper part of the political process it can often lead to the impartiality and integrity of Members being called into question. To avoid compromising their position all Elected Members must not:-

1. Lobby Members of Planning Regulatory Board.
2. Act as an advocate or put pressure on officers for a particular recommendation or do anything which compromises, or is likely to compromise, the officers' impartiality or professional integrity.

6.2 Members of Planning Regulatory Board must exercise great care in ensuring that their position is not compromised and should:-

- (i) Do their best to avoid discussing with an applicant, or any other person, their

thoughts about the merits of a planning application or proposed development.

(ii) Not make it known in advance of the consideration of the application by planning Regulatory Board whether they support or oppose a proposal and avoid lobbying other Members.

(iii) Restrict their response to giving procedural advice, and make it clear that that is all they are prepared to do.

(iv) Direct lobbyists or objectors to the case Officer.

(vi) Advise the Executive Director of Place as soon as possible of the existence of any substantial or abnormal lobbying activity.

7. Hospitality

7.1 Gifts or hospitality should only be accepted in very limited situations as otherwise this might reasonably be thought to influence, or be intended to influence the judgment of a Member or Officer. The Member Code of Conduct provides that members must register with the Director of Legal and Governance within 28 days receipts details of any gifts or hospitality which they have accepted from any person or body other than the Authority, the value of which exceeds £100.

7.2 However, in view of the sensitivity of the handling of planning applications, both Officers and Members must in all circumstances tactfully refuse any personal gift which if offered to themselves or to a member of their family by, or indirectly attributable at any person or body who has, or may have, dealings of any kind whatsoever with the Council or, who has applied, or may apply, to the Council for any planning or other kind of decision.

7.3 Officers and Members must likewise in the above circumstances refuse offers of hospitality to avoid the suggestion of any improper influence. To minimise such situations arising, officers or Members should avoid wherever practical visiting the premises of any applicants for planning permission (unless of course the premises is the application site and they are undertaking a site visit to assess the application) . Where doubt exists, the officer should seek advice from the Service Director, Legal.

8. Proposals submitted by Members, Officers and Council Developments

8.1 Proposals to their own authority by serving and former Members 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 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way that gives no ground for accusations of favouritism. Serving Members who act as agents for people pursuing planning matters within their authority, or submit their own proposal to the authority they serve, must play no part in the decision-making process for that proposal. In addition, they should not take any part in its processing, or should they seek to influence the case officer's assessment or recommendations on the proposal.

8.3 The Head of Planning and Building Control shall maintain a formal register of planning applications which have been submitted by an officer of the Planning Service, or a Member of the Council, or an agent acting on their behalf and which

relates to the land or property in which the officer or Member has an interest. Upon receipt of such notification, the Head of Planning and Building Control will enter details of the application in the register and will confirm in writing to the officer or member that he or she has done so.

- 8.4 The officer or Member must not thereafter have any direct involvement in the processing of the planning application, nor must they seek to use their public office to directly or indirectly influence the decision on it.
- 8.5 Planning Regulatory Board must be provided with a proposed recommendation for all such applications and given the opportunity to comment before any decision is made under delegated powers. The written report of the application will, as a matter of record, carry the statement, "This application has been submitted by or on behalf of a Member or officer of the Planning Service".
- 8.6 If the application has resulted in objections or the decision is, in the opinion of the Head of Planning & Building Control, finely balanced then the application should be determined by Planning and Regulatory Board. In such circumstances, the officer or member concerned must not attend the Council Chamber whilst the decision is taken but may exercise the same right as any member of the public to view the meeting from the public gallery should they wish to do so.
- 8.7 Where a planning application is submitted on behalf of a close friend or relative of an officer of the planning service, it shall be responsibility of the officer to notify the Head of Planning and Building Control of this in writing. The officer must then take no further part in the processing of the application. Where an application is submitted by a close friend or relative of a Member, the Member concerned shall notify the Head of Planning and Building Control in writing and such notification will be placed on file as a matter of record.
- 8.8 Planning Regulatory Board must also be provided with a proposed recommendation for all applications submitted by the Council for its own development and given the opportunity to comment before any decision is made under delegated powers. The written report of the application will, as a matter of record, carry the statement, "This application has been submitted by or on behalf of a Member or officer of the Council".
- 8.9 If the application has resulted in objections or the decision is, in the opinion of the Head of Planning & Building Control, finely balanced then the application should be determined by Planning and Regulatory Board. Decisions made must be strictly on planning merits without regard to any financial or other gain, which may occur to the Council if the development is permitted. Any officer who is, or has been, involved in work relating to the promotion of such development within the Council shall not seek to influence improperly any officer responsible for the processing of the application. However, this should not preclude the normal professional dialogue that may be expected in terms of the provision or requesting of relevant information or seeking clarification as to any material issue in respect of the application in the same way as any other applicant other than the Council. Any such discussions shall be recorded on file for the purposes of transparency.

9. Pre Application and Predetermination Discussions

9.1 Discussions between an applicant and officers/Members prior to the submission or determination of an application can be of considerable benefit to all parties. However, it can be easily interpreted that such discussions can be seen (especially by objectors) as part of the lobbying process.

9.2 In order to avoid such problems, any discussions should take place within the guidelines below:-

- Where the matter is contentious or potentially contentious; they should first seek advice of a Planning Officer.
- It must always be made clear at the outset that the discussions will not bind a Council to making a particular decision and that any views expressed are personal and provisional. By the very nature of such meetings not all relevant information will be to hand, neither will formal consultations with interested parties have taken place.
- Advice must be consistent and based upon the development plan and material considerations. There should be no significant difference of interpretation of planning policies between planning officers.
- A note must be made of all such meetings and telephone calls, particularly where these are of a potentially contentious nature. Where material has been left with the Council, confirmation or its receipt should be provided

9.3 When attending public meetings and site visits, Members must take great care to maintain their impartial role as Members, listen to all the points of view expressed by the speakers and public, and not state a conclusive opinion on any pre-application proposals and submitted planning applications. Members should not become drawn into any negotiations, which should be undertaken by officers so as to ensure that the authority's position is co-ordinated.

9.4 . Under section 25 of the Localism Act 2011 Members of the Planning Regulatory Board should not predetermine decisions (i.e. have a closed mind) but will not be taken to have had a closed mind when making a decision just because:-

- (i) they had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter, and
- (ii) the matter was relevant to the decision.

9.5 A "legitimate predisposition" is acceptable and occurs where a Member has certain relevant views on a matter but retains an open mind when it comes to making the determination. Even if a Member has campaigned on a planning application or made public an initial view on how they would vote in respect of the application, they will still be able to participate in a discussion on that application and vote in it, so long as they retain an open mind. A Member may be predisposed on a matter before it comes to Planning Regulatory Board, providing they remain open to listening to all of the arguments and changing their mind in view of any information or representations made at the committee. Nevertheless, a Member in this position will always be judged against an objective test as to whether the reasonable onlooker with knowledge of the relevant facts would consider that the Member was biased.

9.6 A “predetermination” is not acceptable and occurs where a Member has fixed views on a matter and retains a mind which is closed to the acceptance of a different view when it comes to making the determination. This state of mind can impair the legal validity of any decision taken by the committee of which the Member is a part.

9.7 Members have a duty to act in accordance with “natural justice” and must act with fairness to the applicant and interested parties. Members need to avoid any appearance of bias and should have regard to whether a fair minded observer knowing the background would consider that there was a real possibility of bias arising from a decision in respect of a particular Member. The bias of a single Member in respect of a planning application determined at Planning Regulatory Board may vitiate a decision and render it susceptible to challenge by Judicial Review.

10. Officer Reports

10.1 It is particularly important that full and consistent reports are presented to the Planning Regulatory Board on planning applications with clear officer recommendations, not only as a matter of good practice, but because failure may constitute maladministration, and/or give rise to judicial review.

10.2 Reports must be accurate and cover, among other things, a clear explanation of the site and the proposal, a summary of the objections and the views of people/groups who have been consulted, the relevant development plan policies and any other material considerations and a clear recommendation. If the report’s recommendation is contrary to the provisions of the development plan, the material considerations which justify this must be clearly stated. Oral reporting (except to update a report) should be rare and carefully minuted when it does occur.

11. Political Group Meetings

11.1 There are occasions when planning matters will be discussed prior to being determined at Planning Regulatory Board by informal meetings/briefings involving Members and/or by the Chair the Board either with or without officer attendance. These meetings are informal opportunities for Members to consider various aspects of planning matters before taking a decision at Planning Regulatory Board. For more complex planning proposals these informal meetings may be essential to the understanding of proposals and could lead to the request for more information or consultation on a proposal. As long as the decision on the planning matter is taken when all issues and materials are before Members at Planning Regulatory Board and in public reports, advance informal discussion may, on occasion, be beneficial to the decision making process.

11.2 Elected Members have an overriding duty to the whole local community and, although they may be strongly influenced by the views of others and particularly their political group, it is their responsibility alone to decide what view to take on any matters before the Board.

11.3 Although it is accepted that political groups may have a policy on particular types of development or on a major schemes, group meetings prior to the Board Meeting must not be used to decide how members vote. Political whips should not be used to influence the determination of planning applications.

12. Site Visits

12.1 In preparing their recommendation to Planning & Regulatory Board, officers will have visited the site and assessed the scheme against policies and material considerations already. In advance of the meeting, the presentation slides will be provided to members of the board and will include as much detail as they consider necessary for members of the board to be sufficiently familiar with the site. Site visits should therefore only be used where the benefit is clear and substantial. Accordingly, the Planning Regulatory Board should only visit a site for one or more of the following reasons:-

(a) The application raises issues which are likely to require detailed first-hand knowledge of the site and its surroundings to enable a well informed decision to be taken.

(b) The application involves major development which if approved could change the character of the local area considerably and detailed knowledge of the site and surroundings would be needed to assist in decision making.

(c) A proposal generates substantial local opposition or support and the views expressed by local residents are in conflict with the recommendation of the Officers on the application.

12.2 The request for a site visit, justified by reference to one of the reasons given above, can be made by any Member in the following ways:-

(a) To the Head of Planning and Building Control or any officer nominated to act on his/her behalf before the application has been referred to Board. The Head of Planning and Building Control shall then advise the Board of the request and the reason for it when the application is placed before them for decision.

(b) At the Board meeting at which the application is to be determined.

12.3 In circumstances where an urgent decision is needed but, in the opinion of the Head of Planning and Building Control, the application is of a nature that would require a site visit and an unacceptable delay would occur if the request for a visit was referred to the Planning Regulatory Board in the normal manner, the application can be added to the list of site visits without reference to the Planning Regulatory Board, subject to the agreement of the Chair to such action.

13.0 Procedure on Site Visits

13.1 The purpose of the site visit is to inform Members of the content of the application, and how the development will relate to the site and surroundings, whilst paying particular attention to site specific issues. The site does not constitute a statutory decision making meeting, and there is no debate of decision making. It is, however, quite acceptable for Members to ask questions on points of detail.

13.2 The Chair of the Board shall preside at the site visits or, in the absence of the Chair, a Member nominated at the outset of the site visits by those Members present shall preside. Site visits shall be subject to the same requirements for declaration of interest as the Regulatory Board meeting. Any Member with a disclosable pecuniary interest shall not participate in the site visit in respect of the relevant clarification.

13.3 The site visit shall consist of:-

(a) An explanation of the application by the relevant officer(s) highlighting the issues involved.

(b) An inspection of the site and surrounding area to the extent considered necessary to inform the decision making process.

(c) Members raise questions on matters of fact for clarification.

13.4 During the site visit, as far as it is practicable to do so, the visiting Board shall keep the applicants and any other third parties at arm's length. It shall be responsibility of the attending officer(s), together with the Chair, to explain to those present on site that for reasons for impartiality and fairness the Board will not receive verbal representation nor debate the application during the site visit.

13.5 It shall be the responsibility of the applicant or appointed agent to ensure that adequate access to the site is available. At the commencement of each site visit, particularly where access to private land is needed, the attending officer(s) and Chair shall identify the visiting Regulatory Board to the site occupier/owner and explain the purpose of the visit.

13.6 A Member who is not a member of the Planning Regulatory Board must not attend site visits undertaken by the Board. This means that ward councillors may not attend unless they are members of the Board

14.0 Member Participation at Meetings of the Planning Regulatory Board

14.1 The Council's Standing Orders prohibit the Chair from inviting any Member who is not a Member of the Planning Regulatory Board to attend and address the meeting on a specific item.

14.2 Attendance at meetings of the Planning Regulatory Board of Members, other than those appointed by the Council to the Board, can give rise to confusion in the eyes of the public as to who is responsible and accountable for making decisions on planning applications. Participation of Members at meetings of the Board who are not appointed by the Council to the Board may also cause the impression to arise that such Members are able to disproportionately influence the Planning Regulatory Board in its determination of the merits of any particular application. The following principles must therefore be applied:

(i) A Member who is not a member of the Planning Regulatory Board must not be allowed to address the Board.

(ii) A Member who is not a member of the Planning Regulatory Board must not substitute for a member of the Board.

14.3 Members who are not appointed by the Council to the Planning Regulatory Board have the right to make representations in writing in their capacity as Ward Members for or against applications to be considered by the Board. However, the restriction of a general right to address meetings, or to substitute for a Member of the Planning Regulatory Board, will avoid any confusion as to which Members are responsible and accountable for making planning decisions. This is consistent with the promoting of high ethical standards in the determination of planning applications.

15. Disclosure of Information

15.1 Members will sometimes be given information or assurances by Applicants that are not part of the formal application or be given information by objectors which is

misleading, untrue or irrelevant. This may cause problems if officers are unaware of any such submissions and are unable to advise the Planning Regulatory Board of their relevance or enforceability.

15.2 Any Member receiving a letter for or on behalf of an Applicant or third party in connection with an application before Planning Regulatory Board should establish whether the letter has been submitted to the Council via the Planning Officer and, if not, declare the receipt of the letter prior to the decision being taken.

15.3 A Member must not circulate any documents of information to Planning Regulatory Board unless that information has been first submitted to the Planning Officer and forms part of the application of background papers.

16. **Decisions Contrary to Officer Recommendation and/or the Development Plan**

16.1 Planning & Regulatory Board can, and does, make decisions which are different from the officer recommendation. Sometimes this will relate to conditions attached to the permission or planning obligations secured through a legal agreement pursuant to Section 106 (S106) of the Town and Country Planning Act 1990 (as amended). Sometimes the board's decision will change the outcome from an approval to a refusal, or vice versa. This will usually reflect a difference in the assessment of how a policy has been complied with, or different weight ascribed to material considerations.

16.2 If a councillor is concerned about an officer's recommendation, they should discuss their areas of difference and the reasons for that with officers in advance of the committee meeting. Care should be taken however to ensure that this does not lead to predetermination of a decision.

16.3 If the councillor is still minded to propose an alternative recommendation they should be prepared to explain in full their planning reasons for not agreeing with the officer's recommendation, which should be set in the context of the development plan or the NPPF. The courts have expressed the view that such reasons should be clear and convincing and that the officer should also be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome based on policies set out in the development plan and the NPPF, and chances of a successful award of costs against the local authority, should one be made.

16.4 Having had regard to all material considerations, including the verbal advice of the officers regarding the implications of a contrary decision, if the Board is minded to make a decision contrary to the officers recommendation the Chair shall ask the Members moving and seconding the contrary motion to give an explanation of their reasons for considering that a contrary decision is appropriate. Members should ensure that their reasons are clear-cut planning reasons that can be substantiated by reference to either established policy or verifiable evidence. Officers will not be expected to draft and prepare detailed reasons at the Board itself and instead the detailed wording for the reasons for refusal will ordinarily be delegated to officers in consultation with the Chair.

16.5 The vote taken in respect of an application approved or refused contrary to the recommendation of the Head of Planning and Building Control or their representative shall be recorded by roll call.

16.6 A detailed minute of the Board's reasons for taking a contrary decision as expressed by the Members moving and seconding the contrary motion shall be kept and a copy placed on the planning application file. Any Member may also wish to vote against

the contrary motion for reasons other than those contained in that motion. In such circumstances Members must make that clear before the vote is taken.

- 16.7 In the event that the Board wish to approve an application which had otherwise been recommended for refusal, the Board should delegate to the Head of Planning and Building Control, in consultation with the Chair, such planning conditions as are considered necessary to control and regulate the development and comply with statutory requirements.

17.0 **Sanctions**

- 17.1 A failure to adhere to the Code gives rise to a range of potential consequences to the Council, and individual Members, especially if this gives rise to inconsistency. The normal sanction of the democratic process is through the ballot box. Members may make a reputation in their community not only for their beliefs but also for their general conduct. Consistency and fairness are important qualities in the public eye and they are vital to the conduct of the Planning Regulatory Board. Beyond the normal democratic process a number of specific consequences can be identified:

(a) The Local Government Ombudsman

- 17.2 Although the Local Government Ombudsman will not usually investigate the planning merits of any planning decision, she/he may agree to investigate a planning complaint if it concerns the manner in which a decision was taken. If it is found that injustice has been caused by maladministration in the light of statutory or established Council procedures she/he will recommend redress which may take the form of compensation. Where the Local Government Ombudsman makes a finding of maladministration and considers that the Member may have acted in breach of the Member Code of Conduct, then the report may name the individual Member and give particulars of the breach. In such cases the Council is required to assist the Ombudsman in making publicly available details of the report and the Ombudsman findings. The Local Government Ombudsman can recommend that the Council pay compensation to the aggrieved complainant and may be more inclined to do so where there has been a breach of the Member Code of Conduct.

(b) The Appeals, Awards and Standards Regulatory Board

- 17.3 This is the Council's own standards committee which will investigate and deal with complaints in respect of breaches of the Member Code of Conduct. It is also the body within the Council that would deal with any issues of non-compliance with this Local Code of Planning and Conduct Guidance.
- 17.4 The Member Code of Conduct provides guidance on arrangements for handling ethical standards complaints by the Council. The Code states that the Council's Executive Director, Core Services will initially consider any complaint received and determine whether the complaint warrants any specific considerations by Members. Where it is considered that the complaint warrants further consideration by Members, the Executive Director, Core Services shall arrange for an officer or some other person if appropriate to carry out a further investigation and to produce a report of their findings. The Executive Director, Core Services shall inform the Member that is the subject of the complaint of the nature of the complaint and that it is subject to investigation. That report shall be considered by a panel of three Members selected from the membership of the Appeals and Awards Regulatory Board by the Director of Legal and Governance in consultation with the Chair of the Board. The Panel shall consider the report and determine whether any further action is appropriate.

17.5 Section 34 of the Localism Act 2011 makes it a criminal offence if a Member or co-opted Member fails without reasonable excuse, to comply with requirements under Section 30 or 31 to register or declare disclosable pecuniary interests, or takes part in council business at meetings or takes any steps in relation to a matter in which the Member has a pecuniary interest when discharging a function of the authority as a Member acting alone. If convicted of an offence in contravention of this section of the Act, a magistrates' court is empowered to impose a fine of up to level 5 and an order disqualifying the person from being a member of a relevant authority for up to five years.

(c) Appeals to the Secretary of State

17.6 An applicant who has been refused planning permission or a person served with an enforcement notice etc. have a right to appeal to the secretary of State. If an appeal is successful and it is shown that the Council's Conduct is dealing with the matter was unreasonable, the appellant's costs may be awarded against the Council. This may also result in the Council's External Auditor issuing a Public Interest report which the Council would be required to publish criticising the members concerned for failing to act properly in their stewardship of public funds.

(d) Judicial Review

17.7 If objectors are convinced that the Council, in determining to grant an application, did not observe their statutory obligations to carry out all necessary procedures, base their decision on the Development Plan and take into account all representations, they may apply for judicial review of the decision, which might result in it being quashed. In such circumstances it would be normal for the costs of an applicant to be awarded against the Council.

(e) Powers of the Secretary State

17.8 The Secretary of State possesses a range of powers which could be exercised where a local planning authority appears to be making inconsistent decisions, or decisions which are seriously in conflict with national and development plan policies. This could involve a greater use of the power to "call in" applications, whereby an application would be determined by him following a public inquiry. Where permission has already been granted by the Council, powers exists to revoke or modify permissions, or to require discontinuance of a land use, which if exercised would give rise to a liability to compensate on the part of the Council. The amount of compensation may be considerable.

17.9 The Growth and Infrastructure Act 2013 has also provided the Secretary of State with powers to designate local planning authorities as underperforming, if it is considered that their performance in handling major applications has fallen below an acceptable standard. Where authorities are designated in this way, the Act gives applicants for major development proposals the right to apply for planning permission directly to the Secretary of State.

18.0 **Complaints and Record Keeping**

18.1 Every planning application file will contain an accurate account of events throughout its life. It should be possible for someone not involved with that application to understand what the decision was and how and why it was reached. Applications determined under officers' delegated powers, where there is no committee report, will be as well documented and recorded as those taken by Members at Planning Regulatory Board; these principles apply equally to enforcement.

18.2 Whatever procedures a Council operates, it is likely that complaints will still be made. However, the adoption of the advice in this code should greatly reduce the occasions on which complaints are justified. It should also provide fewer reasons for people to complain in the first place. When such complaints come forward they will be treated as any other made to the Council and considered under the complaints procedures.