

Code of Good Practice for Planning

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1 Introduction

- 1.1** This Code of Good Practice for Planning (the Planning Code) has been adopted by the Council to regulate the performance of its planning, rights of way, commons and village green functions.

The Planning Code has the following objectives:

- To guide members of the Council and officers in dealing with planning, rights of way, commons and village green related matters.
- To inform potential developers, stakeholders and members of the public generally of the standards and procedures adopted by the Council in the performance of the above functions.
- To preserve public confidence in the integrity of decision making by ensuring that it is open, transparent and fair to all parties and to ensure that there are no grounds for suggesting that a decision has been biased, partial or ill founded in any way.
- To protect the reputation of the Council and its members and minimise the prospect of legal or other challenge to decisions, including:
 - Decisions overturned at Appeal
 - Ombudsman findings
 - Judicial Review where the LPA has departed from accepted practice to such an extent that the determination must be set aside
 - Award of Costs at Appeal or judicial Review

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- Sanctions through the Standards Process
- Criminal Sanction

- 1.2** This Planning Code is not intended to form part of the Code of Conduct for Members (the Members' Code). It is a separate document and is intended to supplement the Members' Code by providing more detailed guidance on the standards applying to decision-making for the above functions. The Members' Code must be applied before the Planning Code.
- 1.3** This Planning Code applies to Members at all times when involving themselves in the planning, rights of way, commons and village green process. This includes when taking part in the decision-making meetings of the Council's Area Planning Committee and the Strategic Planning Committee (hereinafter referred to as Planning Committee) and to any other body of the Council making decisions on planning, rights of way, commons and village green matters. This also applies to Members involved on less formal occasions such as meetings with officers or the public written and verbal communication, in electronic and social media communication posts statement and comments. It applies as equally to planning enforcement matters on site specific policy issues as it does to planning applications, rights of way, commons, and village green matters.
- 1.4** Planning law requires Local Planning Authorities to determine all planning applications in accordance with the development plan unless material considerations indicate otherwise. Rights of way and town and village green matters similarly must be determined in accordance with the law, and the case officer's report will advise members as to the relevant considerations in each case. This responsibility must be performed without members being unduly influenced by any interest or other considerations irrelevant to planning, rights of way or town and village green matters.
- 1.5** Matters will be subject to close scrutiny because there will often be financial and other consequences arising for applicants, landowners and other interested parties and also because the quality and nature of the built and natural environment in which local residents and the wider community live and work may be irrevocably affected.
- 1.6** It is essential that members of the Planning Committee do not give any commitment or impression of a commitment to any particular outcome for a matter prior to their consideration at Planning Committee. Decisions must be seen to be made impartially and without bias.
- 1.7** It is recognised that members will, from time to time, be approached by developers and objectors in relation to Planning Committee matters. Part of this Planning Code is intended to assist members in dealing with such approaches and to ensure that the integrity of the decision-making process is preserved.
- 1.8** The Human Rights Act 1998 has created enhanced requirements for procedural fairness, transparency and accountability in decision making.

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2. **Probity in Planning**

- 2.1** Probity in planning is about ensuring that decisions on plan making and planning applications are undertaken, on behalf of communities, in a fair, impartial and transparent way.
- 2.2** In accordance with the Local Government Association guidance on Probity in Planning, Lead Members shall not also act as a Member of Planning Committee.
- 2.3** Serving Councillors and Officers (other than when they are acting for the Council) must not act as Agents for people pursuing planning matters within their authority, even if they are not involved in the decision making on them.

3. **Declaring Interests**

- 3.1** Under the Members' Code, members must declare any Disclosable Pecuniary Interests, Other Registrable Interests and/or Non-Registrable Interests in any matter being considered at a meeting, and must withdraw from the room where the meeting is being held where the Members' Code requires them to do so . The detailed rules on Disclosable Pecuniary Interests, Other Registrable Interests and Non-Registrable Interests are set out in the Members Code, albeit the following paragraphs give a brief summary.

Disclosable Pecuniary Interests

- 3.2** The Localism Act 2011 places requirements on Members to notify the Monitoring Officer of or to disclose at the Planning Committee any Disclosable Pecuniary Interests (DPI) and prohibits participation in the business of the Council where a Member has such an interest. The current list of DPIs is prescribed in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and is set out in the list attached to the Members Code. In the interest of transparency, interests should also be declared at any meeting or at other less formal occasions such as meetings with officers or the public written and verbal communication, in electronic and social media communication posts statement and comments.
- 3.3** The requirement to notify the Monitoring officer of a DPI applies not only to a Member's own interests but also to those of the member's husband/wife or a person with whom the member is living as husband/wife or as if they were civil partners, if the member is aware that that person has an interest. In this Planning Code such a person is referred to as a 'relevantpartner'.
- 3.4** Failure to so notify/disclose a DPI in the circumstances required by the Localism Act 2011 is a criminal offence. Therefore the requirements as to notification, disclosure and participation must be followed scrupulously and members should review their situation regularly. Whilst advice can be sought from the Monitoring Officer, ultimate responsibility for compliance rests with individual members.

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- 3.5** A member may have a DPI in relation to an application before Committee in a number of circumstances where this **directly relates** to themselves or their partner . Examples include, but are not limited to;
- An application relating to a property in the area of the Council owned or leased by the member or their partner
 - An application relating to a property owned by the member's employer or their partner's employer
 - An application relating to a property within the area of the Council which the member or their partner occupy by way of licence for a period of one month or longer
- 3.6** Unless a member has received a dispensation they must not participate in a discussion or vote on any matter in which they or their partner has a DPI and must leave the room during that item of business.
- 3.7** The Localism Act 2011 does not require the disclosure at a meeting of a DPI if the interest already appears on the Register. Members need to be cautious about pending notifications (where the Monitoring Officer has been notified but the register has not yet been updated). There is an ongoing legal obligation to disclose at meetings until the register has been updated and therefore, in cases of doubt the member should disclose at the meeting. The Lawyers in Local Government Guidance advised Members to declare a DPI or other interest at a meeting, in the interests of transparency.
- 3.8** Members must withdraw from the room where the meeting is being held during the discussion or vote upon an issue in which they have a DPI. Failure to withdraw will not be a criminal offence but could potentially taint a decision and leave it susceptible to a challenge by way of judicial review.
- 3.9** Where a member of the Planning Committee has a DPI (either themselves or their partner) they may not participate in the debate or vote on the matter. This prohibition also applies where the member is wishing to speak as a member of the Planning Committee or Division member.
- Other Registerable Interests**
- 3.10** Other Registrable Interests relate to unpaid directorships held by a member or certain bodies of which they are a member or in a position of general control or management. These are set out in the Members Code.
- 3.11** Where a matter arises at a meeting which directly relates to the financial interest or wellbeing of a member's Other Registerable Interests, the member must disclose the nature of that interest. unless it has been agreed by the Monitoring Officer that it is sensitive interest, whereby that Member only discloses that they have an interest. The member may speak on the matter (where registered to speak) only if members of the public are also allowed to speak at the meeting but otherwise the member must not take part in any discussion or vote on the matter and must not

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remain in the room where the meeting is being held unless they have been granted a dispensation. The exception to this is where the Other Registrable Interest relates to either an unpaid directorship on a company owned by the Council or where the member is a member of another local authority.

Non-Registrable Interests 'directly relating to' financial interests or well-being

- 3.12 Where a matter arises at a meeting which directly relates to a member's financial interest or well-being (and is not a Disclosable Pecuniary Interest) or a financial interest or well-being of a relative or close associate of the member, the member must disclose the nature of that interest. Unless it has been agreed by the Monitoring Officer that it is sensitive interest, whereby that Member only discloses that they have an interest. The member may speak on the matter (where registered to speak) only if members of the public are also allowed to speak at the meeting. Otherwise, the member must not take part in any discussion or vote on the matter and must not remain in the room where the meeting is being held unless they have been granted a dispensation.

Non-Registerable Interests 'affecting' financial interests or well-being

- 3.13 Where a matter arises at a meeting which affects a member's own financial interest or well-being, a financial interest or well-being of a member's relative or close associate (a non-registerable interest) or a financial interest or wellbeing of a body included under (Other Registrable Interests) (above), the member must disclose the nature of that interest unless it has been agreed by the Monitoring Officer that it is sensitive interest, whereby that Member only discloses that they have an interest.

- 3.14 In order to determine whether the member can remain and participate in the meeting after disclosing their interest they must apply a public interest test.

- 3.15 Where a matter affects the financial interest or well-being:

- a) to a greater extent than it affects the financial interests of the majority of inhabitants of the division affected by the decision and;
- b) a reasonable member of the public knowing all the facts would believe that it would affect the member's view of the wider public interest,

the member may speak on the matter (where registered to speak) only if members of the public are also allowed to speak at the meeting. Otherwise, the member must not take part in any discussion or vote on the matter and must not remain in the room where the meeting is being held unless they have been granted a dispensation.

- 3.16 Members with a DPI, Other Registrable Interest or Non-Registrable Interest in an application, should not request that the application is referred to Committee.

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3.17 Members may take part in decisions relating to land or premises in their divisions, subject to complying with the rules in the Members' Code on interests. If in doubt as to whether an interest should be declared in relation to any matter, members should take advice from the Council's Monitoring Officer or Head of Legal Services.

4 The Integrity of the decision making process

Presentations by Applicants/Developers

4.1 In respect of presentations by applicants. Developers, these are 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.

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

4.3 Do not attend a planning presentation without requesting an officer to be present. If Members do attend, Members may only ask relevant questions for the purposes of clarifying their understanding of the proposals.

Lobbying of Councillors

4.4 Lobbying is a normal and perfectly proper part of the planning process, and both applicants and objectors should have access to their representatives. However, to ensure that the integrity of the decision making process is not impaired, it is important that any representations made to members form part of the public information leading to any decision.

If an approach is received by a member of the Planning Committee, from any interested party for planning, procedural or technical advice in relation to a matter that could come before the Planning Committee, then the member shall:

- a) Inform that party that whilst they can listen to what is said, it may subsequently prejudice their impartiality and therefore their ability to participate in the Committee's decision making, to express an intention to vote one way or another or to express such a firm point of view that it amounts to the same thing. . Members may consider whether or not it would be prudent in the circumstances to make notes when contacted and report to the Case Officer/Service Manager any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and their involvement in them and ensure that this is recorded on the planning file.
- b) Members overriding duty is to the whole community not just to the people in their division and, taking account of the need to make decisions impartially, Members should not improperly favour, or appear to improperly favour, any person, company, group or locality.

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- c) Don't accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible, including its addition to that Member's register of interests where relevant.
- d) Where a member of the Planning Committee receives written representations directly in relation to a matter that could come before the Planning Committee the member should pass a copy of the correspondence to the application Case Officer and the email address in order that those representations can be included in the officer's report to the Planning Committee.
- e) Any offers made to Members of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise promptly refer this to the Service Manager.
- f) Where Members feel they have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), inform the Monitoring Officer who will in turn advise the appropriate officers to follow the matter up.

4.5 Unless Members have a disclosable or overriding other personal conflict of interest, Members will not have fettered their discretion or breached this Planning Code through:

- a) listening or receiving viewpoints from residents or other interested parties;
- b) making comments to residents, interested parties, other Members or appropriate officers (making clear that you must keep an open mind);
- c) seeking information through appropriate channels; or
- d) being a vehicle for the expression of opinion of others in your role as a Division Member

4.6 Lobbying is likely to involve Division members or other members of the Council who are perceived as being interested in or having an influence over the proposal, as well as members of the Planning Committee. Division members (and other members) who are not members of the Planning Committee are in a different position to that of members of the Planning Committee. Division Members have a very important function in representing the interests of their area or constituents who are affected by a Planning Committee decision. If they are not on the Planning Committee, there is no reason why they should not have a view on decisions which are currently under consideration by the Council and make those views known, providing they do not attempt to exert any improper influence over Planning Committee members or officers.

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4.7 Division members who are on the Planning Committee must remain impartial and keep an open mind about all applications coming before the Planning Committee until the meeting when the decision is to be taken. Members of the Planning Committee have a legal duty in making decisions to take all the evidence and arguments into account, not to commit themselves to a fixed or final view. Failure to comply with this duty may result in decisions made by the Council being quashed by the courts on the grounds of predetermination or bias. It can also damage the public perception of the impartiality and integrity of the decision making process.

Lobbying by Councillors

4.8 Members of the Planning Committee who wish to take part in a decision should not therefore do anything that gives the impression that they have come to a final view before the Planning Committee meeting, such as making a firm view public, or organising support for or opposition to an application, or lobbying other members. It is perfectly proper for members to have a "predisposition" in favour of or against a particular proposal before it is discussed at Planning Committee. It would be unrealistic to expect them to be totally neutral in all cases, and the law does not require this. What is important is that members do not close their mind to further evidence or arguments which may be put forward. Members of the Planning Committee or Division members should also not put pressure on officers for a particular recommendation. This does not preclude members from seeking information or clarification from officers about a matter.

4.9 Members of the Planning Committee who represent a division affected by a matter to be considered by the Planning Committee may be in a difficult position if it is a controversial matter attracting much lobbying, or on which they have strong personal views. In this situation, a member is perfectly free to choose to support one side or the other, to make their views known and to organise lobbying. **However, a member who makes this choice must not take part in the actual making of the decision.** When the matter comes before the Planning Committee, they will be entitled to make representations, but should not then take any part in the debate or vote

4.10 If a member leads, represents or is a member of a group whose primary purpose is to lobby to promote or oppose a particular matter, they will be considered to have predetermined an decision relating to that matter. However the position is different for membership of general interest groups e. g. English Heritage, RSPB etc. In this case if that organisation has made representations on a matter but the member has not been involved in preparing the representations they will not have predetermined merely due to that membership.

4.11 The Localism Act 2011 provided some further clarification in that a member will NOT be considered to be pre-determined;

- By just listening to viewpoints from residents or interested parties
- By making comments which fall short of prejudging the issue
- By seeking information through the appropriate channels

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- By acting as a vehicle for the expression or views as a division member providing they have not committed to vote in accordance with those views or that they are not acting as an advocate for a particular viewpoint.

4.12 In the interests of public participation and involvement, it can be helpful if members involved in the determination of planning applications attend public meetings in relation to planning matters which are under consideration. It is, however, important to ensure that they make clear their position at the outset of the meeting so that there can be no question of misunderstanding or undue influence. Members should identify themselves as being members of the Planning Committee dealing with the application, and make it clear that they are happy to hear views expressed by the public, whether for or against the proposal, but are unable to reach or express any view on the merits or otherwise of the proposal at that stage. Members of the public attending meetings should be advised to contact the relevant officer with their views so that these can be included in the officer's report.

4.13 As no decision on a matter should be made before the Planning Committee meeting, when all available information is to hand and has been duly considered, any political group meeting prior to the Planning Committee meeting should not be used to decide how members should vote, whether this is for or against an officer's recommendation. Members must be free to take decisions based on relevant considerations only, and any use of a political whip to influence voting may amount to maladministration.

5. Discussions with developers or applicants on planning applications

5.1 Discussion between developers or an applicant for planning permission and the Council, either prior to the submission of an application or during the consideration process of the application, can be of considerable benefit to both parties and is generally encouraged as assisting the planning process. However, it would be easy for such discussions to become or be seen (especially by objectors) to become part of a lobbying process. Any involvement of members in discussions with developers or applicants should therefore only take place as part of structured arrangements agreed with officers, and the advice given in Sections 3 and 5 should always be borne in mind.

5.2 The following guidance given by the Local Government Association and the Planning Officers' Society should be followed in relation to such discussions:

- Presentations by applicants should be limited to the development proposal and a question and answer session on factual matters. Where appropriate, they may take place on site or incorporate a site visit.
- To promote transparency of the planning process, the public will be invited to attend developer presentations wherever practicable.
- Members must maintain an impartial listening role and avoid expressing an opinion or giving advice beyond outlining local policies, although questions may be asked to clarify aspects of a proposal and policy concerns may be raised. The chair or officer should explain this role at the outset of the meeting.

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- The discussions should not develop into negotiations and it must be made clear that they are not part of the determination process.
- Officers of appropriate seniority (where resources permit) should attend the meeting, and written notes should be kept.
- For major or contentious applications, the involvement of members should be authorised by the Planning Committee and recorded in any subsequent committee report.
- Members should not seek to influence officers or pressure them to support a particular course of action.
- The Council should set out in advance how it will deal with any commercially sensitive or confidential information, bearing in mind the requirements of the Freedom of Information Act and the need for transparency.

5.3 To minimise the risks of predetermination in championing their communities, members are encouraged to promote any community aspirations involving sites, land or community benefits from development, or other planning issues through the Local Plan or Neighbourhood Plan preparation at the earliest opportunity.

6. Predetermination and Bias

6.1 Members must also be aware of and act within the rules on predetermination and bias. Avoidance of bias or predetermination is a principle of natural justice which has evolved through the courts, although section 25 of the Localism Act 2011 is also relevant. Even if a member does not have a DPI or is not acting in breach of the Members' Code they may cause a decision to be invalid if they participate while predetermined or biased. The rules regarding predetermination or bias are likely to be more strictly applied where the Council is making 'quasi-judicial' decisions, such as the determination of a planning, right of way, common or town and village green application, than in other decisions to be made by the Council.

6.2 The basic legal position is that a member should not take part in making a decision on a matter if they are biased or has predetermined the matter. Members should bring an unbiased, properly directed mind to the consideration of any matters before them at the Planning Committee. This does not mean that members are not entitled to have and to express opinions about general matters, or cases. However they must approach, and must be seen to approach, matters before them with an open mind.

6.3 In this respect a distinction is to be drawn between those members who are making the decision (speaking and voting as part of the Planning Committee) and those members seeking merely to influence the decision (i.e. making representations as a division member). The prohibition in respect of predetermination or bias only affects those actually making the decision. A member who has predetermined or who is biased may still speak as a division member (provided they do not also have a DPI).

7. Predetermination and Predisposition

- 7.1** The law also makes a distinction between predetermination, which rules out participation in decision making and predisposition, which does not.
- 7.2** A member is entitled to have and express views on local matters, both general matters and more specific applications. These views may indicate that a member has a predisposition towards a particular policy or viewpoint. This is perfectly acceptable and a member with a predisposition may take part in the decision-making.
- 7.3** A predisposition will move on to become predetermination if, in relation to any matter before the Planning Committee, a member has taken a stance which indicates that they have finally closed their mind on the matter and that nothing they hear at the Planning Committee will alter their position.
- 7.5** There is an acceptance that a member may legitimately consider matters in certain capacities as different factors may apply to different decisions. For instance, where premises require planning permission and a licence, members may be asked to sit on both planning and licensing committees. While the statutory regimes in such cases are different, often the factors to be taken into account can be similar. In these circumstances members should carefully consider whether anything they have done or said in making the earlier decision would demonstrate a predetermination of the second decision. If that is the case the member should not take part in the decision making at the second Planning Committee.

8 Bias

- 8.1** A member should not be party to decisions in which he is actually biased or gives the appearance of being biased to the reasonable observer. The test for the appearance of bias is whether a fair minded and informed observer, having considered the facts, would conclude there was a possibility that the decision maker was biased. The common ground for this test, in deciding whether the decision of the Planning Committee is vitiated was stated by Lord Hope in *Porter v Magill* (2001) UKHL 68.
- 8.2** There is an earlier line of authorities which identify situations in which a Judge or other decision maker whose activities are governed by Public Law is automatically disqualified on grounds of apparent bias. This is so where a decision maker is party to a decision, the paradigm instance of *nemo iudex in causa sua* principle.
- 8.2** Bias may arise by virtue of a member being closely connected with a person who has a vested interest such as the applicant or an objector. This may result from a personal connection, such as the applicant being a relative or friend, or result from the member espousing a particular viewpoint (e.g. being part of a lobby group). The role of the Planning Committee is to consider matters in accordance with the legislation and to balance the interests of persons with competing views and this may not be possible where a member is closely connected with a particular party.

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8.3 In addition, circumstances which raise the possibility of bias may also lead to an accusation of a breach of the Members' Code, as the Members' Code states that members should act solely in the public interest and not do so in order to gain financial or other material benefits for themselves, their family or friends. Where this might occur, members should not take part in the decision making.

9. Section 25 of the Localism Act 2011

9.1 Section 25(2) of the Localism Act 2011 provides that a decision maker is not to be taken to have had, or to have appeared to have had, a closed mind when making a decision just because –

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

9.2 The section makes it clear that if a councillor has given a view on an issue, this, considered in isolation, does not show that the councillor has a closed mind on that issue. So, the mere fact that a councillor has campaigned on an issue or made public statements about their approach to an item of council business does not prevent that councillor from being able to participate in discussion of that issue and to vote on it.

9.3 Having said this, the use of the words 'just because' in section 25 suggest that other factors when combined with statements made etc. can still give rise to accusations of predetermination. This has also been the approach that the courts have taken to this issue. When considering whether predetermination has taken place they will consider all events leading to the decision, (and also, where appropriate, those following the decision) rather than looking at individual events in isolation.

9.4 The case law has also made it clear that the words used by particular members and the interpretation put on those words is of particular importance. So care still needs to be taken when making statements in advance of the determination of planning applications as there is a risk that they can be misinterpreted or taken out of context.

Guidance

9.5 With this in mind;

- It is always advisable to avoid giving the impression that you have made up your mind prior to the decision making meeting and hearing the officer's presentation and any representations made on the matter.
- With this in mind, if you do comment on a matter in advance the decision, consider using a form of words that makes it clear that you have yet to make up your mind and will only do so at the appropriate time and in the light of the advice

and material put before you and having regard to the discussion and debate in the committee meeting.

- Particular care should be taken where there are chance encounters with objectors to proposals or in the context of meetings which are not formally minuted. These are situations where the risk of what you say being misrepresented or taken out of context is particularly high.

10. Dual-hatted Members

10.1 Where a Member is a member of the Planning Committee and is also a city, parish or town councillor, caution needs to be exercised in considering matters at the city/parish/town council. This is because of the member's additional responsibility as a member of the Planning Committee charged with making a decision on the matter. It is important to bear in mind that city/parish/town councils are consultees in the planning process and may be asked for their comments on a matter at a time when not all the relevant material considerations have become known and the full implications of a matter investigated. Members should therefore:

- at the city/parish/town level, make it clear that they will reconsider the matter at the Planning Committee level, taking into account all relevant evidence and representations at the city/parish/town tier; strong opposition to or support of a matter at the parish or town council meeting would indicate that a dual hatted member had predetermined and therefore debar the member from voting at the Planning Committee
- At the Planning Committee, declare the appropriate interest arising from their membership of the city/parish/town council, and make it clear that the council's view does not bind them and that they are considering the matter afresh.
- Be mindful that if a matter significantly affects the city, parish or town council (e.g. the city, parish or town council is the applicant or the application affects land owned outright by the city, parish or town council) it is likely that a fair minded observer might consider the Councillor to be biased as a result of his/her membership of the city, parish or town council and therefore in those circumstances a dual hatted member should not take part or vote on such an matter.

10.2 The same procedures should be followed by members of the Planning Committee who sit on any other body, which is considering an issue which may subsequently come before the Planning Committee. Members may decide that in some circumstances it would be inappropriate for them to participate in the vote that decides the consultative body's comments and views on a matter. A member's expertise as a member of the Planning Committee can sometimes be put to best use in advising and guiding other bodies on which they sit on the issues that arise from the matter. When the matter comes to be decided by the Planning Committee, the views of the city/parish/town council or other consultative body will be one of the material considerations to be considered and taken into account.

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- 10.3** Ward members who make representations on a matter and who also sit on the Planning Committee should ensure that any comments which they make do not give the impression that they have formed a final view on the matter by that stage. Members should keep an open mind until the matter comes before the Planning Committee, and take all relevant considerations into account before making their decision.
- 10.4** Subject to the guidance listed in para 2.2 above there may be circumstances where a member of the Planning Committee who is also a member of the Council's executive is so closely involved with a matter coming before the Planning Committee that s/he may not be seen as impartial in relation to the decision. This may occur, for example, in relation to planning matters, if the member concerned is committed to the development as a result of his/her responsibilities for furthering the development of the area, and is effectively acting as an advocate for that development. In these circumstances, the member concerned may argue for the development, but should not take part in the debate or vote at the relevant Planning Committee meeting. If in doubt, advice should be taken from the Council's Monitoring Officer.
- 11. Applications by Members, Officers and the Council, Delegation to Officers and Exceptions to Delegated Powers**
- 11.1** In the event that an application is brought to Planning Committee for probity reasons, members of the Planning Committee will need to consider whether they should declare any interest in the matter in which other members of the Council or officers are involved. This will normally only be necessary if the member or officer concerned is a "close associate", as that term is used in the Members' Code of Conduct. If in doubt, advice should be taken from the Monitoring Officer or Head of Legal Services.
- 11.2** Planning proposals where the Council is the applicant (or a development involving the Council and another party) should be treated in the same way as those by private developers, in accordance with the relevant Town and Country Planning Regulations and government guidance.
- 11.3** The same procedures also apply to private applications in respect of Council owned land (e.g. prior to a land sale being agreed or negotiated). Decisions must be made strictly on the relevant considerations and without regard to any financial or other gain that may accrue to the Council arising from the decision. It is important that the Council is seen to be treating such applications and matters on an equal footing with all other applications and matters, as well as actually doing so.
- 12 Members and decision making**

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12.1 Members are required to have regard to all relevant considerations when arriving at a decision on a matter. To this end, the reports of officers to members must be accurate and cover all relevant points. These reports:

- a) For planning applications should contain a section on the relevance of the development plan, a description of the site and any related planning history with all other relevant material considerations outlined.
- b) Should deal with the substance of any objections or support received and the views of people who have been consulted or notified.
- c) Should incorporate a recommendation for the consideration of members; oral reporting (except to introduce a report or update it) should be extremely rare and carefully minuted when it does occur.
- d) Should contain an appraisal which clearly justifies the stated recommendation.
- e) For planning applications, if the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify this must be clearly stated.

12.2 Members of Planning Committee must also;

- Come to meetings with an open mind and demonstrate they are open minded.
- Have a duty to take into account any representations made to the Council as a result of the publicity and consultation process for the matter. In doing so, it is necessary to decide which representations are material to the decision to be made, and if so, what weight to attach to them. This conclusion should not be reached until all the facts have been presented in the officer's report to the Planning Committee.
- Request further information if it is felt there is insufficient information before the Planning Committee to reach a decision,
- When making a decision contrary to the officer recommendation, identify the reasons behind the decision before the vote is taken, which may need to be justified in the event of an appeal or other challenge. In the event of a proposal to grant planning permission contrary to officer recommendation, Members must propose and the Committee must approve relevant conditions and reasons for conditions to be attached to the planning permission. The detailed compilation and attachment of relevant conditions and reasons can be delegated to officers in consultation with the Chair. If members are unable to do this immediately, they should request an adjournment or a deferral in order to seek advice and/or formulate the reasons/conditions.

13 Training

13.1 To ensure that correct procedures are followed and proper considerations are employed in decision making, members of the Planning Committee will receive

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relevant training on planning rights of way, commons and town and village green matters as soon as possible after appointment to the Planning Committee. The Council's Executive Lead Member responsible for these functions will also receive the same training as soon as possible after appointment.

13.2 Under the Council's Constitution, Members may not take part in decisions unless they have first received appropriate training on the functions that pertain to the decisions. Additional training as considered necessary from time to time by the relevant Service Director or Monitoring Officer, should also be attended by all members of the Planning Committee.

13.3 Refresher training, updates, and more detailed training on specific issues will also be provided, and should be taken up by all Planning Committee members.

14 Complaints and Record Keeping

14.1 Whatever procedures the Council operates, it is likely that complaints will be made. In order that any complaints can be fully investigated, record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. Every case file will contain an accurate account of events throughout its life, particularly the outcomes of meetings or significant telephone conversations.

14.2 The same principles of good record keeping will be observed in relation to all other matters. Monitoring of record keeping will be undertaken on a continuous basis by the relevant Service Director.

15 Role of Officers

15.1 An officer's function is to advise members on all relevant procedures and considerations in their determination of matters by:

- a) Providing impartial and professional advice which is properly recorded.
- b) Making sure that all the necessary information as far as practicable is available for a decision to be made.
- c) Providing a clear and sufficient analysis of the issue
- d) Giving a clear recommendation.
- e) Carrying out the decisions made by members at meetings of the Planning Committee.

Officers who are members of the Royal Town Planning Institute are governed by the Royal Town Planning Institute Code of Professional Conduct which states that RTPI members shall not make or subscribe to any statements or reports which are contrary to their own professional opinions. Officers who are not members of the RTPI should aim to adhere to the same principles of conduct.

15.2 Officers shall also comply with the following:

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- a) Informal pre-application advice will be given (where appropriate for a reasonable fee as set out in the published schedule of charges) to prospective applicants prior to submitting an application. Advice will reflect adopted policies within the Development Plan where relevant to the application being discussed.
- b) Where considered necessary a site visit will be carried out.
- c) Officers will endeavour to deal with, and determine applications in accordance with published service standards where applicable.
- d) All applications will be considered by at least two officers, i.e. the case officer plus a senior officer who will authorise the final decision unless internal procedures state otherwise.
- e) In all dealings with applicants, agents, and the public officers should maintain a courteous and professional relationship adhering to the Council's policies and officer codes ensuring that all parties are treated fairly and respecting people's rights.
- f) When an application is submitted by an officer involved in the associated process the officer shall highlight this on the application forms and make the Case Officer aware at the earliest opportunity. Such applications shall be determined in accordance with Appendix K of the Constitution.
- g) Where an officer involved in the associated process has a close personal relationship with any applicant, agent or organisation that could lead to a third party suggestion of bias, the officer will inform the Service Director and Monitoring Officer in writing and take no part in processing or determining the matter.
- h) Officers should not, under any circumstances, accept gifts or hospitality beyond simple basic refreshment where necessary or unavoidable. If, however, a degree of hospitality is unavoidable, it should be ensured that this is of the minimum. All gifts and hospitality beyond simple basic refreshment should be declared to the Monitoring Officer for entry in the Council Register of Gifts and Hospitality.

16 Planning Decisions Contrary to Officer Recommendation and/or Development Plan

16.1 The law requires that planning decisions should be made in accordance with the development plan unless material considerations indicate otherwise.

16.2 In discussing and then determining a planning application, members should confine themselves to the planning merits of the case and the reasons for making a final decision should be clear and convincing and supported by planning evidence. All

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decisions must be founded on material planning reasons and there must be planning evidence to substantiate them.

- 16.3** There is no reason in law why a Planning Committee may not make a decision contrary to the officer's recommendation, whether it is for approval or refusal. Nevertheless, the law does require that in the case of refusals of planning permission, detailed reasons are given, and it is important that where members have made a decision contrary to an officer's recommendations, the reasons for the decision should be made clear. In such a situation, therefore, whether the decision by members is to approve or refuse permission, the planning reasons should be clearly minuted, together with the evidence to substantiate them.

17 Consequences of Failure to Comply with the Planning Code

- 17.1** This Planning Code, together with the provisions of the Members' Code sets out the standards that the Council will operate in dealing with matters that are brought to the Planning Committee. Members and officers should be aware that failure to comply with this Planning Code or the Members' Code may have legal consequences.

- 17.2** These include:

- a) A complaint to the Monitoring Officer, and a subsequent investigation if informal resolution is not possible, which may result in a member being censured.
- b) An investigation by the Ombudsman if complaints are received about the manner in which a matter is dealt with. In determining whether or not there has been maladministration the test that is currently used is that members must "at all times avoid any occasion for suspicion and any appearance of improper conduct" and must not allow "the impression to be created that (the Member) is or may be using his position to promote a private or personal interest". Individuals involved may be named, and the Council may be found guilty of maladministration and recommended to compensate the claimant.
- c). Appeal to the Secretary of State. He/she can award costs against the Council if it has acted unreasonably – for example, bias has been present or the decision has been taken for irrelevant reasons.
- d). Court action (judicial review) to quash a decision, which may succeed if bias or apparent bias was present, or if it is demonstrated that a decision was taken for irrelevant reasons or material considerations were ignored. Procedural errors may also have this result if any party was prejudiced. Costs will be awarded against the Council which will have to re-determine the matter correctly.
- e) A Human Rights challenge where the potential level of damages awarded for a breach is unlimited.