

Planning Decisions Code of Practice
As adopted by LLDC Board September 2012

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PLANNING DECISIONS CODE OF PRACTICE

Scope and Overview

The London Legacy Development Corporation (the "Corporation") will be established as the local planning authority for the purposes of Part 3 of the Town and Country Planning Act 1990 (as amended) and all other town and country planning matters that fall within its jurisdiction pursuant to Part 8, Chapter 2 of the Localism Act 2011, including determining planning applications and preparing development plan documents.

Planning decisions will be taken by the Corporation's Planning Decisions Committee ("the Planning Decisions Committee") unless determined under delegated authority by Corporation Planning Officers ("Planning Officers") or unless authority is retained by the Corporation's Board (the "Board").

The Corporation, its Planning Officers and the Planning Decisions Committee Members are committed to the highest standards in planning decision-making to provide confidence in their decisions as a local planning authority. The Corporation has therefore adopted this Planning Decisions Code of Practice ("this Planning Decisions Code"), which applies to its approach in making all planning decisions. Where "planning decisions", "planning business" or decisions in connection with "planning matters" are referred to in this Planning Decisions Code, they are decisions in connection with the town and country planning functions of the Corporation that fall within the Town and Country Planning Act 1990 (as amended), the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) and the Electricity Act 1989 except that they do not include, and this Planning Decisions Code does not relate to, functions under the Planning and Compulsory Purchase Act 2004 which relate to preparing local development documents, functions relating to the community infrastructure levy or the designation of conservation areas which are separately governed by the Members' Code of Conduct.

This Planning Decisions Code applies to:

The Board where and to the extent that they are involved in planning decisions;

Planning Decisions Committee Members (including Board Members who are Planning Decisions Committee Members);

where and to the extent indicated in this Planning Decisions Code, Board Members who attend Planning Decisions Committee Meetings; and

where and to the extent indicated in this Planning Decisions Code, Planning Officers.

Where this Planning Decisions Code refers to Planning Decisions Committee Members or Board Members, it shall include any authorised substitutes.

Planning decision-making relies on informed judgements within the context of a range of planning policy and other material considerations. The Corporation considers it to be of particular importance that the Planning Decisions Committee's and Board's planning decision-making is open, objective and fair. This Planning Decisions Code is intended to provide a framework for planning decision-making by the Planning Decisions Committee and the Board so that planning decisions are transparent and accountable.

This Planning Decisions Code should be read in conjunction with the Corporation's Standing Orders and the Planning Decisions Committee's Terms of Reference.

Copies of this Planning Decisions Code will be supplied to all Board Members, Planning Decisions Committee Members and Planning Officers.

1. Role and conduct of Planning Officers, Planning Decisions Committee Members and Board Members in planning decisions

1.1. Planning Officers

1.1.1. Planning Officers should ensure that they conduct themselves in a way that not only maintains their impartiality in advising Planning Decisions Committee Members or Board Members making planning decisions, but ensures that they are seen to behave in a way that maintains impartiality. Planning Officers should record meetings and dialogue with interested parties in the application file.

1.1.2. Planning Officers' reports to the Planning Decisions Committee or Board making planning decisions on applications should be accurate and cover, amongst other things, the applicant's position, the substance of any objections and the views of people and/or organisations that have been consulted. They should also, where appropriate:

1.1.2.1. include a clear exposition of planning policy, including the development plan, site or related planning history, and any other material considerations;

1.1.2.2. include a recommendation of action. Oral reporting, except to update a report, should be avoided where practicable and minuted when it does occur;

1.1.2.3. contain a technical appraisal that justifies the recommendation; and

1.1.2.4. if the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure should be stated.

1.2. Planning Decisions Committee Members and Board Members making planning decisions

1.2.1. Members of the Planning Decisions Committee are the decision-makers in respect of the planning decisions, except where decision making on any planning related matter has been retained by the Board or in the circumstances that the authority to make planning decisions has been delegated to Planning Officers. It is the responsibility of Planning Decisions Committee Members and Board Members when they are the planning decision markers to ensure that the planning decision-making powers conferred upon them are used appropriately, fairly and consistently.

1.2.2. Planning Decisions Committee Members and Board Members making planning decisions have a responsibility in their role to the community as a whole. They should take account of all relevant views as part of the decision-making process, and no single group or individual can be specially favoured over another.

1.3. Decision Making at Planning Decisions Committee or Board meetings making planning decisions

1.3.1. Members of the Planning Decisions Committee or Board Members in making planning decisions must take planning decisions in accordance with the development plan unless material considerations indicate otherwise. Planning Officers' advice should highlight relevant development plan policies and material considerations and contain clear recommendations.

1.3.2. The Planning Decisions Committee or Board in making planning decisions must

(with the support of Planning Officers) give summary reasons for their decision to approve planning applications and reasons for their decision to refuse planning applications and reasons for other matters determined, regardless of whether their determination accords with the Planning Officer's recommendation.

1.3.3. If the Planning Decisions Committee or Board in making planning decisions is minded to decide an application or planning matter contrary to a Planning Officer's recommendation, the Planning Officer should also be given the opportunity to explain the implications of the contrary decision to Planning Decisions Committee Members or Board Members making planning decisions during the Planning Decisions Committee meeting or Board meeting where the application or other matter is being considered and reasons based on planning grounds should be given if they choose to determine such application or other matter contrary to Planning Officer's recommendation.

1.3.4. In all cases, the reason(s) or summary reason(s) (as applicable) for decisions should be minuted and placed on the planning application or matter file.

2. Development proposals of, or promoted by, the Corporation, or its Board Members or Planning Decisions Committee Members or Planning Officers

2.1. Development proposals of, or promoted by, the Corporation

2.1.1. The Corporation has the power to grant planning permission for its own proposals and for joint development proposals for development on the Corporation's land. In addition, proposed developments that are supported by the Corporation, or where the Corporation has had such a significant involvement in their development or promotion that it could reasonably be considered that it supports the development, will be considered by the Planning Decisions Committee or Board Members making planning decisions in the same way for the purposes of paragraphs 2.1.2 and 2.1.3 below.

2.1.2. Such applications should be considered by the Corporation's Planning Decisions Committee or Board Members making planning decisions or Planning Officers in the same way as any other application, according to the planning merits of the application. To ensure transparency, the nature of the relationship of the Corporation to the proposal and to the parties involved in promoting the application should be set out in the Planning Officer's report on the application. So far as not commercially sensitive or confidential (including by virtue of any appropriate Freedom of Information Act or Environmental Information Regulations exemption), a record should also be maintained of the liaison between the relevant parties and the Corporation and included in the application file.

2.1.3. The Corporation's Chief Executive should receive a copy of the Planning Officer's report prior to the Planning Decisions Committee or Board meeting making a planning decision to ensure that the relationship between the applicant or person(s) affected by the matter to be considered by the Planning Decisions Committee or Board meeting making a planning decision and the Corporation is properly recorded.

2.1.4. A Planning Committee Member or Board Member making a planning decision must avoid becoming so committed to a development that is the subject of an application in another capacity (including as a member of the Corporation or one of its other Committees) that s/he may be unable to demonstrate that s/he can take into account all the considerations material to its determination.

2.2. Development proposals of, or promoted by, Board Members, Planning Decisions Committee Members or its Planning Officers

2.2.1. A Board Member or Planning Decisions Committee Member should play no part in the planning decision-making process, nor seek to influence in any way, proposals where such a Board Member or Planning Decisions Committee Member is promoting a given planning application, proposal or matter on his/her own account or is an agent in respect of such a planning application, proposal or matter. Such Board Members or Planning Decisions Committee Members should notify both the Chief Executive and the relevant Planning Officer in writing as soon as reasonably possible once any such planning application, proposal or matter has been made or arises and in any event within 21 days. At any relevant meeting of the Planning Decisions Committee or Board meeting making a planning decision, the Board Member or Planning Decisions Committee Member must declare the interest, explain the nature of the relationship with the application, proposal or matter and leave the room in which the meeting where the application, proposal or matter is being discussed is taking place whilst it is under discussion. It is the responsibility of the Board Member or Planning Decisions Committee Member to notify the Planning Officer dealing with the application, proposal or matter prior to the Planning Decisions Committee meeting or Board meeting making a planning decision to ensure that a note is placed on the relevant file and in the Planning Officer's report on the application, proposal or matter. The Board Member or Planning Decisions Committee Member must also notify the Chief Executive in writing of the details of his/her interest in the application.

2.2.2. Planning Officers, where the application, proposal or matter is their own, should have no involvement in the preparation of the Planning Officer's report on the application. The Chief Executive should be notified in writing as soon as reasonably possible of the nature of the Planning Officer's connection with the application.

2.2.3. A system should be devised to identify such proposals by Planning Decisions Committee Members, Board Members or Planning Officers. Proposals should be reported to the Planning Decisions Committee as main items and not dealt with by Planning Officers under delegated powers.

3. Lobbying of, and by, Board Members or Planning Decisions Committee Members

3.1. Lobbying is a normal and proper part of the political process; those affected by a planning decision will often seek to influence its outcome by approaching decision-makers. It is good practice for Planning Decisions Committee Members or Board Members making planning decisions to have formal contact with the applicants for planning permission for strategic schemes during the pre-application and determination periods. Planning Decisions Committee Members or Board Members making planning decisions may ask questions but should not provide an opinion or express a view that may give the impression that a final view on the application/matter in question has already been reached. Involving Planning Decisions Committee Members or Board Members making planning decisions early on and throughout the application and determination process often leads to better planning decisions and better developments. Planning Officers should seek to arrange regular pre-application briefings for the presentation of prospective schemes to Planning Decisions Committee Members or Board Members making planning decisions (either as and when necessary or to a scheduled timetable).

3.2. It is therefore appropriate for Planning Decisions Committee Members or Board Members making planning decisions to accept information from stakeholders that is

relevant to planning applications where this information informs the planning decision-making process. However, the Corporation considers that all Planning Decisions Committee Members or Board Members making planning decisions should take an approach to lobbying in relation to planning matters that not only ensures the impartiality of the Corporation's decision-making, but which maintains confidence among stakeholders in the decision-making process.

3.3. Planning Decisions Committee Members or Board Members making planning decisions should make planning decisions based on the development plan giving appropriate and due weight to all material planning considerations. These should be set out and detailed in the Planning Officer's report and its supporting information.

3.4. The Corporation considers the following methods of supplying information to Planning Decisions Committee Members or Board Members making planning decisions appropriate:

3.4.1. briefings to all Planning Decisions Committee Members or Board Members making planning decisions early on in the planning process. Applicants can present their application proposals to the Planning Decisions Committee or Board making planning decisions at least twice during pre-application; firstly, when the application or proposal is at the draft stage before it goes out to public consultation and secondly just before the application is submitted. Applicants can be asked questions by Planning Decisions Committee Members or Board Members making planning decisions who will eventually take the decision on their planning application, and Planning Decisions Committee Members or Board Members making planning decisions can find that the process enables them to get a deeper understanding of the application as the proposals develop. Applicants who wish to address the Planning Decisions Committee or Board making planning decisions at the meeting where the application is to be determined may do so in accordance with arrangements adopted by the Planning Decisions Committee and published from time to time on the Corporation's web site;

3.4.2. a short briefing letter to all Planning Decisions Committee Members or Board Members making planning decisions, copied to the relevant Planning Officer, to provide information on key details of the proposal to Planning Decisions Committee Members or Board Members making planning decisions;

3.4.3. an exhibition¹ where all Planning Decisions Committee Members or Board Members making planning decisions and a Planning Officer have been offered the opportunity to attend. Where the entire Planning Decisions Committee or Board making planning decisions cannot attend simultaneously, Planning Decisions Committee Members or Board Members making planning decisions should attend an exhibition with at least one other Planning Decisions Committee Member or Board Member making planning decisions, or a Planning Officer. All Planning Decisions Committee Members or Board Members making planning decisions should be encouraged to attend these to get a good idea of how a proposed development will look. Planning Decisions Committee Members or Board Members making planning decisions may ask questions of the applicants;

3.4.4. a meeting with Planning Decisions Committee Members or Board Members making planning decisions when accompanied by a Planning Officer, where all Planning Decisions Committee Members or Board Members making planning

¹ Such exhibitions may be arranged exclusively for Planning Decisions Committee Members and Planning Officers, such as a private viewing of a public exhibition, or may be open to all members of the public, in which case Planning Decisions Committee Members may attend the exhibition as a matter of course.

decisions have been offered the opportunity to attend; where the entire Planning Decisions Committee or Board making planning decisions cannot attend simultaneously, Planning Decisions Committee Members or Board Members making planning decisions should only attend such a meeting with at least one other Planning Decisions Committee Member or Board Member making planning decisions or a Planning Officer;

- 3.4.5.a site visit where Planning Decisions Committee Members or Board Members making planning decisions are accompanied by a Planning Officer and where all Planning Decisions Committee Members or Board Members making planning decisions have been offered the opportunity to attend prior to the Planning Decisions Committee meeting or Board meeting making planning decisions where the application or matter is to be determined. Site visits by Planning Decisions Committee Members or Board Members making planning decisions are important in the understanding and consideration of strategic planning applications. After the site visit, the briefing continues at a meeting where the applicant presents the scheme and Planning Officers summarise policy and other issues for consideration.
- 3.5. Planning Decisions Committee Members or Board Members making planning decisions should avoid private discussions or correspondence with relevant stakeholders, including as applicable the applicant or local residents, about an application or prospective application or other actual or prospective matter to be considered or determined by the Corporation as local planning authority. Planning Decisions Committee Members or Board Members making planning decisions should encourage relevant information, representations and/or correspondence about an application or prospective application or other actual or prospective matter to be considered or determined by the Corporation as local planning authority to be directed towards the whole Planning Decisions Committee or Board making planning decisions or Planning Officers.
- 3.6. All information in relation to an application or prospective application or other actual or prospective matter to be considered or determined by the Corporation as local planning authority received by Planning Decisions Committee Members or Board Members making planning decisions should be forwarded to the relevant Planning Officer who will determine whether to circulate the information to Planning Decisions Committee Members or Board Members making planning decisions on the basis that it provides additional, relevant detail that benefits the planning decision-making process.
- 3.7. Third parties approaching Planning Decisions Committee Members and/or Board Members making planning decisions should be encouraged to write to the relevant Planning Officer.
- 3.8. The same standards as apply to third parties (in paragraph 3.6 above) should be applied where Planning Decisions Committee Members or Board Members making planning decisions are subject to lobbying by other Board Members or by or on behalf of another local authority.
- 3.9. Where approached by an applicant or any other interested party in respect of an application or prospective application or other actual or prospective matter to be considered or determined by the Corporation as local planning authority, a Planning Decisions Committee Member or Board Members making planning decisions should make it clear that he/she will maintain an open mind about the merits of the application as a whole and will not be in a position to make a final decision on such application or matter until all the relevant evidence and submissions have been placed before the Planning Decisions Committee meeting or Board meeting making planning decisions when the application or matter is considered.

4. Pre- and post-planning application discussions

4.1. Pre-application and post-application discussions in relation to planning applications can be of considerable benefit to both the Corporation as local planning authority and applicants. Although the term "pre-application" has been used, the same considerations should apply to any discussion concerning any other planning matter which takes place with the Corporation before a decision has been taken in relation to it. In order to ensure that these discussions do not become, and are not seen to become, part of the lobbying process for the benefit of applicants, the Corporation expects that:

4.1.1. pre-application meetings or discussions (including telephone discussions) in relation to a prospective planning application or other planning matter held with the Corporation in its capacity as local planning authority should be conducted in the presence of a Planning Officer;

4.1.2. pre-application meetings or discussions (including telephone discussions) in relation to a prospective planning application or other planning matter held with the Corporation in any other capacity (i.e. not in the Corporation's capacity as local planning authority) should be recorded as such;

4.1.3. a written note should be made of all pre-application meetings or discussions (including telephone discussions) in relation to a prospective planning application or other planning matter held with the Corporation in its capacity as local planning authority and be placed on the application file (or pre-application file if appropriate) to show a transparent approach. A Planning Officer would best make the arrangements for such meetings or discussions, attend and write a follow-up letter. Sometimes confidentiality is needed and should be respected. However, confidentiality of advice by representatives of a public body on a planning matter will normally be rare. If there is a legitimate reason for confidentiality, a note of the non-confidential issues raised or advice given should still normally be recorded on the file to reassure others not party to the meeting or discussion;

4.1.4. applicants and/or prospective applicants should be informed from the outset of their meeting or discussion that any meeting or discussion will not bind the Corporation as local planning authority to make a particular decision on an application or matter and that any views expressed are personal and provisional. By the very nature of such meetings or discussions not all relevant information may be at hand, nor will formal consultations with interested parties have taken place;

4.1.5. consistent advice should be given by Planning Officers based upon the development plan and material considerations. All Planning Officers taking part in such discussions should make it clear whether or not they are the planning decision-maker; and

4.1.6. any advice given to applicants or prospective planning applicants is impartial and should be seen to be impartial.

5. Avoiding predetermination

5.1. Planning Decision Committee Members or Board Members making planning decisions must avoid any appearance of having predetermined their views before taking a decision on a planning related matter. Predetermination means a mind already closed to the planning issues which are relevant to the decision. Planning Decision Committee Members or Board Members must address the planning issues on the matter before

them fairly and on their merits even though they may start with a predisposition in favour of one side of the argument or the other.

- 5.2. Planning Decision Committee Members or Board Members making planning decisions do not have a closed mind just because they sit on committees where decisions are made about the promotion of development or if such decisions are made at the Board when they are present. However, Planning Decision Committee Members or Board Members making planning decisions must avoid becoming so committed to a development that is the subject of an application in another capacity (including as a member of the Corporation or one of its other Committees) that they may be unable to demonstrate that they can take into account all the considerations material to its determination.

6. Site visits for Planning Decisions Committee or Board making planning decisions

The Corporation considers that where a site visit is undertaken in relation to a planning decisions matter, the following requirements should be met:

- 6.1. formal site visits by the Planning Decisions Committee or Board making planning decisions should be triggered by advice from the relevant Planning Officer or by a request from Planning Decisions Committee Members or Board Members making planning decisions. All Planning Decisions Committee Members or Board Members making planning decisions should be given the opportunity to attend. A Planning Officer should also attend;
- 6.2. Planning Decisions Committee Members or Board Members making planning decisions should avoid unofficial visits to sites in the presence of an applicant where a planning application has been submitted or is likely to be submitted or the person who is affected or may be affected by the consideration or determination of the relevant matter. Should a Planning Decisions Committee Member or Board Member making planning decisions have visited a site with an applicant or prospective applicant or relevant affected or prospectively affected person, he/she should notify the relevant Planning Officer and supply the relevant details to be included in a note to be placed in the planning application or matter file;
- 6.3. the attendance of an applicant or prospective applicant or relevant affected or prospectively affected person or their agents at a formal site visit should be to answer questions about the planning application or matter but not to make a presentation about the planning application or matter; and
- 6.4. a record of the site visit, including details of questions raised and information supplied by the applicant or person in response, should be made by the relevant Planning Officer, placed in the planning application or matter file and noted in the relevant Planning Officer's report to the Planning Decisions Committee or Board meeting.

7. Compliance with this Planning Decisions Code, complaints and record-keeping

- 7.1. It is important that Board Members and Planning Decisions Committee Members receive training in procedural and probity rules plus the basics of spatial planning and development management before they make any planning decisions. Refresher sessions should also be available.
- 7.2. Where Board Members or Planning Decisions Committee Members are uncertain as to how to apply this Planning Decisions Code in a particular instance, they should seek advice from the Director of Planning Policy and Decisions or the General Counsel.
- 7.3. The Corporation takes responsibility for training Planning Decisions Committee

Members and Board Members in the operation of this Planning Decisions Code. All new Planning Decisions Committee Members and Board Members should undertake the Corporation's training on this Planning Decisions Code prior to commencing their role as a voting member of the Planning Decisions Committee or sitting on the Board making a planning decision. Continuing Planning Decisions Committee Members and Board Members should also attend "refresher" training sessions as required. All Planning Decisions Committee Members and Board Members making planning decisions should ensure they are familiar with this Planning Decisions Code and are responsible for ensuring that they behave according to its requirements.

- 7.4. Any complaints about the adherence of the relevant Board Members, Planning Decisions Committee Members and Planning Officers to this Planning Decisions Code will be handled according to the Corporation's Complaints Procedures and Members' Code of Conduct.