

PROTOCOL E: MEMBERS' PLANNING CODE OF GOOD PRACTICE

E1	Introduction
E1.1	This Code has been prepared using the advice in the Local Government Association's guidance note on good planning practice for councillors and officers dealing with planning matters – Probity in Planning (April 2013)
E1.2	<p>This Code of good practice applies to councillors at all times when they are involved in the planning process. This includes when you are:</p> <ul style="list-style-type: none"> - acting as a member of an area planning committee; - taking part in a debate on a planning application or other development control matter in another area planning committee; - acting as a member of the Full Council when it is determining a planning application or other development control matter; - involved in informal meetings e.g. with officers or public and consultative meetings; - involved outside the committee on a planning application or other development control matter, including planning enforcement matters or site specific issues <p>and use of the expression "planning committee" should be taken to refer to the forum for any of these activities.</p> <p>This Code also applies to Members when dealing with site-specific issues in connection with the Local Plan.</p>
E1.3	<p>The aim of this Code is to ensure that:</p> <ul style="list-style-type: none"> - in the planning process there are no grounds for suggesting that a decision has been biased, partial or is not well founded in any way. - You must make planning decisions openly and impartially with sound judgment and for clear and justifiable reasons. - Development is managed in the public interest
E1.4	The Human Rights Act 1998 has implications for the planning system and creates enhanced requirements for procedural fairness, transparency and accountability in determining planning applications.

E.5	This Code is intended to minimise the prospect of legal or other challenges to planning decisions. However, non-compliance without good reason can be taken into account in investigations into possible maladministration or may have implications for the standing of councillors and the council as a whole. It could also lead to a complaint to the Monitoring Officer against an individual member.				
E2	Relationship with the Members' Code of Conduct				
E2.1	This Planning Code of good practice is designed for Members when discharging planning functions of the Council. Whilst it interprets the Members' Code of Conduct with respect to planning matters it is subordinate to the Members' Code of Conduct and in the event of any inconsistencies arising between this code and the Members' Code of Conduct, the latter shall prevail.				
E3	Declaration of Interests				
E3.1	The Members' Code of Conduct places requirements on councillors as to the notification and declaration of their interests and participation in the business of the Council in light of those interests. These requirements must be followed scrupulously and councillors should review their situation regularly. Advice can always be sought from the Monitoring Officer or one of the Council's solicitors as to whether an interest may exist; however ultimate responsibility for compliance rests with individual councillors.				
E3.2	<p>You can have an interest in a planning application in a number of different ways. It may, for example, be an application which relates to property in which you or your partner have a direct interest e.g. as owner. Alternatively, it may be an application which may reasonably be regarded as affecting the financial position of yourself and/ or an Associated Person e.g. a member of your family and where a member of the public with knowledge of the relevant facts would reasonably regard the interest as being so significant that it is likely to prejudice public interest.</p> <p>These interests are defined in the Code of Conduct as Disclosable Pecuniary Interests (DPIs) and Other Significant Interests (OSIs).</p>				
E3.3	<p>If you have a Disclosable Pecuniary Interest or Other Significant Interest in any business of the Council, then you</p> <table border="1" data-bbox="215 1563 1053 1747"> <tr> <td>(a)</td> <td>must notify the Monitoring Officer of the existence and nature of the interest (if not already notified) as soon as you become aware of this;</td> </tr> <tr> <td>(b)</td> <td>not participate in any discussion of, or vote taken on, the matter at a meeting (unless you have obtained a dispensation from the Monitoring Officer or General Purposes Committee as appropriate);</td> </tr> </table>	(a)	must notify the Monitoring Officer of the existence and nature of the interest (if not already notified) as soon as you become aware of this;	(b)	not participate in any discussion of, or vote taken on, the matter at a meeting (unless you have obtained a dispensation from the Monitoring Officer or General Purposes Committee as appropriate);
(a)	must notify the Monitoring Officer of the existence and nature of the interest (if not already notified) as soon as you become aware of this;				
(b)	not participate in any discussion of, or vote taken on, the matter at a meeting (unless you have obtained a dispensation from the Monitoring Officer or General Purposes Committee as appropriate);				

	(c)	withdraw from the meeting room whenever it becomes apparent that the matter is being considered
	(d)	not seek to improperly influence a decision about that business.
E3.4	If you have an Other Significant Interest in any business of the Council then you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose. Having made your representations, given evidence or answered questions you must:	
	(a)	not participate in any discussion of, or vote taken on, the matter at the meeting; and
	(b)	withdraw from the meeting room in accordance with the Council's Procedure Rules.
E3.5	You should also make known any DPI or OSI at informal meetings or discussions including those held with officers or other councillors and third parties.	
E4	"Pre-determination" (fettering discretion) and "apparent bias"	
E4.1	In addition to taking appropriate action in relation to DPIs and OSIs, Members of the Area Planning Committees need to avoid bias or predetermination or any appearance of bias or predetermination before taking a decision on a planning application.	
E4.2	If you have taken a firm view on a planning matter, or if it appears that you have made up your mind before the formal consideration of a planning application, it may appear to a member of the public that you may have formed what is called a "pre-determined view" on the matter – this used to be described as having "fettered one's discretion".	
E4.3	In some circumstances you might reasonably appear to a member of the public to have a pre-determined view on an application, by reason of comments made or close contact with an applicant or representor, even though this is not the case. This is described as "apparent bias" and may put you in the same position as one who has fettered their discretion. It is important to remember that it is the public's perception which is important here.	
E4.4	If you have fettered your discretion and then take part in the decision, that will put the Council at risk of a finding of maladministration. It could also lead to legal proceedings to challenge the decision on grounds of there being a danger of bias or pre-determination or a failure to take into account all factors enabling the proposal to be considered on its specific merits. It may also give rise to a complaint to the Council's Monitoring Officer.	

E4.5	As long as you do not have an interest, and have not fettered your discretion, you can still act as a ward councillor and address the committee in the usual way: if you have an interest the rules at paragraph E3.3 above will apply.
E4.6	Areas in which you need to give particular consideration are set out below.
Lobbying By Other Councillors	
E4.7	If you lead, represent or are a member of a group whose primary purpose is to lobby in support or against a planning application, you may have fettered your discretion. Depending on your involvement, you may also have an interest. This may be so, even if you were appointed to the body by the Borough Council.
E4.8	The position in paragraph E4.7 is distinct from membership of general interest groups which reflect your area of interest, for example the RSPB, the Ramblers' Association or a local historical society (unless you have a position of control or management in the organisation. However, you should still disclose the existence of an interest where appropriate. If, at the time of declaring that interest you are able to say that you were not involved in preparing that representation and have reserved your judgement, then you will not have fettered your discretion. However, if you cannot say so, you will have fettered your discretion.
E4.9	You should not lobby other councillors regarding their views on planning applications. Nor should you, outside of the planning committee meeting, try to persuade other councillors how to vote.
E4.10	You should not decide, or discuss, how to vote on planning applications at political group meetings or other meetings or lobby other members to do so. Political group meetings should never dictate how members should vote on planning applications. The use of a political whip to seek to influence the outcome of a planning application is likely to be regarded as maladministration.
Lobbying of Councillors by other persons	
E4.11	Lobbying is a normal and perfectly proper part of the political process. Those who may be promoting or affected by a planning decision will often be seeking to influence it through an approach to their elected ward councillor, another councillor or a member of a planning committee. However where you are a member of a planning committee which will determine the application, lobbying can lead to a challenge to your integrity and impartiality. This can, in turn, affect the validity of a planning decision.

E4.12	<p>Councillors are entitled to have a view on planning proposals submitted or to be submitted to the Council. The simple expression of a prior view does not preclude you from taking part in the decision making process. If you decide that you wish to participate in the determination of a planning application you should explain to persons lobbying or attempting to lobby you that, whilst you can listen to what is said, it would prejudice your impartiality and your ability to participate in the decision if you give a firm statement of how you intend to vote or such a firm point of view that it amounts to the same thing. For the avoidance of doubt you will not have fettered your discretion:</p> <ul style="list-style-type: none"> - by just listening to viewpoints from residents or interested parties; - by making comments which fall short of prejudging the issue; - by seeking information through appropriate channels; - by acting as a vehicle for the expression of views as a ward councillor; <p>providing that you have not committed yourself to vote in accordance with those views and that you are not acting as an advocate for a particular viewpoint.</p>
E4.13	<p>When you participate in a planning decision, your overriding duty is to the community as a whole and not just to people in your ward. As decisions need to be taken impartially you must not improperly favour, or appear to improperly favour, any person, company, group or locality.</p>
E4.14	<p>You should not accept gifts or hospitality from any person involved in or affected by a planning application. It is advisable to let the monitoring officer know if you feel that you have been exposed to excessive lobbying or offers of gifts or hospitality linked to a planning application. It may be wise, and in your own best interests, to make a written notification to the Monitoring Officer that a gift, benefit or hospitality has been offered and refused.</p>
E4.15	<p>It is good practice to:</p> <ul style="list-style-type: none"> - forward copies of lobbying correspondence to the Director of Planning, Housing and Environmental Health; - advise the Director of Planning, Housing and Environmental Health of any offers of planning gain or constraint on development made to them; - comply with guidance on lobbying or attending presentations or discussions set out this protocol.
E5	Contact with applicants, developers and objectors
E5.1	<p>You should refer those who approach you for assistance on planning, procedural or technical matters to the relevant officers.</p>

E5.2	<p>The following rules should be applied in respect of presentations about planning proposals:</p> <p>(a) You should not attend private planning presentations unless you have taken advice from one of the Council's solicitors as to the appropriateness of attending. Officers should be present with councillors in any pre-application meetings.</p> <p>(b) A written note should be made of all meetings. A note should also be taken of any phone conversations and relevant emails recorded for the file. The note(s) should be placed on the file as a public record. If there is a legitimate reason for confidentiality regarding a proposal, a note of the non-confidential issues raised or advice given can still normally be placed on the file.</p> <p>(c) Questions should be limited to those necessary to clarify your understanding of proposals.</p> <p>(d) Councillors should avoid giving separate advice on the development plan or material considerations as they may not be aware of all the issues at an early stage. Neither should they become drawn into any negotiations, which should be done by officers (keeping interested councillors up to date) to ensure that the Borough Council's position is co-ordinated.</p> <p>(e) It must be remembered that the presentation is not a part of the formal planning process. The presentation is a form of lobbying and councillors who will be determining the application should avoid expressing views on how they will vote.</p>
E6	Site Inspections
E6.1	<p>A Members site inspection can be carried out where an application is to be determined by an Area Planning Committee. The Committee Chairman, in consultation with the Head of Planning, will normally identify the need for any site inspections in advance of meetings of the Committee. Otherwise, only exceptionally should an item be deferred for a site inspection and it should only take place if voted for by a majority of the Area Planning Committee.</p>
E6.2	<p>A Councillor who believes a site inspection is necessary in a particular case, having careful regard to the criteria below, is encouraged to contact the Head of Planning as soon as possible. A Councillor making such a request should state under which of the four criteria below the Inspection is requested and also provide supporting justification. The Head of Planning will then consult with the Chairman of the Area Planning Committee regarding the request for the site inspection. The same justification is required should the Head of Planning believe a site inspection is necessary.</p>

E6.3	<p>A Members' Site inspection should only be used where the benefit of doing so is clear and substantial. The decision to hold a site inspection must fit at least one of the following criteria:</p> <p>(a) Particular site factors are so significant in terms of weight attached to them, relative to other factors, and that a site inspection would be the only way to assess those factors.</p> <p>(b) It is essential in order to reach a view on an application that the specific and particular characteristics of the site need to be viewed on the ground in order to assess the broader material impact of the proposal.</p> <p>(c) The proposal raises specific matters in respect of site characteristics, the importance of which can only be established by means of a site inspection.</p> <p>(d) The proposal is of such a major or strategic scale that a site inspection is essential to enable Members to be fully familiar with all site-related matters of fact.</p>
E6.4	<p>The purpose of a site inspection is solely for Planning Committee Members to view the site and its surroundings and to relate the application proposals to the site. Officers will explain the submitted drawings. Neither the applicant, their agent nor any supporters or objectors should take part. Where an applicant or land owner and/or their agent have to be present to allow access to the site, the visiting Members should stand away from them (or if necessary, politely ask the applicant or owner to stand away) and should not engage in any discussions.</p>
E6.5	<p>One representative from the Parish Council, in whose area the site is located, may attend the site inspection. The Parish Council representative may observe proceedings, but should not take part or engage in any discussions. The relevant Parish Council will be notified in advance of the date and time the site inspection is scheduled to take place and should advise Committee Services if they wish a representative to be present.</p> <p>Access to the site by the Parish Council representative is at the discretion of the landowner.</p>
E6.6	<p>Members should avoid any discussion of the merits of the case on site, on the journey to/from the site, or anywhere other than the subsequent Committee meeting when the application is reported for determination. No decision will be taken on site.</p> <p>The application will normally be considered at the next ordinary meeting of the Area Planning Committee.</p>

E7	Contact with Officers
E7.1	General guidance is given in the Protocol on Member/Officer relations in Part 5 (Codes) of the Constitution and that is not repeated here.
E7.2	You should not put pressure on officers for a particular recommendation or decision, nor do anything which compromises, or is likely to compromise, the officers' impartiality or professional integrity. However this does not prevent you from asking questions or submitting views to a relevant officer.
E7.3	Officers must act in accordance with the Officers' Code of Conduct in this Part the Constitution and any relevant professional codes of conduct, for example the Royal Town Planning Institute's code of professional conduct. As a result, the planning officers' views will be presented on the basis of their overriding professional obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the committee or its members.
E8	Planning applications made by Councillors and Officers and Council Development
Applications submitted by councillors and officers	
E8.1	It is perfectly legitimate for planning applications or development plan proposals to be submitted by councillors and officers. However, proposals to the Council by councillors and officers and their close friends and relatives can easily give rise to suspicions of impropriety. It is therefore vital to ensure that they are handled in a way that gives no grounds for accusations of bias or pre-determination.
E8.2	Councillors and officers who submit proposals should notify the Monitoring Officer of the proposal, play no part in its processing or determination and not seek to improperly influence a decision about such proposals.
E8.3	All such proposals shall be subject to the relevant statutory public consultation requirements. Where objections have been raised, the application shall be decided by the relevant area planning committee and not dealt with by officers under delegated powers.
E8.4	The relevant requirements set out in the Members' Code of Conduct regarding participation and voting at meetings must be observed e.g. a councillor with a DPI may not participate in the consideration of the matter and may therefore not speak. Such councillors will need to have a representative speak on their behalf.
E8.5	Members considering an application to be determined by committee must, of course, consider whether the nature of any relationship with the member or officer submitting the planning application requires the declaration of a DPI or OSI.

E8.6	<p>Serving councillors and officers should avoid acting as agents for people pursuing a planning matter and where they do must play no part in the decision making process for that proposal. Particular arrangements may need to be made in respect of councillors whose business is, or includes, the making of planning applications on behalf of others. <u>These arrangements may include the following provisions:-</u></p> <ul style="list-style-type: none"> • <u>Planning applications submitted by the councillor as agent should be notified to the Director of Planning, Housing & Environmental Health, Director of Central Services & Deputy Chief Executive, Head of Planning Services, Head of Legal & Democratic Services and the Development Manager</u> • <u>All decisions taken by Planning Services in respect of applications submitted by the councillor will need to be counter-signed by a second signatory e.g., the Development Manager or Head of Planning Services</u> - <u>The councillor should take no part in any decision taken in respect of any application submitted by them. This will mean withdrawing from the room should an application fall to be determined by the Area Planning Committee of which they are a member and taking no part in the discussion or vote.</u> - <u>In the event that any objections are received to an application, it will need to be determined at the relevant Area Planning Committee</u> - <u>The potential for a conflict of interest may arise should an application be submitted by a local resident (or an agent on their behalf) which conflicts with the interests of a client of the councillor in question. Should this arise then the councillor would need to declare a conflict of interest and seek further advice from the Monitoring Officer, on the appropriate way forward</u>
Applications submitted by the Council	
E8.7	Proposals for development submitted by the Council must be treated no differently to any other application.
E8.8	Occasionally some councillor's e.g. Cabinet Members, may through their other roles outside of an Area Planning Committee, have been committed to or involved in a development proposal by the Council. In such circumstances, where such an item comes to be considered at an Area Planning Committee the councillor concerned must consider whether they have had a degree of involvement with the proposals that could give the impression of bias. If in doubt, they are encouraged to seek advice from the Monitoring Officer.
E9	Decision Making
E9.1	Under the Council's Constitution, most decisions on planning matters are delegated to the Director of Planning, Housing and Environmental Health except in certain circumstances set out in the table of delegations. One of those circumstances is where a member for the relevant ward in which the application site falls <u>(or adjoining ward member in specified circumstances),-or</u>

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	<p>the relevant planning committee Chairman or Vice-Chairman has, with reasoned justification, required-requested that the application be determined by the relevant planning committee. In those cases, it is imperative that members state clearly their justification (in planning terms) for requiring an application to be reported to the planning committee. In every case, members are advised to frame their comments in such a way as not to give any appearance of pre-determination in respect of the matter. Any comments you have made will be included in the public register and may have to be disclosed to the public under the Freedom of Information Act or Environmental Information Regulations.</p>
E9.2	When you have to make a planning decision you must:
(a)	come to meetings with an open mind and demonstrate you are open minded;
(b)	comply with section 54A of the Town and Country Planning Act 1990 and make decisions only in accordance with the development plan unless material considerations indicate otherwise;
(c)	not vote or take part in the meeting's discussions on a proposal unless present to hear the entire debate including any officer introduction/presentation;

	(d)	come to a decision only after due consideration of all information reasonably required upon which to base such a decision;
	(e)	request further information if you consider that there is insufficient information before the committee upon which to reach a decision;
	(f)	where proposing, seconding or supporting a decision contrary to officer recommendations or the development plan, identify the planning reasons behind the decision before the vote is taken which may have to be justified in the event of any appeal or other challenge.
E10	Training	
E10.1	You should not participate in decision-making meetings dealing with planning matters unless you have attended any prescribed training.	