

Protocol for Members in their Dealings with Contractors/Developers and Other Third Parties

1. INTRODUCTION

- 1.1 This Protocol has been developed to assist Members by identifying some of the existing provisions in Codes of Conduct, Guidance and Procedure Rules most relevant to dealings with contractors/developers for easy access when advice on individual circumstances is needed. It also extends to include advice on meetings or discussions with external bodies, and in particular private companies, which might at some stage be seeking to benefit from an association with the Council and/or its partner organisations.
- 1.2 It is recognised that Members may be contacted by a range of public, private and voluntary organisations for various reasons and in various ways. Occasionally this will be to acquaint a Member with an event that is planned for the Member's particular ward. However, more often than not the contact will be in the hope that the Member will support a proposal in one way or another.
- 1.3 The Code of Conduct for Members sets out general principles which Members must have regard to in the roles they fulfil. The Planning Code of Conduct builds upon the Members' Code of Conduct and in relation to planning applications requires Members to declare circumstances where there has been significant contact and indicates that this is where a Member has been contacted on more than 3 occasions by the same person whether that was an applicant or an objector.

2. CODE OF CONDUCT

- 2.1 The Members' Code of Conduct includes the following provisions which are particularly relevant in relation to Members in their dealings with contractors/developers and other third parties.
- 2.2 Paragraph 4 of the Members' Code requires that Members must carry out their duties and responsibilities with due regard to the principle of equality of opportunity for all people regardless of their gender, race, disability, sexual orientation, age or religion.
- 2.3 Paragraph 7 of the Members' Code provides that Members must not use their position improperly to confer on or secure for themselves or any other person an advantage or create or avoid for themselves or any other person a disadvantage.
- 2.4 Part 3 of the Members' Code contains detailed provisions concerning the disclosure of personal interests and where Members believe these provisions may be relevant they should seek advice from the Monitoring Officer, Deputy Monitoring Officer or other senior officer in Legal & Democratic Services.

These provisions are particularly important in dealings with contractors/developers or third parties with whom the Member has a close personal association.

- 2.5 Paragraph 8 of the Members' Code required that when reaching decisions Members must do so on the basis of the merits of the circumstances involved and in the public interest having regard to relevant advice provided by officers.
- 2.6 Paragraphs 9, 17 and 18 of the Members' Code contain provisions concerning accepting from anyone gifts or hospitality. Where a Member is in any doubt as to the application of these provisions, advice should be obtained from the Monitoring Officer, Deputy Monitoring Officer or other senior officer within Legal & Democratic Services.
- 2.7 The above provisions are merely a summary of some of the contents of the Members' Code of Conduct, the full details of which appear elsewhere in this Constitution.

3. **PROCEDURE RULES**

- 3.1 The Council's Financial Procedure Rules make reference to the Council's responsibility to achieve the most favourable terms possible from suppliers and requires central procurement arrangements to be set up for that purpose.
- 3.2 The Contract Procedure Rules have been adopted by the Council based upon a number of basic principles and emphasise that purchasing and disposal procedures must:-
 - Seek value for money
 - Show no undue favour to any contractor, nor discriminate against any contractor.
 - Ensure that all procurement is in accordance with the highest standards of propriety and proper practice (including respecting the confidentiality of commercial information).
 - Do nothing that contravenes EU or domestic law
 - Ensure that adequate contract files are kept.
 - Ensure that contracts are packaged to ensure best value for money.
- 3.3. One of the overriding principles that must be complied with is that officers should show no undue favour to any contractor. This principle applies equally to Members.

4. **PLANNING CODE OF CONDUCT**

- 4.1 The Planning Code of Conduct provides a set of principles which apply primarily to the manner in which individual planning applications should be dealt with and to the decision-making process relating to the Unitary Development Plan, Supplementary Planning Guidance and associated documentation.

4.2 The Code makes it clear that whilst 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, Members are under an obligation to determine matters on their merits. Accordingly the Code provides advice that Members should amongst other things:-

- Refer applicants/developers who approach them for planning or procedural advice to the appropriate Planning Officer.
- Not put pressure on Officers to make a particular recommendation in their report.
- Direct lobbyists or objectors to the appropriate Planning Officer who will include reference to their opinions where relevant in their report.

Those Members who sit on the Planning Committee are also advised :-

- Not to openly declare which way they intend to vote in advance of the committee meeting.
- Avoid campaigning actively in support of a particular outcome on a planning application.
- Where a member of the committee has made it clear which way they intend to vote prior to the committee meeting they should not participate in the committee's debate or vote on the matter.

4.3 The above is a summary of some of the points in the Flintshire Planning Code and full details of the code are contained in the Council's Constitution.

5. ROLES AND RESPONSIBILITIES OF MEMBERS

5.1 The Council has adopted role descriptions for the various roles that Members undertake such as Leader of the Council, Cabinet Member, Committee Chair and ordinary Member. These are all available on the Council's Infonet.

5.2 The roles and responsibilities envisage Members, particularly at Cabinet level, having significant input into the development of policy in relation to the Authority's functions.

5.3 In the formulation of policy, Members will often rely on developmental work undertaken by Officers and in such circumstances there will often be a necessary overlap in this area. However, care should be taken to ensure that the management/operational role of Officers is not compromised.

5.4 In fulfilling their respective roles, Cabinet Members and Officers will frequently find it convenient to be present in discussions with private companies and other external bodies in the development of options for service provision. There may be occasions when non Cabinet Members are present at such meetings and this Protocol also covers such situations.

5.5 Such discussions with private companies and other external bodies will often be held for explanatory reasons to assist in undertaking an options appraisal

exercise or in an attempt to understand and gain knowledge of the market ahead of a procurement exercise. Accordingly great caution is needed in all such discussions to ensure that there can be no perception that an expectation is created that the discussions were anything more than exploratory in nature.

5.6 Accordingly a few simple precautions should always be put in place to avoid any ambiguity on the part of the private company or any perception by others who get to hear of the discussions that they were for irregular purposes. Such precautions will include:-

- First of all, serious consideration should be given to the appropriateness of Members attending the meeting of that company or its representatives in the first place: the risks involved should be assessed and the potential benefits/disadvantages identified, eg. where there is a major contract to be awarded or a major planning application to be determined it may not be appropriate to meet. The Council must comply both with statutory requirements in relation to procurement as well as its Contract Procedure Rules and it is important that no discussions or meetings prejudice the ability of the Council to demonstrate equal treatment and transparency. Officers should always provide objective advice to Members in such circumstances. If there are any doubts, advice should be sought from the Council's Statutory Officers.

5.7 If it is considered appropriate for the discussions to proceed with Members, further precautions should be put in place:-

- A written invitation to the company in question setting out the purpose of the proposed discussions.
- Where the invitation is from a private company, the purpose of the discussions should be ascertained and contained in a letter accepting the invitation.
- Appropriate Officers should always be present to advise Members.
- Notes should be taken of the discussion and where possible agreed by the attendees. These should set out any conclusions arrived at. It should always be borne in mind that such notes could be the subject of a Freedom of Information Act request and the extent to which any commercially sensitive information needs to be discussed should be assessed and agreed in advance with the contractor.
- It should be made clear to the company that similar discussions may be held with any other interested party.
- Where the matter to be discussed is likely to lead to a procurement exercise, either because of the Procurement Rules, Contract Procedure Rules or best practice, it should be made clear that all interested tenderers will need to be financially vetted and comply with all other pre-tender

requirements. This will probably be required even in circumstances where procurement is not at issue if it is likely to lead to a contractual arrangement if discussions are successful.

- Care should be taken to ensure that no company is given any advantage over others as a consequence of the discussions.
- Unless there is a good reason for doing so, which can be objectively justified, discussions should take place in the Council's offices.
- The Council should meet all costs associated with a visit to a contractor or to a development site or developer.

5.8 If Members are in any doubt about the provisions of this Protocol they should seek advice from either the Monitoring Officer or the Deputy Monitoring Officer as the impact of their actions could potentially have serious consequences for themselves and the Council.