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To: Edward Michael Hughes (Chairman)

Councillors: David Cox, Hilary McGuill and Arnold Woolley

Co-opted Members

Robert Dewey, Jonathan Duggan-Keen, Phillipa Ann Earlam and Kenneth Harry Molyneux

5 April 2016

Dear Member

You are invited to attend a meeting of the Standards Committee which will be held at 6.30 pm on Monday, 11th April, 2016 in the Clwyd Committee Room, County Hall, Mold CH7 6NA to consider the following items

Please note that a training session for the Standards Committee members will be held from 6.00pm until 6.30pm.

A G E N D A

1 APOLOGIES

Purpose: To receive any apologies.

2 DECLARATIONS OF INTEREST (INCLUDING WHIPPING DECLARATIONS)

Purpose: To receive any Declarations and advise Members accordingly.

3 MINUTES (Pages 3 - 6)

Purpose: To confirm as a correct record the minutes of the meeting held on 7 March 2016.

4 DISPENSATIONS

Purpose: To receive any requests for dispensations.


5 PLANNING PROTOCOL (Pages 7 - 50)

To advise the Committee about the proposed Welsh Planning Protocol.

6 **FORWARD WORK PROGRAMME** (Pages 51 - 52)

Purpose: For the Committee to consider topics to be included on the attached Forward Work Programme.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Peter Evans', with a long horizontal flourish extending to the right.

Peter Evans
Democracy & Governance Manager

STANDARDS COMMITTEE **7 MARCH 2016**

Minutes of the meeting of the Standards Committee of the Flintshire County Council held at County Hall, Mold, on Monday, 7 March 2016.

PRESENT: Robert Dewey (Vice Chair in the Chair)

Councillors:

David Cox and Arnold Woolley

Co-opted Members:

Jonathan Duggan-Keen, Phillipa Earlam and Ken Molyneux

ALSO PRESENT: Councillor Tim Newhouse

APOLOGIES:

Councillor Hilary McGuill and Edward Hughes

IN ATTENDANCE:

Monitoring Officer, Deputy Monitoring Officer, and Committee Officer

40. DECLARATIONS OF INTEREST (including whipping declarations)

None were received.

41. MINUTES

The minutes of the meeting held on 8 February 2016 were submitted.

Review of Protocol on Councillor Newsletters

The Monitoring Officer explained that the questionnaire to be sent to Members to receive data on the communications they produce was to be combined with a further survey to be undertaken by Members to determine the time and frequency of Council meetings. A report on the data received from the survey would be brought back to a future meeting of the Committee.

RESOLVED:

That the minutes be received, approved and signed by the Chairman as a correct record.

42. DISPENSATIONS

Councillor Tim Newhouse

The Committee were asked to consider a request for dispensation submitted by Councillor Newhouse to speak, but not vote, at Audit Committee meetings concerning reports relating to E-Teach.

The Monitoring Officer provided background information and context. Councillor Newhouse detailed the reasons for his request for dispensation and commented on his understanding of how the E Teach system operated. He explained that he wished to speak at the next meeting of the Audit Committee on 16 March 2016 on the advantages and disadvantages of E Teach, agencies, and direct employment and would leave before any vote on the item at the meeting.

Councillor Newhouse left the room whilst the dispensation request was considered.

The Monitoring Officer provided clarification on the position of Councillor Newhouse as Chair of the Audit Committee and advised that it was normal practice that the Vice Chair would Chair the meeting in circumstances where the Chair had declared an interest on an item to be considered at the meeting. He also commented on the potential for consideration of further reports relating to E Teach to be submitted to future meetings of the Audit Committee. In response to the queries raised the Monitoring Officer advised that Councillor Newhouse would be required to leave before any debate and vote on the item took place at those meetings.

Councillor Newhouse returned to the meeting and was informed of the decision.

RESOLVED

That Councillor Tim Newhouse be granted dispensation under paragraphs (d), (e) and (f) of the Standards Committee (Grant of Dispensations) (Wales) Regulations 2001 to speak and answer questions in respect of matters relating to E Teach but to leave the room before the debate and vote when the item is considered at meetings of the Audit Committee. The Vice Chair to take the position of Chair during the absence of Councillor Newhouse as Chair of the Audit Committee. The dispensation to cover a period of 12 months.

43. STANDARDS FORUM

The Monitoring Officer provided a verbal update on the Standards Forum. He reported that at the meeting of the Forum held in June 2015, discussion had taken place around how often the Forum should meet and the protocols around how it would operate in the future. He explained that it was proposed that meetings of the Forum would be held twice a year, that the host Monitoring Officer should be the only Monitoring Officer to attend the meeting to dispense with the need for all 6 Monitoring Officers to attend each meeting, and that the local Chair would Chair the meeting.

During discussion the Monitoring Officer responded to the questions raised around the nature of the work undertaken by the Forum. The Monitoring Officer explained that the remit of the Forum was to share good practice and experience, however, it was not a decision making body.

RESOLVED:

That the Committee supported the following proposals:

- (a) That meetings of the Standard Forum be held every 6 months;
- (b) That the host Monitoring Officer be the only Monitoring Officer required to attend a meeting of the Forum, and
- (c) That the local Chair takes the Chair for the meeting.

44. ADDITIONAL ITEM

The Monitoring Officer advised that the Chairman had agreed that the Committee should consider an additional item on the grounds of urgency, as provided for under Section 100 4B4 of the Local Government Act 1972 (as amended). The item was concerning the Local Government Ethical Framework.

45. LOCAL GOVERNMENT ETHICAL FRAMEWORK

The Monitoring Officer distributed copies of a letter from the Welsh Government concerning the Local Government Ethical Framework. He reported that following consultation existing legislation had been amended through implementation of the statutory instruments on The Local Authorities (Model Code of Conduct (Wales) (Amendment) Order 2016; and The Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016, which come into force on 1 April 2016. He reported that the instruments also implemented other proposals to improve the operation of the local government ethical standards framework in Wales.

The Monitoring Officer distributed copies of a letter from the Welsh Government which detailed the proposals and reported on the main considerations. He also distributed copies of the text of the amended Model Code of Conduct for Members and Co-opted Members with voting rights. The Monitoring Officer advised that in accordance with section 51 of the 2000 Act, all relevant authorities must adopt a revised code of conduct by 26 July 2016.

During discussion the Monitoring Officer responded to the queries raised by members and commented that the obligation was to adopt a national model by a code of conduct which was no less onerous.

RESOLVED:

- (a) That the Committee recommends to Council that it applies the changes to the national model to its own local code; and

- (b) That the Council provides guidance to Town and Community Councils to enable them to make the same changes.

46. FORWARD WORK PROGRAMME

The Monitoring Officer presented the current Forward Work Programme and invited topics for future consideration. It was agreed that a report on the Planning Protocol would be provided to the next meeting of the Committee to be held on 11 April 2016.

During discussion it was also agreed that the Chair be asked to provide a report back on the Standards Forum to the meetings of the Committee to be held in July 2016 and January 2017. It was suggested that the Committee may also wish to consider items to be put forward to the Standards Forum at the meetings to be held in May 2016 and November 2016.

RESOLVED:

- (a) That the Forward Work Programme be noted;
- (b) That a report on the Planning Protocol be provided to the next meeting of the Committee; and
- (c) That the Chair be asked to provide a report back on the Standards Forum to the meetings of the Committee to be held in July 2016 and January 2017

47. MEMBERS OF THE PUBLIC AND PRESS IN ATTENDANCE

There were no members of the press or public in attendance.

The meeting commenced at 6.30pm and ended at 7.47pm.

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Chairman



STANDARDS COMMITTEE

Date of Meeting	Monday, 11 April 2016
Report Subject	Draft National Planning Committee Protocol
Report Author	Deputy Monitoring Officer

EXECUTIVE SUMMARY

A recent study by the RTPI into the operation of planning committees in Wales concluded that there was much variety of practice across Wales and recommended a National Protocol be prepared.

WG established a drafting group who have prepared a Draft Planning Protocol (see Appendix 1). The main aim of the Protocol is to improve consistency across the LPAs in Wales, although it is also intended that the Protocol should allow for a level of local flexibility.

WG has opened the draft protocol to consultation and the closing date for comments is Friday 20 May 2016.

The Council has its own planning protocol which it keeps under regular review, and on the whole the proposed protocol is in accordance with the Council's current one. However, WG's consultation document, in addition to the Draft Protocol, includes a series of questions (17 in total) for consultees to answer.

This report focuses on the differences between the Council's current protocol and the draft protocol and seeks comments and suggestions from Members in response to the specific questions about the draft protocol so that those comments can be attached to a report to PSG in order that the Council can provide a single response to the consultation.

RECOMMENDATIONS

1	To consider the report and the draft planning protocol and to provide comments and responses to WG's consultation questions so that those comments and responses can be considered by PSG and a single response to WG can be provided by the Council
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REPORT DETAILS

1.00	NATIONAL PLANNING PROTOCOL
1.01	A recent study by the RTPI into the operation of planning committees in Wales concluded that there was much variation of practice between committees across Wales and recommended a National Protocol be prepared.
1.02	WG prepared a draft planning protocol (see Appendix 1). The main aim of the protocol is to improve consistency across LPAs in Wales, although it is intended that the protocol should allow for some local flexibility.
1.03	WG has opened the draft to consultation and the closing date for comments is Friday 20 May 2016.
1.04	The Council has its own planning protocol which it keeps under regular review, and on the whole the proposed protocol accords with the Council's protocol. WG's consultation document includes 17 questions for consultees to respond to. This report focuses on the differences between the Council's protocol and the draft national protocol and seek responses from Members to these questions so the responses can be attached to a report to PSG so that the Council can provide a single response to the consultation.
1.05	The 17 questions referred to above are referred to below together with comments on any differences between the proposed protocol and the Council's current protocol.
1.06	Question 1: Do you agree with having a National Planning Protocol?
1.07	Question 2 sets out the relationship that the proposed protocol has to the Members' Code of Conduct and also sets out rules about personal and prejudicial interests and the impact of such interests on Members' involvement in planning decisions. The draft protocol stipulates that where there is a personal and prejudicial interest the Member is not to participate, or give the appearance of doing so, in the making of a planning decision. The proposed protocol also specifically requests Members to notify the Monitoring Officer whenever they submit a planning application themselves and advises that a professional planning agent should be instructed to deal with the application. The Council's current protocol advises that Members should consult the Monitoring Officer or Senior Legal Officer whenever there is a potential personal or prejudicial interest. It does specifically state that Members can never participate in planning decisions where a personal and prejudicial interest arises but advises that Members should consult with the Monitoring Officer or Senior Legal Officer if in any doubt. Further, the

	<p>Code of Conduct itself deals with the position where Members have a personal and prejudicial interest in respect of any meeting.</p> <p>Neither is there a requirement in the Council's current protocol to notify the Monitoring Officer of Members' own applications (although the requirement for Members to keep the Register of Interests up to date with written details of relevant interests is contained in the Council's current protocol).</p> <p>Finally, there is no specific recommendation in the Council's protocol that should Members submit an application for planning permission they should appoint a professional agent to deal with the application on their behalf.</p> <p>However, it is clear in the Council's current protocol that it is important for Members to seek legal advice from the Monitoring Officer or legal officer to the planning committee if they consider may have an interest, to declare a personal and prejudicial interest at any meeting of the Planning Committee that involves a Member's own planning application and take no part in the decision and to leave the meeting and unless granted a dispensation by this Committee.</p> <p>Question 2 states:-</p> <p>Do these proposals differ from the Protocol you have in place? Do you see any difficulties with adopting these proposals?</p> <p>The differences are set out above. In respect of any difficulties, it appears that the Council's protocol acknowledges the possibility that a dispensation may allow a Member to take part in the application, whereas the draft protocol does not.</p>
1.08	<p>Question relates to matters of natural justice, pre-disposition and pre-determination. The importance of recognising these principles pervades the Council's current protocol. The difference between the draft protocol and the Council's protocol is that the draft protocol specifically sets out the need for a Member to consider whether they are speaking as Local Member (in which case they may speak but not vote on an application) or as a Member of the Planning Committee (in which case they may both speak and vote on the application). Although the Council's current Protocol is clear about the need to keep an open mind in any planning decision, it may be that Members of the Planning Committee could find this detail helpful.</p> <p>Question 3 asks: Does the proposal regarding voting differ from the arrangements you have in place? Do you see any difficulties with adopting these proposals? The difference is set out above and there do not appear to be any obvious difficulties in adopting this proposal as the importance of the principle of keeping an open mind in planning decisions is consistent with the Council's current protocol.</p>
1.09	<p>Question 4 and Question 5 both relate to pre-application discussions with applicants/developers/objectors.</p> <p>Question 4 asks whether Members are currently involved in the pre-application discussions and Question 5 asks whether the proposals within</p>

	<p>the Protocol in respect of contact with applicants/developers/objectors would cause any difficulties for the Council in adopting those proposals.</p> <p>The draft protocol is consistent with the Council's current protocol in this respect.</p>
1.10	<p>Question 6 and Question 7 ask whether proposals relating to advice on lobbying of, or by, Councillors differ from the Council's own arrangements and whether there would be any difficulties with adopting the proposals contained in the draft protocol.</p> <p>The Council's current protocol is consistent with the proposed draft protocol in this respect.</p>
1.11	<p>Question 8 asks if the Council can see any difficulty with adopting proposals relating to site visits.</p> <p>The draft protocol is consistent with the Council's protocol save that in addition the Council specifically advises that Members with personal and prejudicial interests are not to attend site visits. This advice is not contained within the draft protocol.</p>
1.12	<p>Question 9 asks whether the authority allows public speaking and if not why not.</p> <p>The Council does allow public speaking.</p> <p>The draft protocol then sets out the proposed arrangements for public speaking (which includes provision for members of the public to speak for 5 minutes) and Question 10 asks if those proposals differ from the Council's arrangements or if the Council sees any difficulties with adopting those proposals.</p> <p>The draft protocol differs from the Council's protocol both in respect of the proposed arrangements for speaking and in that the Council does not have details of arrangements for public speaking at Planning Committee contained with their planning protocol. The Council has a separate protocol/advice note on public speaking at Planning Committee.</p> <p>The Council only allows public speakers 3 minutes to speak at planning committees and also only allows 1 public speaker in favour of an application and 1 public speaker against an application. The Council's procedure for public speakers explains that it will normally be on a first come first served basis and encourages members of the public wishing to speak to liaise with each other in order that a single person can attend to represent others' views.</p> <p>The draft protocol also proposes a different order for public speakers. The draft protocol proposes that the applicant speaks first, the objectors speak second and then the applicant can respond. The Council requires the objectors to speak first, the applicant (or other person supporting the application) to speak second. There is therefore no right for the applicant to respond as the applicant has had the opportunity to listen to the</p>

	<p>objectors before they speak.</p> <p>Where the Council is clear that it will only allow a single public speaker to represent each of the views of the applicant/objectors, although the draft protocol encourages speakers not to repeat the representations of previous speakers it does not provide a limit on the number of speakers. As referred to above, the Draft Protocol also allows 5 minutes for public speakers as opposed to 3 minutes.</p>
1.13	<p>Question 11 asks how proposals in the Draft Protocol relating to the role of officers and decision making differ from the arrangements which the Council has in place, and asks for any perceived difficulties in adopting those proposals.</p> <p>The only obvious difference between the proposed protocol and the Council's current protocol is that there is specific advice in the draft protocol that a Member should not vote or take part in a discussion on a proposal unless they have been present to hear the entire debate. Although this is not specifically stated in the Council's current protocol it is clear from the advice in the current protocol that Members should consider all material planning considerations in reaching their decision.</p>
1.14	<p>Question 12 asks for the Council's views on having a cooling off period.</p> <p>This is a practice that a number of other Councils have in place, whereby if the Planning Committee reaches a decision contrary to officer recommendation (whether or not the recommendation is for approval or refusal) then Members should defer consideration of the matter to the next meeting of the Planning Committee so that a report can be taken to the Committee advising of issues in the proposed decision.</p> <p>The Council's protocol does provide that should the legal officer attending a Planning Committee consider that any legal issues arising from a decision require a report to be taken to the next Committee then he or she can do so. However, this is clearly different from having a specific cooling off procedure.</p> <p>Of all the differences between the draft protocol and the Council's protocol it is likely that this provision would be of most interest to members of the Council's planning committee as it is a clear difference in practice to the current practice and decisions of the Council's committee against officer recommendation are not uncommon.</p>
1.15	<p>Question 13 relates to duties of the Chair of Planning Committee. It asks whether the duties set out are different from the duties of the Council's Chair. The question also asks whether there should be training for the Chair of the Planning Committee as a specific requirement. The Council's protocol does not contain specific reference to the duties of the Chair. However all of the duties set out in the draft protocol are consistent with the practice of the Council's Chair of their Planning Committee.</p> <p>There is a requirement in the Council's protocol for all Members of the Committee to attend compulsory Planning Training. There is a specific requirement that during the course of any year Members of the Committee</p>

	must have attended at 75% of the training.
1.16	<p>Question 14 relates to the role of Members at Planning Appeals. It asks whether the proposals differ from the arrangements that the Council has in place and whether there would be any perceived difficulties in adopting these proposals.</p> <p>The only difference between the draft and the current protocols is that there is no specific requirement in the Council's protocol that a Member of the Planning Committee is not to make representations at the Appeal in opposition to the decision of the Committee as a whole, as is advised in the draft protocol.</p>
1.17	<p>Question 15 asks whether the Council currently requires Planning Committee Members to undertake training before participating in decision making. Further, the question asks whether the Council would support a national approach to the provision of training resources.</p> <p>As referred to above the Council's current Protocol requires Members of the Planning Committee to attend 75% of planning training organised by the Council in any calendar year. However, the Council's current protocol also requires that any Member who attends as a member of Planning Committee should first have had some core training covering Planning Policies, Procedures, Law and the protocol itself</p>
1.18	<p>Question 16 asks whether the proposals in the draft protocol in respect of customer care arrangements differ from the Council's current arrangements and whether the Council perceives any difficulty with preparing a local procedure as set out in paragraph 15.1 of the draft Protocol. This is in fact a typographical error and should read 17.1.</p> <p>Apart from the fact that the Council has a different practice and procedure in respect of public speakers (and public speaking is referred to paragraph 17.4 of the draft protocol) the advice set out is consistent with the Council's current approach.</p> <p>Paragraph 18 of the draft Protocol contains proposed advice on attending and speaking at Planning Committee. The difference between public speaking as proposed in the draft protocol and the Council's current practices have been referred to at 1.12 above.</p>
1.19	Question 17 asks for any additional comments not covered in the Questions above.

2.00	RESOURCE IMPLICATIONS
2.01	None

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
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3.01	WG have issued a draft protocol and consultation questions to the public, requiring a response by the 20 May 2016. The Council's PSG is to be consulted on the Committees' response so a single response can be submitted on behalf of the Council.
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4.00	RISK MANAGEMENT
4.01	N/A

5.00	APPENDICES
5.01	Draft planning protocol and consultation questions and the Council's current protocol

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	As referred to in the report. Contact Officer: Matthew Georgiou, Deputy Monitoring Officer Telephone: 01352 702330 E-mail: matthew_georgiou@flintshire.gov.uk

7.00	GLOSSARY OF TERMS
7.01	LPAs Local Planning Authorities PSG The Council's Planning Strategy Group RTPI Royal Town Planning institute WG Welsh Government

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Draft Planning Committee Protocol

1. Introduction

- 1.1 The Planning (Wales) Act which received Royal Assent in 2015 will result in many changes to the planning system in Wales. In addition to legislative change the Minister is strongly advocating culture change; part of which is a more consistent approach to planning across Wales including greater consistency in the operation of planning committees.
- 1.2 A recent study by the Royal Town Planning Institute into the "Study into the Operation of Planning Committees in Wales" concluded that there is a wide variety of practice in the operation of planning committees across Wales and recommended that a national planning committee protocol be prepared.
- 1.3 As a result of this study, Welsh Government invited local authorities to draft a voluntary planning committee protocol. Through the WLGA a drafting group was established with representatives from the Planning Officers Society Wales and Lawyers in Local Government. The members of this group are:
 - Sioned Wyn Davies, Legal, Democratic and Registration Services Manager, Wrexham CBC
 - Simon Gale, Service Director Planning, RCT CBC
 - Simon Humphreys, Head of Legal Planning & Environment, RCT CBC
 - Roderic Jones, Senior Lawyer, Bridgend CBC
 - Jane Lee, Policy Officer, WLGA
 - Paul Lucas, Director Legal and Democratic Services, RCT CBC
- 1.4 Following a series of meetings, the drafting group has prepared a draft protocol for consultation. The draft protocol is based on the published LLG Planning Code or Protocol 2014.

2.0 The Protocol

- 2.1 The primary aim of the protocol is to improve consistency across the 25 LPAs while ensuring a level of local flexibility through discretion of the Chair and locally determined procedures such as the committee meeting running order. Planning Committees have different names in different local planning authorities therefore where the term "planning committee" appears in the text this has been inserted in brackets.
- 2.2 It is intended that the protocol will complement any national and local codes on Councillor Conduct and the general arrangements regarding the running of meetings. This protocol is specific to Planning and covers the following areas:
 - Relationship to the Members' Code of Conduct
 - Development Proposals and Personal and Prejudicial Interests

- Fettering Discretion in the Planning Process
- Member Involvement at the pre-application stage
- Contact with Applicants, Developers and Objectors
- Lobbying of Councillors
- Lobbying by Councillors
- Site Visits/Inspections
- Public Speaking at Meetings
- Public Speaking Procedures
- Role of Officers
- Decision Making
- Cooling Off Period
- Duties of the Chair
- Role of Members at a Planning Appeal
- Training
- Customer Care
- Advice for the public on attending and speaking at the Planning Committee

3.0 *How to respond*

- 3.1 The WLGA welcomes comments on the protocol and has inserted questions in the consultation draft of the protocol to prompt responses. The closing date for comments is Friday 20th May 2016. Please send comments to Jane Lee by email jane.lee@wlga.gov.uk or by post to WLGA, Local Government House, Drake Walk, Cardiff, CF10 4LG.
- 3.2 The drafting group will review these comments and make changes to the protocol where appropriate. It is anticipated that the final protocol will be available in June for consideration by each local authority at the appropriate Council meeting.

Draft Planning Committee Protocol

1.0 Introduction

- 1.1 **The aim of this Protocol** is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.
- 1.2 One of the key purposes of the planning system is to regulate the development and use of land in the public interest. Your role as a Member of the Planning Authority is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.
- 1.3 You are also a democratically accountable decision-taker who has been elected to provide and pursue policies. You are entitled to be predisposed to make planning decisions in accordance with your political views and policies provided that you have considered all material considerations and have given fair consideration to relevant points raised.
- 1.4 **When the Protocol applies:** this protocol applies to Members at all times when involving themselves in the planning process. (This includes when taking part in the decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.
- 1.5 If you have any doubts about the application of this protocol to your own circumstances you should seek advice early, from the Monitoring Officer or one of his or her staff, and preferably well before any meeting takes place.

Q1. Do you agree with having a national planning protocol?

2. Relationship to the Code of Conduct

Do apply the rules in the Code of Conduct first, which must always be complied with.

Do then apply the rules in this Members' Planning Committee Protocol, which seek to explain and supplement the Code of Conduct and the law on decision making for the purposes of planning control. If you do not abide by this protocol, you may put:

- the Council at risk of proceedings on the legality of the related decision or maladministration; and

- yourself at risk of being named in a report made to the Council or, if the failure is also likely to be a breach of the Code of Conduct, in a complaint being made to the Ombudsman.

3. Development Proposals and Personal and Prejudicial Interests

Conduct of All Members

Do disclose the existence and nature of your interest as required by the Code of Conduct.

Do then act in accordance with the Code of Conduct. Where your interest is a personal and also a prejudicial interest:

- Don't participate, or give the appearance of trying to participate, in the making of any decision on the matter by the [planning committee]
- Don't seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a disclosable or other personal conflict of interest in a proposal, using your position to discuss that proposal with officers or Members when other members of the public would not have the same opportunity to do so.

Do note that you will be able to speak at a [planning committee] where you have a prejudicial interest if and only to the same extent that a member of the public would have a right to speak on that item but remember that you must withdraw from the meeting as soon as you have finished speaking.

Do notify the Monitoring Officer in writing of your own planning applications and note that:

- you should send the notification no later than submission of that application;
- the proposal will always be reported to the [planning committee] as a main item and not dealt with by officers under delegated powers;
- you must not get involved in the processing of the application; and
- it is advisable that you employ an agent to act on your behalf in respect of the proposal when dealing with officers and in public speaking at Committee.

Q2. Do these proposals differ from the protocol you have in place? Do you see any difficulties with adopting these proposals?

4. Fettering Discretion in the Planning Process (natural justice, predisposition and predetermination)

4.1 Members of the Planning Committee

Don't fetter your discretion by approaching the decision with a closed mind.

Do be aware that in your role as an elected Member you are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the Localism Act 2011.

Do keep at the front of your mind that, when you come to make the decision, you

- are entitled to have and to have expressed your own views on the matter, provided you are prepared to reconsider your position in the light of all the evidence and arguments;
- must keep an open mind and hear all of the evidence before you, including the written report, the officers' presentation of the facts and their advice, any oral or written representations received and the arguments from all sides;
- are not required to cast aside views on planning policy you held when seeking election or otherwise acting as a Member, in giving fair consideration to points raised;
- are only entitled to take account a material consideration and must disregard considerations irrelevant to the question and legal context at hand; and
- are to come to a decision after giving what you feel is the right weight to those material considerations.

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

Do consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the community council, for example, or both a unitary authority councillor), provided:

- the proposal does not substantially effect the wellbeing or financial standing of the consultee body;
- you make it clear to the consultee body that:
- your views are expressed on the limited information before you only;
- you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or community, as

and when it comes before the Committee and you hear all of the relevant information; and

- you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee.

Do explain that you do not intend to speak and vote as a member of the Committee because you will be perceived as having judged (or you reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes. (Use the disclosure form provided for disclosing interests.)

Do remember that as a Member of the [planning committee] subject to the provisions of the Code of Conduct and provided that you have not pre-determined the application you can speak and vote on any application which comes before the Committee.

Where an application comes before the [planning committee] which falls within the electoral area of a Member that Member can: -

- act as a Member for their electoral ward in dealing with the application; or
- act as a Member of the [planning committee] in relation to the application.

Where a Member acts as a Member for their electoral ward:

- they will be able to speak on an application but not vote on that application
- they must notify the Chair when that item has been called as the next business to be considered by the [planning committee] that they intend to act as a Member for their electoral ward
- the Chair shall invite the Member to speak following any public speakers but before any debate starts. If the Member decides not to speak on the Application they shall not be given a further opportunity to speak.
- once the Member has exercised their right to speak or indicated that they do not wish to speak they shall leave the [planning committee] area until the item is dealt with.

Where a Member acts as a Member of the [planning committee] for an application in their electoral ward:

- they must notify the Chair when that item has been called as the next business to be considered by the [planning committee] that they intend to act as a Member of the [planning committee]
- the Chair shall explain to all present that the Member will not be acting as a local member for that application and may speak in the debate and vote.

Do seek advice from the [Monitoring Officer] before the meeting of the [planning committee] where you have an interest under the Code of Conduct in an item in your electoral ward {NB the Code of Conduct is due to be amended and para 10(2)(b) is likely to disappear}

Q3. Does the proposal regarding voting differ from the arrangements you have in place? Do you see any difficulties with adopting these proposals?

4.2. Member involvement at the pre-application stage

Do be aware that in your role as an elected member, you are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the Localism Act 2011.

Do be aware that you can through personal significant involvement in preparing or advocating a proposal be, or be perceived by the public as being, no longer able to act impartially.

Do consider yourself able to take part in a consultation on a proposal and, if you are a member of the [planning committee], the subsequent determination of the application provided that: -

- You do not in any way commit yourself as to how you may vote when the proposal comes before the [planning committee] for determination;
- You focus only on site factors and site issues;
- You do not excessively lobby fellow councillors regarding your concerns or views not attempt to persuade them how to vote in advance of the meeting at which the planning decision is take;
- You are not involved in negotiations regarding the application. These should be conducted by officers separately from any pre-application discussions members have been involved in.

At a pre-application consultation: -

- Do ask relevant questions for the purpose of clarifying your understanding of the proposal;
- Do remember that the presentation is not part of the formal process of debate and determination of any application.

Q4. Are members currently involved in pre-application discussions? Do you see any difficulties with adopting these proposals?

5. Contact with Applicants, Developers and Objectors

Do refer those who approach you for planning, procedural or technical advice to officers.

Don't agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should seek to arrange that meeting yourself through a request to the [Development Control Manager] to organise it. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.

Do otherwise:

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

In addition in respect of presentations by applicants/developers:

Don't attend a planning presentation without requesting an officer to be present.

Do ask relevant questions for the purposes of clarifying your understanding of the proposals.

Do remember that the presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the appropriate Committee of the planning authority.

Do be aware that a presentation is a form of lobbying and, whilst you may express any view on the merits or otherwise of the proposal presented, you should never state how you or other Members would intend to vote at a committee.

Q5. Do these proposals differ from the arrangements you have in place? Do you see any difficulties with adopting these proposals?

6. Lobbying of Councillors

Do explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it may subsequently prejudice your impartiality, and therefore your ability to participate in the Committee's decision making, to make any sort of promise to vote one way or another or offer a firm point of view that it amounts to the same thing.

Do remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.

Don't accept gifts or hospitality from any person involved in or affected by a planning proposal.

Do copy or pass on any lobbying correspondence you receive to the [Development Control Manager] at the earliest opportunity.

Do promptly refer to the [Development Control Manager] any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.

Do inform the [Monitoring Officer] where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.

Do note that, unless you have a personal interest which is also a prejudicial interest, you will not have fettered your discretion or breached this Planning Protocol through:

- Listening to or receiving viewpoints from residents or other interested parties;
- making comments to residents, interested parties, other Members or appropriate officers (making clear that you must keep an open mind when it comes to making the decision);
- seeking information through appropriate channels; or
- being a vehicle for the expression of opinion of others in your role as a [Ward][Division] Member.

Q6. Do these proposals differ from the arrangements you have in place? Do you see any difficulties with adopting these proposals?

7. Lobbying by Councillors

Don't become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals unless it is your intention to openly campaign on the matter and will therefore step away from the Committee when it comes to make its decision.

Do join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals (such as the Victorian Society, CPRW, Ramblers Association or a local civic society), but you should disclose that interest on the grounds of transparency where the organisation has made representations on a particular proposal.

Don't excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.

Don't decide or discuss how to vote on any application at any political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue.

Q7. Do these proposals differ from the arrangements you have in place? Do you see any difficulties with adopting these proposals?

8. Site Visits/Inspections

8.1 Site visits are fact-finding exercises, the sole purpose of which is to allow the [planning committee] to look at the site and its surroundings and shall only be held when the [planning committee] are unable to reach an informed decision without seeing the site for themselves and an inspections would have substantial benefit.

Examples where a site visit would NOT be appropriate include: -

- Where purely policy matters or issues of principle are at issue;
- A Member wishes to consider boundary or neighbour disputes;
- To consider issues of competition;
- To consider loss of property values;
- Simply at the invitation or request of the local Member;
- Where you disagree with the conclusion reached in the Officer's report;
- To consider issues which are not material planning considerations;
- Where Members have already visited the site in the last 12 months, other than in exceptional circumstances, details of which shall be minuted.

8.2 In all cases where a decision is made to conduct a site visit the full planning reasons and details of the issues to be inspected during the site visit shall be minuted.

If a site visited is conducted as a member of the [planning committee]:

- **Do** try to attend site visits organised by the Council where possible.
- **Do** ensure that you report back to the Committee any information gained from the site visit that you feel would benefit all Members of the [planning committee]
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **Don't** hear representations from any other party, with the exception of the [Ward] [local] Member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.
- **Don't** express opinions or views.
- **Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
 - you feel it is essential for you to visit the site other than through attending the official site visit,
 - you have first spoken to the [Development Control Manager] about your intention to do so and why (which will be recorded on the file) and
 - you can ensure you will comply with these good practice rules on site visits.

Q8. Do you see any difficulties with adopting these proposals?

9. Public Speaking at Meetings

Don't allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking or through the Chair, as this may give the appearance of bias.

Do ensure that you comply with the Council's procedures in respect of public speaking.

Q9. Does your authority allow public speaking? If not are there any reasons why public speaking cannot be allowed?

10. Public Speaking Procedures

10.1 Public speaking shall be permitted at a [planning committee] in accordance with the following procedures: -

- A member of the public who wishes to speak at the [planning committee] must notify the [Development Control Manager] in writing at least 2 working days prior to the date of the [planning committee] where the planning application will be considered. In exceptional circumstances, the Chair may agree to hear late requests.
- Where an application is deferred (following an application where Members have indicated that they are minded to either grant or refuse contrary to officer recommendation) then public speakers will not be heard on the second occasion that the application is before Members subject to the Chairman's discretion, in exceptional circumstances, to allow such speakers.
- Each side will have no more than 5 minutes to address the meeting although, in exceptional circumstances, the Chairman may extend this time. Where there is more than one speaker objecting to the application then the five minutes is a total for all objectors.
- Visual aids and other supporting evidence will not be permitted.
- A member of the public addressing the [planning committee] is not permitted to put questions to Members or Officers but this will not prevent Members asking the public speaker questions through the Chairman.
- The order for public speaking shall be:
 - The applicant/professional adviser of the objector

- Supporters of the applicant
 - Objector/ professional advisers of the objectors
 - Response by the applicant
 - Community Councillor
 - Local Member or adjoining Ward Member
- Consideration of an application will not be delayed simply because an objector, the applicant, Community Councillor or Ward Member is not present providing that they have been appropriately informed of the date of the meeting and of their right to speak at the meeting.

Q10. Do these proposals differ from the arrangements you have in place? Do you see any difficulties with adopting these proposals?

11. Role of Officers

Don't put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the [Development Control Manager], which may be incorporated into any committee report).

Do recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

12. Decision Making

Do ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your planning reasons are recorded and repeated in the report to the Committee.

Do come to meetings with an open mind and demonstrate that you are open-minded.

Do comply with section 38 of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.

Do come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.

Don't vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.

Do have recorded the reasons for Committee's decision to defer any proposal [and that this is in accordance with the Council's protocol on deferrals].

Do make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

Q11. Do these proposals differ from the arrangements you have in place? Do you see any difficulties with adopting these proposals?

13. Cooling Off Period

13.1 Where Members of the [planning committee] are minded to take a decision against Officers recommendation, Members should defer consideration of that matter to the next meeting of the Committee in order to receive a further report from [Development Control Manager], if necessary, in consultation with the [Legal and Democratic Services Officer], upon the strengths and weaknesses of any proposed or possible planning reasons for such a decision.

Q12. What are your views on having a cooling off period?

14. Duties of the Chair

14.1 The Chair shall make clear to everyone present the capacity in which a Member is speaking on a specific application unless that Member is a Member of the [planning committee] and taking part in the debate.

14.2 The Chair shall make clear to everyone present when the [planning committee] is moving to the debate stage on any application.

14.3 The Chair shall make clear to everyone present at the [planning committee] that a debate or speech must relate to planning issues relevant to the application.

14.4 The Chair shall ensure that all Members of the [planning committee] who are entitled to vote on any particular application understand what they are voting for and whether the vote is on an amendment of on a recommendation.

14.5 The Chair will be responsible for making clear to everyone present at a meeting what the decision is on an application

Q13. Are these duties different from current duties? Do you consider that training for Chair of Planning Committee would be required?

15. Role of Members at a Planning Appeal

- 15.1 Where a [planning committee] refuse an application contrary to officers' recommendation the planning officers' professional code will prevent them from supporting the committee decision at appeal.
- 15.2 It is acceptable for a member of the [planning committee] to advocate the decision made by the [planning committee] but it is recommended that an officer provides technical support to the Member at the appeal and deals with any technical or process issues raised by the Inspector or other participants.
- 15.3 A Ward Member or Non-Committee Member is entitled to make representations at the appeal but they should offer local views and not the views of the [planning committee]
- 15.4 A Member who disagrees with the [planning committee] should not make opposing representations at an appeal and should accept the decision of the [planning committee] as being fair, open and democratic. Where a Member wishes to make representations at an appeal that are contrary to the decision of the [planning committee] they should first inform the [Development Control Manager] of their decision so that the Planning Inspectorate can be informed. Members in these circumstances must understand that the views that they put forward do not represent the views of the Council or the [planning committee].

Q14. Do these proposals differ from the arrangements you have in place? Do you see any difficulties with adopting these proposals?

16. Training

- 16.1 All Members of the [planning committee] must undertake training in accordance with the relevant training scheme (local or national) before participating in any decision making at meetings.
- 16.2 Do endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.

Q15. Do you currently require planning committee members to undertake training before participating in any decision making? Would you support a national approach to provision of training resources?

17. *Customer Care*

- 17.1 The Planning Authority will adopt a procedure which sets out the way in which each application will be dealt with. This procedure should cover cut off time for representations and how late representations to the report are managed, how members' questions will be dealt with, moving and seconding of recommendations from officers and how amendments will be dealt with.
- 17.2 Local Planning Authorities are not obliged to notify objectors that the application is going to committee. It is however advised that interested parties are made aware that information regarding committee agendas is available on the Council website and therefore they are advised to regularly check the Council website.
- 17.3 As part of the proper administration of the meeting any members of the public who attend shall be shown to the public gallery and provided with sufficient copies of the Agenda for the meeting. In addition copies of the procedure adopted by the Council for the conduct of the meeting should be made available.
- 17.4 Members of the public who have requested an opportunity to speak on an application shall be shown the location where they will be able to address the [planning committee] and when their opportunity to address the [planning committee] will arise.
- 17.5 The Chairman shall make clear to everyone present which Agenda item the [planning committee] is considering at any specific time and shall identify the application number and page number on the Agenda and the site address.
- 17.6 The Chairman will confirm the order of speaking on an application. The Chairman shall identify to the [planning committee] the public speaker and the capacity in which they address the [planning committee]. The Chairman will confirm to the public speakers the time permitted to address the [planning committee]. If Member who is speaking has a right to speak but not to vote the Chairman shall make clear the capacity of that Member at the meeting.
- 17.7 When a decision is taken on any application, the Chairman shall make clear to all present at the meeting the decision taken by the [planning committee] on that item.

Q16. Do these proposals differ from the current customer care arrangements you have in place? Do you see any difficulties with preparing a local procedure as set out in paragraph 15.1?

18. *Advice on attending and speaking at the [Planning Committee]*

- 18.1 The Council shall publish on its web site advice to the public on attending and speaking at the [planning committee].

Suggested provisions: -

1. How do the Council decide planning applications?

Over three-quarters of the planning applications submitted to the Council are decided by officers under delegated powers. The rest are decided by Elected Councillors at the [Planning Committee]. The full list of matters that should be considered by the Committee can be found in the scheme of delegation on the Council's website – www.xxxxx.gov.uk/planning

The following procedures and guidance are designed to ensure fair play and the smooth conduct of the [Planning Committee] meeting.

2. Can I speak at Committee?

Yes - but there are some procedures that need to be followed and these are outlined below.

3. How do I get to speak at Committee?

If you wish to speak at the Committee, you must notify the [Development Control Manager] in writing, at least 2 working days before the date of the Committee meeting at which the planning application will be considered. This will allow reasonable notice for the applicant to be contacted and make arrangements for them, or their agent, to speak and respond to you, should they so wish.

Notification of a written request to speak at the Committee which is received less than 2 days before the date of the meeting will not be accepted, unless there are exceptional circumstances. These will be determined by the Council Legal Officer, in consultation with the Chairman of the Committee.

4. What if a lot of people want to speak?

If a number of people wish to speak either for, or against, a particular planning application on similar grounds, you should try to combine your representations with them and nominate one spokesperson to speak on your behalf. This will avoid unnecessary repetition at the Committee meeting.

5. What can I expect at Committee?

As long as you have registered to speak there is nothing you need to do when you arrive at the Committee as the Chairman will let you know when it is your turn to speak.

First, the Chairman will open the meeting and ask the Members of the Committee to declare whether they have any personal and/or prejudicial interests in any of the applications that are to be discussed. If any Member does have a prejudicial interest you will see they leave the room when that application is being discussed. Further information on personal and prejudicial interests can be found on the Council's website – www.xxxx.gov.uk

The Chairman will then introduce the application to be considered. Public speaking will normally come next. Consideration of an item will not be delayed if a person who has registered to speak is not present.

Example The order for public speaking is likely to be as follows:

1. The applicant
2. The applicant's professional advisers
3. Supporters of the applicant
4. Professional advisers of the objectors
5. Objectors
6. Response by the applicant

It is important to be aware that public speakers will be expected to sit at a microphone at the front of the meeting. If you think that this situation could make you nervous you may want to think about preparing some notes of what you want to say to help you on the night, or perhaps ask someone to speak on your behalf.

Each side will have no more than 5 minutes to address the meeting although, in exceptional circumstances, the Chairman may extend this time. All speakers must comply with the directions of the Chairman, should he/she interrupt them during their speech.

6. What are Site Visit Committees?

Sometimes, even before the public speaking has started, a Member of the Committee may request that consideration of the application is deferred for a site visit. If the Committee agrees with this request then there will be no further discussion on the application at the meeting, and you will not be invited to speak.

Members of the Committee (not necessarily the whole Committee) will make a formal visit to the application site within a couple of weeks in order to assess the situation on site. You will not be able to make representations to the Members of the site visit Committee.

The application will then be reported back to the next available meeting of the Committee, along with an update from the site visit meeting. It is expected that you would still wish to address the Committee but if this is not the case then you should notify us of this change.

7. What happens after the public speaking?

Once all of the people who have registered to speak on the application have spoken, the matter will then be considered and debated by Members. In some cases the Chairman may invite the Planning Officer to make a short presentation on the application to the Committee or update Members on any late representations that have been received.

Members will then 'vote' on the application through a show of hands, which will normally lead to one of three outcomes:

- they may vote to defer determination of the application to a later meeting if it is felt that further information or amendments are needed before a decision can be made;

- they may vote to agree with the Planning Officer's recommendation to approve or refuse the application; or
- they may vote to disagree with the Planning Officer's recommendation.

If the resolution is to go against the Planning Officer's recommendation then the application will not usually be determined at that meeting. The application will be considered again at a further meeting of the Committee with an additional report looking at the implications of going against the Planning Officer's recommendation. You will not normally be able to speak when the application is reported back. Members are not bound by their original resolution and can, following consideration resolve to agree with the Planning Officer's recommendation.

General advice

The law of defamation applies to any statement made in public. It is important, therefore, that you exercise extreme caution if you make personal comments about either applicants or objectors.

You should not enter into any dialogue with the Members of the Committee at the meeting.

Meetings of the Development Control Committee are normally held at am/pm in the Committee Chamber, Council Offices. General enquiries in respect of meetings should be made to the Council's Member Services Support Team, tel, email: If you want to know when, or if, a particular planning application is due to be considered by the Committee, please contact.

Q17. Do you have any additional comments not covered in the questions above?

SECTION 23

23. PLANNING CODE OF PRACTICE

HOW WE DEAL WITH PLANNING APPLICATIONS AND OTHER PLANNING ISSUES

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1. **INTRODUCTION**

- 1.1 The Planning system involves taking decisions about the use and development of land in the wider public interest having regard to the Development Plan, national Planning Guidance and other material considerations. Planning can be contentious because its decisions affect the daily lives of individuals, landowners and developers.

It is important therefore that the process is open and transparent. In other words the system should not only be fair but it should be seen to be fair. The Nolan Committee's report on Standards in Public Life gave close consideration to these issues and its recommendations feature significantly in the Local Government Association's revised 2002 guidance for Members and Officers in dealing with planning matters. Members are advised to read the LGA guidance as it provides useful background to the Code of Practice.

- 1.2 This Code of Practice provides guidance to elected Members, officers and developers on the planning process. It is supplementary to the Flintshire Member and Officer Codes of Conduct and the Protocol on Member/officer relations all of which are contained in the Council Constitution.
- 1.3 Whilst the principles set out in this document apply primarily to the manner in which individual planning applications should be dealt with, they also apply to the decision-making process relating to any aspect of the planning function.

2. **ROLE OF MEMBERS AND OFFICERS**

2.1 **General**

- 2.1.1 Members and officers have different but complementary roles. Both serve the public but Members are responsible to the electorate, whilst 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 individual Members, and Members instructions may only be given to officers through a decision of the Council, its Cabinet or a Committee.
- 2.1.2 It is important that a good relationship exists between Members and officers and that this is based on mutual trust and understanding of each others positions. This relationship and trust must never be abused or compromised.

2.2 **Role of Officers**

- 2.2.1 The officer's function is to advise and assist Members in the formulation of planning policies, in the determination of planning applications and, deciding whether or not to take enforcement action for breaches of planning control. officers should:-

- Provide impartial and professional advice.
- Make sure that all accurate information necessary for the decision to be

made is given.

- Provide a clear and accurate analysis of the issues.
- Set applications and enforcement issues against the broader Development Plan policies and all other material considerations.
- Give a clear recommendation based on the above requirements.
- Carry out the decisions made by Members in committee or through the delegated authority of the Chief Officer, Planning and Environment
- Update Members on new legislation and guidance.
- Provide appropriate training and briefings for Members.

2.3 **Role of Members**

2.3.1 The full Council is responsible for setting the Council's formal planning policy framework through the Development Plan(s). As a general principle there is an expectation that Members will uphold the Council's planning policies.

2.3.2 When Members come to make a decision they must:-

- Be clear as to whether or not they have an interest which needs to be declared if not already done so.
- Act fairly and openly.
- Approach each application with an open mind.
- Carefully weigh up all relevant issues.
- Determine each application on its own merits.
- Avoid giving the impression that the Member has made her / his mind up prior to the application being determined.
- Ensure that there are clear and substantial reasons for their decisions, and that those reasons are clearly stated.

2.3.3 Where a planning application relates to a Member's ward the views of the local Member are important to the Chief Officer, Planning & Environment and to the Chair and Members of the Planning and Development Control Committee. Ward Members should not become too closely identified with special interest groups if they wish to vote in the Planning and Development Control Committee. Whilst Members have a responsibility to their constituents their overriding duty is to the whole County and therefore need to consider proposed developments in the interests of the wider community.

2.3.4 Members should not decide how to vote on any application at any formal political group meeting. Political group meetings should never dictate how Members should vote on a planning issue.

2.4 **Member / Officer Contact**

2.4.1 The officer / Member relationship is extremely important for good decision making and an effective planning service. The mutual understanding of their respective roles and respect for each other's position is vital for good relations.

- 2.4.2 In making enquiries regarding individual applications Members should make contact with the Case Officer or Line Manager and make an appointment if necessary. Whilst Members may wish to seek advice or information from the Chief Officer, Planning & Environment or the Development Manager, Members should in the first instance seek information from the Case Officer. Information can be sought and provided by e-mail.
- 2.4.3 Officers will provide every reasonable help to Members in the carrying out of their duties. Meetings between officers and Members may sometimes be helpful, but are only likely to be of value if prior arrangements have been made. This allows the officer to have all relevant documents available at the meeting. Prior arrangements may be made by telephoning the relevant Officer or the Planning Services Reception staff. Members rooms can be utilised and suitable rooms can be made available by mutual agreement if privacy is required.
- 2.4.4 It is acknowledged that Members and officers may well have differing views on a proposal but Members should on no account interfere with or put pressure on officers to make a particular recommendation.

3. **TRAINING**

- 3.1 All members of the Council are required to have received core planning training covering planning policies, procedures, law and this Code.
- 3.2 Other training will be arranged by officers in consultation with members in the form of additional sessions, seminars and workshops on topical issues and to keep members up to date on new procedures, advice and guidance.
- 3.3 Members of the Planning & Development Control Committee (including substitute members) are required at all times between ordinary County Council elections to attend at least 75% of the planning training topics covered during their membership of the Committee.
- 3.4 Attendance at planning training will be monitored and reported to the Planning Strategy Group who may grant an exception to the requirements of paragraph 3.3 where there is good reason for a member temporarily failing to meet this requirement.

4. **REGISTRATION AND DECLARATION OF INTERESTS**

4.1 **Code of Conduct**

- 4.1.1 Members should follow scrupulously the County Council's **Members' Code of Conduct** in relation to registration and declaration of interests and, if an interest is declared, in deciding whether the Member should participate in the consideration of an application. Not only should impropriety be avoided but also any appearance or grounds for suspicion of improper conduct. If a Member considers he/she may have a personal interest they should consult

the Monitoring Officer or a Senior Officer of Legal & Democratic Services for advice on their position ideally in advance of the meeting.

4.2 **Personal Interests**

4.2.1 The principles about the disclosure of interests should be applied, not only to formal meetings, but also to any of a Member's dealings with Council officers, or with other Members. Where a Member has a personal interest, as defined by the Code, it must always be declared. It does not necessarily follow that the Member is debarred from participation in the discussion. The responsibility for declaring an interest lies with the Member, but the Monitoring Officer is there to advise. If there is any doubt in a Member's mind, he / she should seek early advice from the Monitoring Officer or other Senior Officer of Legal & Democratic Services on their position. Members should err on the side of declaring an interest when they are not sure.

4.2.2 Members who have substantial property, professional or other interests relating to the planning function which would prevent them from voting on a regular basis, should avoid serving on the Planning and Development Control Committee.

4.2.3 Where a Local Member has decided he / she has a personal interest making it inappropriate for that Member to be involved in the processing and determination of a planning application in his / her ward such a Member may arrange for another Member to act as local Member instead to represent constituents views. In such a situation the local Member should inform the Monitoring Officer and the Chief Officer, Planning & Environment of the arrangement made and take no further part in the processing and determination of the planning application other than referring any representations or communications received to the Member who is acting as local Member.

4.3 **Declaration**

4.3.1 When declaring an interest at committee, this should be done at the beginning of the meeting. Members should be clear and specific in identifying the item on the agenda in which they have an interest, and the nature of that interest.

4.4 **Predetermination**

4.4.1 A Member has predetermined a planning application where the Member shows (e.g. in local press) he/she has made their mind up on the merits of the application prior to it being considered at committee. A predisposition is where a Member has an inclination or preliminary view on the merits of the application.

4.4.2. A Member who has predetermined the merits of a planning application in advance of it being considered at committee should not be a Member of the committee that considers that application. A Member of the committee may have a predisposition or a preliminary view. If in doubt a Committee Member

should seek advice prior to the Committee meeting from either the Monitoring Officer or the Solicitor who attends committee meetings.

- 4.4.3 Those Members who do not sit on the Planning & Development Control Committee may predetermine their stance on an application but should respect the fact that Planning Committee Members cannot do the same.

4.5 **Register**

- 4.5.1 A register of Members' interests is maintained by the Council's Monitoring Officer. It is available for public inspection. Each Member has a responsibility to provide the Monitoring Officer with up to date written details of relevant interests.

4.6 **Dual Community / Town and County Council Membership**

- 4.6.1 Membership of a Town / Community Council which has expressed a view on a planning matter does not in itself mean that the Member cannot take part in the determination of the matter when it comes before the Planning and Development Control Committee provided that the Member has kept an open mind and not committed himself / herself to a final view on the matter until all the arguments for and against have been aired at committee. The Member can enter into discussion and ask questions, but should make clear that a view in favour or against the proposal is on the basis of knowledge and information known at that time.
- 4.6.2 Where an application submitted by a Community or Town Council is being considered then a Member of that Council may not vote on the proposal to determine the application unless the Member has obtained dispensation from the Standards Committee.

5. **LOBBYING**

- 5.1 Lobbying is a part of the political process and it is quite common for applicants or other interested parties to wish to discuss a proposed development with Members before a planning application is determined. This can help Members' understanding of the issues and concerns associated with an application. Officers should be made of any lobbying correspondence Members receive.
- 5.2 However, Members of the Planning & Development Control Committee are under an obligation to determine matters on their merits. That means that they should not take a firm view on a planning matter before receiving and reading the officer's report or receiving any new information reported to the committee. Whilst Members of the committee may form an initial view or opinion, and indicate their view that an application is contrary to policy, they should not openly declare which way they intend to vote in advance of the Planning and Development Control Committee meeting. To avoid compromising their position before they have received all the relevant information, committee Members are advised that they should:-

- > **Refer** applicants / developers who approach them for planning or procedural advice to the appropriate Planning Officer.
 - > **Avoid** making it known in advance whether they support or oppose the proposal.
 - > **Avoid** campaigning actively in support of a particular outcome.
 - > **Direct** lobbyists or objectors to the appropriate Planning Officer, who will include reference to their opinions where relevant in their report.
- 5.3 Members should declare at the appropriate part of the committee meeting significant contact with applicants and objectors. Significant contact is where a Member has been contacted on four or more occasions by the applicant or the same objector (either orally or in writing).
- 5.4 Members must advise the Ward Member as a courtesy in cases where they are seeking to be involved in a development proposal or enforcement issue outside of their own Ward. It is accepted that where a planning application has a significant effect on another ward the Member(s) for that ward is entitled to become involved in the development proposal.
- 5.5 Members of the Planning & Development Control Committee must avoid organising support for or against a planning application. Where such a Member does organise support for or against a planning application then that Member must stand down from the Planning and Development Control Committee on such a planning application. Where a Member is in doubt about such issues the Member should seek advice from the Monitoring Officer or other Senior Officer in Legal & Democratic Services ideally in advance of the meeting.
- 5.6 If a Planning & Development Control Committee Member expresses support for, or opposition to, a proposal before the matter is formally considered at the relevant meeting, whether or not there has been lobbying, he / she could have some difficulty in being able to claim to retain an open mind on the issue and to be prepared to determine the application on its merits. If such a Member does express an opinion, then it should make it clear that it is a preliminary opinion and that he / she will only be in a position to take a final decision when all the evidence and arguments have been considered.
- 5.7 Where a member of the committee has not complied with 5.2, 5.5 or 5.6 above and has predetermined the merits of the application, they must not participate in the decision making on that application.

6. **APPLICATIONS SUBMITTED BY MEMBERS AND OFFICERS**

- 6.1 Planning applications submitted by or on behalf of Members, or officers involved in the planning application process, or the close relatives* of Members or such officers where the officer or Member knows of the application shall be decided by the Planning and Development Control Committee and not by the Chief Officer, Planning & Environment under

delegated powers.

[* Close relative is defined as spouse, partner, parent, child or sibling].

6.2 A Member affected by clause 6.1 shall declare the personal and prejudicial interest at any meeting of the Planning and Development Control Committee to determine the application, take no part in the decision and leave the meeting place unless granted a dispensation by the Standards Committee.

6.3 The affected officer shall take no part in the processing of the application and its determination.

7. **APPLICATIONS SUBMITTED BY THE COUNCIL**

7.1 It is important that the Council is seen to be treating applications for its own development (or a development involving the Council and another party) on an equal footing with all other applications as well as actually doing so.

7.2 Subject to any legislative restrictions all such proposals will be subject to the same administration processes, including consultation, as private applications with consideration being made in accordance with policy and any other material planning considerations.

8. **PRE-APPLICATION AND ENFORCEMENT DISCUSSIONS**

8.1 Pre-application meetings between officers and potential applicants and negotiations regarding breaches of planning control are encouraged. The aim of such meetings is to ensure beneficial development and to resolve matters that might otherwise lead to the refusal of planning permission. Such discussions will normally take place at officer level and Members should refer requests for such advice to the officers. If Members become involved in such discussions they should make it clear that their views are personal and provisional. To avoid such meetings being misunderstood:-

- > **It will be made clear** prior to and at such meetings that only personal and provisional views based upon the Development Plan and other material considerations can be given and no commitments can be made which would bind or otherwise compromise the Planning & Development Control Committee or any member of the committee.
- > **A note** of the discussion will be taken and placed on file and made available for public inspection once an application has been made.
- > **Where** exceptionally meetings are to involve Members the meetings will be arranged by and attended by officers.

9. **PLANNING COMMITTEE SITE VISITS**

9.1 **Purpose**

9.1.1 Planning and Development Control Committee site visits are not meetings

where decisions are made and neither are they public meetings. They are essentially fact finding exercises held for the benefit of Members where a proposed development may be difficult to visualise from the plans and supporting material. They may be necessary for careful consideration of relationships to adjoining property or the general character of the area due to the scale or design of the development.

9.2 **Request for a Site Visit**

9.2.1 A request for a site visit is normally made by the local Ward Member in response to being consulted on the proposed development. The request must be in writing (e.g. e-mail) and should clearly indicate the planning reasons for the visit which will appear on the agenda for site visits. Site visits can be costly and cause delay so it is important that they are only held where necessary and prior to committee. Site visits are held pursuant to a decision of the Chair of the Planning and Development Control Committee or pursuant to a request from a local Member including another Ward Member consulted because the application significantly affects the other ward. All local Members will be advised when a site visit has been arranged.

9.2.2 Examples where a site visit would not normally be appropriate include where;

- purely policy matters or issues of principle are at issue
- the Member wishes to consider boundary or neighbour disputes
- issues of competition
- loss of property values
- any other issues which are not material planning considerations
- where Members have already visited the site within the last 12 months, except in exceptional circumstances

Where no planning reason is given for the site visit or the reason for the site visit is any of the above the Chair should not convene the site visit.

9.3 **Format and Conduct at the Site Visit**

9.3.1 Members of the Planning and Development Control Committee and the Local Ward Member(s) will be notified in advance of any visit. Such visits are not formal meetings of the Committee and there is no right of public attendance at the visit itself. If the public in lobbying Members on their way to or from a site visit seek to present documentation they should be advised to send it to the Planning Department instead

9.3.2 Advance notice of the site visit will also be sent to the applicant or agent requesting that access to the site for Members/officers be provided at the specified time/date and pointing out that the applicant/agent will not be allowed to participate in the site visit. Any Member with a personal and prejudicial interest must not take part in the site visit.

- 9.3.3 The Chair will invite the Planning Officer to briefly outline the proposal and point out the key issues raised by the application and of any vantage points from which the site should be viewed then the local ward Member will be invited to speak, followed by other Members of the Committee who may ask questions and seek clarification from officers who will respond. Any statement or discussion concerning the principles and policies applicable to the development should not be allowed by the Chairman.
- 9.3.4 Although site visits are not part of the formal committee consideration of the application, the Code of Conduct still applies to site visits and Members should have regard to the guidance on declarations of personal interest.
- 9.3.5 A file record will be kept of those attending the site visit, together with a brief note of any points raised.
- 9.3.6 For the avoidance of doubt references in this section to Local Member(s) includes adjacent ward Members where the application significantly affects their ward.
- 9.3.7 Occasionally the applicant/agent/owner of the site to be visited may not permit Members and officers onto the site. There may be good reason for this, for example, if someone was injured they could have a claim against the landowner. Where access is refused to one or more of the elected Members, the Chairman will be advised that none of the Members and officers should enter onto the land. In such circumstances the site should be viewed from the nearest public land such as the public highway.
- 9.3.8. In summary site visits are:-
- > **Fact** finding exercise.
 - > **Not part** of the formal committee meeting and therefore public rights of attendance do not apply.
 - > **To enable** officers to point out relevant features.
 - > **To enable** questions to be asked on site for clarification. However, discussions on the application will only take place at the subsequent committee.

10. **PROCEDURE AT PLANNING & DEVELOPMENT CONTROL COMMITTEE**

- 10.1 The majority of planning applications are determined by the Chief Officer, Planning & Environment under the Council's delegation scheme. This is necessary to ensure that most decisions are made in a timely manner. Whilst Members have a right to request that applications, affecting their ward be determined by the Planning and Development Control Committee such requests should be justified by clearly identifying in writing why a committee decision is required. This is generally done on the return notification form sent out to Members.

10.2 Officers will produce written reports on all planning applications reported to committee. In respect of each proposal the report will include, amongst other matters;

- description of the proposal
- description of the site
- responses to consultations and officer observations thereon.
- summary of objections and / or support received
- relevant site history
- relevant Development Plan policies
- relevant planning guidance where appropriate
- any other material planning consideration
- an appraisal by the Case Officer which will include the relevant views of other consulted officers within the Planning Division
- a clear recommendation
- brief details of the substance of any conditions to be imposed or;
- full details of reasons for refusal.

10.3 Late observations received by 5.00 p.m. the day before a committee meeting will be summarised and reported separately and circulated to Members immediately prior to the start of the meeting.

10.4 The Planning Officer will briefly introduce each item highlighting the key issues for Members consideration.

10.5 Where an application is being reported to committee, the Chair will allow oral representations to be made in accordance with the protocol on public speaking prior to the committee debating the application.

10.6 Where a Member seeks and obtains a majority for a deferment for a specific purpose then there will be no further debate on that matter until such time as the proposal is re-presented.

10.7 Members who read out at committee, or refer to, communications they have received should provide an advance copy to officers

11. **DECISIONS CONTRARY TO OFFICER RECOMMENDATION**

11.1 From time to time members of the Planning & Development Control Committee will disagree with the professional advice given by the Chief Officer, Planning & Environment. The committee's decisions must be in accordance with the provisions of the Development Plan unless material considerations indicate otherwise. If Members propose to make a decision contrary to the officer recommendation (whether for approval or refusal), the proposer should set out clearly the reasons for doing so. The Chairperson will ensure that the officer is given the opportunity to explain the implications of the contrary decision, before a vote is taken.

- 11.2 In cases where the Planning and Development Control Committee decides for good and valid reasons to depart from the Chief Officer, Planning & Environment recommendation, the committee must always define the reasons for rejecting the officer's recommendation and those reasons must be recorded in the minutes of the meeting.
- 11.3 In the case of conditions which the committee has resolved to add or amend the precise wording is delegated to the Chief Officer, Planning & Environment and, if appropriate, in consultation with the Chair of committee.
- 11.4 In cases of refusal the reasons shall be clearly stated and agreed by Members. There may be occasions when officers need to clarify the reasons for refusal either at the meeting itself or by a report to a subsequent meeting.
- 11.5 A legal advisor present at the committee meeting may subsequently prevent a decision notice being issued until a report by the Chief Officer Governance has been considered at the subsequent committee meeting. The reason for this report may be concerns of a legal nature or that at the committee meeting the Chief Officer, Planning and Environment indicated the proposed decision represents a significant departure from planning policy and the legal officer subsequently agreed.

12. PLANNING APPEALS

- 12.1 There are a wide variety of different factual situations relating to appeals. There can be appeals against non determination or against a refusal made under officers' delegated powers or by the Planning & Development Control Committee, either in accordance with the officer recommendation or contrary to the officer recommendation. Appeals can be heard by way of written representations, informal hearing or at an inquiry. The appeal may relate to a major or a minor planning proposal, a development that has attracted a lot of interest from Members and the public or a proposal that is of limited interest. Because of the range of circumstances, the way the Council responds to an appeal will be individual to the circumstances of that appeal. The following principles will guide the Council's response to each specific appeal.
- 12.2 The Council recognises the importance of complying with the timescales within the appeal process as a failure to meet these timescales can lead to an award of costs against the Council.
- 12.3 The Council will adopt a team approach to appeals whereby Members and officers work together in the best interest of the Council, irrespective of how the decision appealed against was arrived at.
- 12.4 The decision whether an appeal is determined by way of written representations, informal hearing or public inquiry is a matter for the Planning Inspectorate but the Council is given the opportunity of making representations as to the appropriate format. The Chief Officer, Planning & Environment will make representations on behalf of the Council as to its

preferred format where possible following consultation with the local Member(s).

- 12.5 In the case of Informal Hearings and inquiries, the Chief Officer, Planning & Environment will determine who shall present the case on behalf of the Council following consultation with the Chair and Vice Chair of the Planning and Development Control Committee.
- 12.6 Where the decision appealed against was made by officers under delegated powers or was pursuant to an officer recommendation, the case will normally be presented by the Council's officers.
- 12.7 Where the decision was made by Members contrary to officer recommendation, attendance by one or more Members would assist the Council's case and relevant Members will be approached by the Chief Officer, Planning & Environment to ascertain their availability. Officers will assist any such Member in preparing for the appeal.
- 12.8 External legal representation and/or consultants will be engaged where the Chief Officer, Planning & Environment, following consultation with the Local Member(s) and the Chair and Vice Chair of the Planning and Development Control Committee, believes this to be appropriate in all the circumstances. One relevant circumstance is the need for Planning Officers who are members of The Royal Town Planning Institute to comply with its Code of Professional Conduct and not make statements purporting to be their own which are contrary to their bona fide professional opinion.

13. **PLANNING OBLIGATIONS**

- 13.1 The Planning and Development Control Committee may, when considering the merits of an individual planning application, consider any planning obligation which has been raised with the applicant or agent but should form a view solely on the basis of the contents of the application and should take into account offered planning obligations only to the extent that they are necessary to make a proposal acceptable in land use planning terms.
- 13.2 Members should avoid becoming involved in discussions with applicants, prospective applicants, their agents, landowners or other interested parties regarding benefits, which may be offered to the Council, or benefits which the Council itself wishes to obtain.

14. **REGULAR REVIEW OF DECISIONS**

- 14.1 As part of the aim to continually improve the quality of planning decisions Members will have the opportunity to revisit a sample of implemented planning decisions. Such reviews will be a positive step to improve the quality and consistency of decision-making, not only strengthening public confidence in the planning system but also assist with the review of planning policy.

14.2 Such a review will take place annually and briefing notes will be prepared for each case. The Planning Strategy Group will formally consider the review and decide whether it gives rise to the need to reconsider any policies or practices.

15. **COMPLAINTS**

15.1 Any issues or concern arising from this Code of Practice can be raised with the Chairperson of the Planning and Development Control Committee, the Monitoring Officer, the Chief Officer, Planning & Environment or the Legal Officer present at committee. (The Council also has a formal complaints system in operation, which can be used if necessary).

FLINTSHIRE COUNTY COUNCIL – STANDARDS COMMITTEE – FORWARD WORK PROGRAMME

Date of Meeting	Topic	Notes/Decision/Action
January 2017	<ul style="list-style-type: none"> • Training • Dispensations • Standards Forum 	The Chair to provide a report back on the Standards Forum from November.
	<ul style="list-style-type: none"> • Member Newsletters • Frequency of Council Meetings 	Future item be submitted on the data received by Members on newsletters or other regular communications produced to be combined with a further survey to be undertaken by Members to determine the time and frequency of Council meetings. A report on the data received from the survey would be brought back to a future meeting of the Committee – 7/3/16 meeting
October 2016	<ul style="list-style-type: none"> • Training on Code of Conduct • Standards Forum Meeting November 	<p>Joint meeting with Town and Community Councils including a training session on the Code of Conduct</p> <p>Items for November’s meeting</p>
July 2016	<ul style="list-style-type: none"> • Training • Dispensations • Standards Forum 	The Chair to provide a report back on the Standards Forum from May.
May 2016	<ul style="list-style-type: none"> • Training • Dispensations 	

Date of Meeting	Topic	Notes/Decision/Action
April 2016	<ul style="list-style-type: none"> • Training • Dispensations • Planning Protocol • Standards Forum Meeting May 	<p>A report on the Planning Protocol be provided to the April meeting – 7/3/16 meeting</p> <p>Items for May’s meeting</p>