PROTOCOL FOR MEMBERS AND OFFICERS ON PLANNING PROCEDURES

1. Introduction

1.1. Public confidence in the planning system, whether that is determining planning applications or taking enforcement action against breaches of planning control, is essential to the acceptance of the restrictions which it imposes upon individuals, and that confidence can only be achieved if Members and officers not only act, but are seen to act in a manner which is fair, impartial and in the general public interest of the area as a whole.

1.2. Determination of a planning application is a formal administrative process involving rules of procedure, rights of appeal and an expectation that decision makers will act reasonably and fairly. Procedural unfairness can leave planning decisions vulnerable to legal challenge in the High Court.

1.3. This Code applies to every Member irrespective of whether or not he or she is a member of the Planning Committee and to all Officers. It is supplemental to the Members' Code of Conduct.

2. Pre-determination

2.1. Since any planning matter must be determined on its merits, taking into account all material planning considerations, Members must not make up their minds on a planning issue before they all have all the relevant information. Decisions can only be taken after full consideration of the officer's report and information and discussion at the Planning Committee meeting. This does not mean that Members cannot hold strong views about an application.

2.2. However, if a Councillor fully commits him- or her-self to a particular view on a planning application, such that their mind is no longer open to the consideration of the merits of the case, that Councillor should not take part in the debate or vote on an application.

3 Pre-application discussions

3.1 Members have an important part to play in community engagement. Members who take part in pre-application discussions either with applicants or objectors need to be aware of the:

(a) need to remain impartial;

(b) danger of giving inconsistent or inappropriate advice particularly when not all the facts are known so advice should be limited to matters of process;

(c) need for an officer to be present during any such discussions where practicable; and

(d) the fact that they are not negotiators.

3.2 On the basis of "no surprises" where potential issues are brought to Members' attention during any pre-application discussion at which it was not practicable for an

Officer to be present they should alert Officers to the issue as soon as possible and not leave it to the Planning Committee meeting.

4 Lobbying of Members

4.1 Lobbying, whether by applicants, objectors or those in support of an application, is a normal part of the political process and can take the form of meetings, both private and public, formal presentations or correspondence. It is an essential part of the process that local concerns can be expressed. However, care must be taken to ensure that lobbying does not call into question the integrity and fairness of the planning process or an individual Councillor. When lobbied, members of the Planning Committee should take care about expressing an opinion which could be taken as an indication that they have already made up their mind on the issue and are no longer open to consideration of the merits of the application. Instead they should give procedural advice including suggesting that contact is made with the case officer.

4.2 If Members do express an opinion, care should be taken to state that this is a preliminary view only and the final decision will be reached when all the facts are available at the Planning Committee meeting.

4.3 Any written or electronic correspondence received should be passed by the Member who is main addressee (if the e-mail is addressed to all members of the Planning Committee, this will be the Chair of the Planning Committee) immediately to the case officer for recording on the file and for communication to all Planning Committee members.

4.4 Members of the Planning Committee should take care when attending meetings in connection with development proposals or submitted planning applications unless such meetings have been arranged as Councillor briefings as part of the formal process. Members should take advice from the Monitoring Officer before deciding whether to attend meetings that appear to have been organised for lobbying purposes.

4.5 Members of the Planning Committee must consider whether any contact with an applicant, objector or landowner is significant, and if so, disclose such contact prior to any decision being taken on the application. This should be formally recorded in the record of the Planning Committee meeting.

5 Lobbying by Members

5.1 Ward Members have an important role to play as representatives of their communities and to bring local information to the decision-making process. Ward Members may therefore become involved in discussions with Officers about individual applications. However, they should remember that it is very easy to create the impression that they are using their position to influence the progress of the application. Any discussions with Officers should be seen to be open and above Planning Committee. Officers should make a note on the file of any such discussions.

5.2 Ward Members who are not members of the Planning Committee can make representations on planning applications in their Ward and may attend meetings of the Planning Committee and, with the Chair of Planning Committee’s agreement, can address the Planning Committee on such applications in accordance with the

protocol on public speaking at Planning Committee meetings. Any representations or address should relate to the planning merits of a planning application. This will not apply if the Councillor is also a Parish/Town Councillor and the Parish/Town Council is the applicant.

5.3 When making representations on behalf of their constituents, Members should make it clear that it is their constituents' views and not their own that are being expressed. Furthermore, any representations on behalf of constituents must be expressed in such a way that no individual or group feels that they have been unfairly represented.

5.4 Members should avoid lobbying Planning Committee Members and exerting of undue pressure on planning officers for a particular recommendation.

6 Membership of another local authority

6.1. A Councillor who is also a member of another tier of local government should have regard to the guidance on interests in this Code. If in doubt about the nature of their interest, Members are recommended to seek further advice from the Monitoring Officer.

6.2. Members of the Planning Committee who are also members of another tier of local government should adopt the practice of making it clear, when they participate in a debate on development proposals at a Parish/Town meeting, that the views they express are based upon information before them at that time, and might change in the light of further information at the Council's Planning Committee Meeting.

7 Political group meetings

7.1 Given that the point at which a decision on a planning application is made cannot be before the Planning Committee meeting when all available information will be to hand and has been duly considered, any political group meeting prior to the meeting of the Planning Committee should not be used to decide how Members should vote. Furthermore, the Ombudsman takes the view that the use of political whips at group meetings in this way may be considered as maladministration.

8 Scheme of delegation

8.1 The detail of the Scheme of Delegation is set out in Part 3 of the Constitution.

Applications by the Council or in respect of Council-owned land

8.2 Applications submitted by, or on behalf of, the Council or made by any person in respect of Council-owned land will be determined in accordance with the Scheme of Delegation and may be determined by the relevant Planning Committee.

Applications by Members and Officers

8.3 Whilst it is perfectly legitimate for any Member or Officer to submit a planning application, it can easily give rise to suspicions of impropriety unless handled properly. Accordingly:

(a) all applications by Members and applications by a Chief Officer or an officer directly involved in the processing or determination of the application will be determined in accordance with the Scheme of Delegation and may be determined by the relevant Planning Committee.

(b) while any application from a Member or an Officer identified under paragraph (a) above, should usually be identified as part of the registration process, Members and Officers are encouraged to draw the fact that such an application has been submitted to the attention to both the Head of Service for Planning (or any other Officer nominated by him/her) in writing and also the relevant case officer within 21 days of the date of the application being submitted to help ensure its identification.

(c) where an application is submitted by someone other than a Member, but in relation to land or a building in which the Member has a registered legal interest (which for the purpose of this code means a legal interest registered at HM Land Registry in the name of the Member), the Member is also encouraged to provide such notification as identified above. Note that this is in addition to any duty the Member may have regarding the disclosure of any interest including any Disclosable Pecuniary Interest for the purposes of the Member Code of Conduct.

(d) any Member or Officer who submits a planning application must not take part in or seek to influence the decision-making process relating to that application.

(e) any Member or Officer who acts as an agent for people pursuing a planning matter with the Council must not take part in the decision-making process for that proposal, nor seek in any way to influence it.

Reports to the Planning Committee

8.6 All planning applications to be determined by the Planning Committee will be the subject of a written report from the case officer. The report should aim to be as accurate as possible and include a summary of the substance of representations received, the relevant policies, identify any other material considerations, contain an appraisal of the application and give a recommendation. Where the recommendation is contrary to policy or is a departure from the development plan, the report will identify this and provide reasoned justification.

8.7 Officers may report additional information received after the publication of the Planning Committee report at the meeting.

9 Decision-making

The legal framework

9.1 The Town and Country Planning Act 1990 requires the Council to have regard to the provisions of the development plan, so far as material to the application and to any other material consideration. Furthermore, the application is to be determined in accordance with provisions of the development plan unless material considerations suggest otherwise.

Determination of applications contrary to Officer's advice

9.2 Decisions should be based on any written report prepared by Officers. However, Members are not obliged to accept and follow the professional advice given by Officers. Nevertheless, when Members are minded to determine an application contrary to the Officer recommendation they should ensure that they have sound and convincing planning-based reasons for doing so, with evidence to support those reasons whether they are reasons to refuse an application, or to grant planning permission as a departure from the development plan.

9.3 The mover of the motion must set out their reasons as part of the motion and if seconded, it may be appropriate for the Planning Committee to adjourn for a few minutes to allow Officers to consider the reasons. Where officers have doubts about the validity of the reasons given, then consideration should normally be given to the deferral of the application to the next meeting so that the reasons may be considered and tested further.

9.4 Before a vote is taken or consideration is given to deferral, the Chair of the Planning Committee should ensure that the Officer is given the opportunity to explain the likely implications of any subsequent decision.

9.5 When Members decide to determine an application contrary to the Officer's recommendation, the minute will state the reasons for the decision and if those reasons are to be based on development plan policies, identifying the relevant policies and stating in what way the application supports or infringes those policies. A copy of the minute will be placed on the application file.

10 **Site visits**

10.1 It is the responsibility of each Member to familiarize himself/herself with the location of any proposed development. This might well include seeking to view the site from areas that are accessible to the public. In no circumstance should a Member enter onto private land without the permission of the owner and occupier. Exceptionally, where the impact of the proposed development is difficult to visualise both from the submitted plans and other supporting material a committee site visit may be agreed. The site visit will be carried out in accordance with arrangements that will ensure that it is conducted fairly and without risk of bias or predetermination.

11 **Interests**

Fundamental principle

11.1 It is a fundamental principle that those who have a significant interest in the outcome of a particular planning application or enforcement matter should not make decisions in relation to that application or matter. This applies to Members and Officers alike.

Declaration

11.2 Members should declare and register those interests identified in the Code of Conduct for Members. Members with a Disclosable Pecuniary Interest in a planning application or enforcement matter should not take part in any discussions about the application or matter and leave the room during any discussions.

11.3 Where a Councillor has a personal interest e.g. the applicant is a relative, friend or close associate or there has been previous personal dealings acrimonious or otherwise, they should think whether their involvement in the decision-making process would compromise the General Principles set out the Code of Conduct for Members. If it would they should not take part.

11.4 Officers who discover that they have an interest in a planning matter should, in addition to any requirement of the Officers' Code of Conduct, cease to act and report the interest to their immediate manager who will reallocate the matter to an Officer without an interest in it. The Officer having an interest will not take part in any part of the decision-making process in respect of that application.

Monitoring Officer to advise

11.5 Members and Officers who are unsure whether to declare an interest should seek advice from the Monitoring Officer, before the Planning Committee meeting, although the final decision whether to make a declaration and/or to withdraw from the meeting will always be one for the individual.

12 Councillor training

12.1 Town and Country Planning is a specialised field and both the Local Government Association and the Royal Town Planning Institute place particular emphasis on the need for Members to have an adequate knowledge of the planning process. The Council will provide training that all members of the Planning Committee must undertake before taking part in any Planning Committee meetings. Members have a responsibility to ensure that they understand the fundamental principles and keep up-to-date with developments.

12.2 Training will be arranged for Members when there is a change in the composition of the Planning Committee or when there are material changes in legislation, policy guidance or practice.

13 Officers' professional obligations

13.1 Many Planning Officers are Chartered Town Planners and are bound by the Code of Professional Conduct of the Royal Town Planning Institute (RTPI) which imposes certain professional obligations including conflicts of interest and continuing training. Breaches of that Code may be subject to disciplinary action by the RTPI.

14 Breach of this code

14.1 If anybody wishes to make an allegation that a Councillor has breached this Code, such allegation should be made to the Monitoring Officer.