

To: T Barnes (Chair)  
Councillors Edwards, Asare, Ayub,  
G Dennis, Gavin, Keane, Keeping, Moore  
and Mitchell

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6 September 2023

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### **NOTICE OF MEETING - STANDARDS COMMITTEE 14 SEPTEMBER 2023**

A meeting of the Standards Committee will be held on Thursday, 14 September 2023 at 6.00 pm in the Council Chamber, Civic Offices, Reading, RG1 2LU. The Agenda for the meeting is set out below.

	<u>WARDS AFFECTED</u>	<u>Page No</u>
1. <b>DECLARATIONS OF INTEREST</b>		
2. <b>MINUTES OF THE MEETING HELD ON 10 OCTOBER 2022</b>		<b>3 - 6</b>
3. <b>PLANNING CODE OF CONDUCT</b>		<b>7 - 52</b>
A report asking the Committee to consider a proposed Member Planning Code of Conduct.		
4. <b>HANDLING ARRANGEMENTS FOR COUNCIL DEVELOPMENTS</b>		<b>53 - 64</b>
A report asking the Committee to consider the Handling Arrangements for Council Developments Policy for recommendation to Council and to consider the arrangements for the Minster Quarter Development.		
5. <b>INVESTIGATION OF COMPLAINTS 2022/23</b>		<b>65 - 70</b>
To provide the Committee with information relating to the number, type of complaints and their disposal in the financial years 2022/23.		



## STANDARDS COMMITTEE MINUTES - 10 OCTOBER 2022

**Present:** Mrs T Barnes (Chair);  
Councillors Edwards (Vice-Chair), Keane, McEwan and Terry

**Apologies:** Councillor Lovelock

### 1. MINUTES

The Minutes of the meeting held on 10 March 2021 were confirmed as a correct record.

### 2. INVESTIGATION OF COMPLAINTS 2020/21 AND 2021/22

The Monitoring Officer submitted a report outlining the number, type and disposal of complaints made by members of the public against councillors. The report covered complaints for two financial years 2020/21 and 2021/22.

The Committee noted that the complaints report was usually provided on an annual basis. However, due to the Coronavirus pandemic the Standards Committee had temporarily stood down during 2020 and the last report considered was for 2019/20 at the meeting in March 2021.

Annex A to the report contained a list of six complaints in the financial year 2020/21 and Annex B contained seven complaints made to the Monitoring Officer in the financial year 2021/22.

Of the six complaints set out in Annex A:

- 4 complaints were judged not to engage the Code of Conduct and were rejected at the initial filter stage.
- 1 complaint was already resolved by the councillor and there was no further action.
- 1 complaint was referred to the Group disciplinary process and a breach of the Code was found, and training identified.

Of the seven complaints set out in Annex B:

- 1 complaint was resolved at the filter stage (advice was given to the councillor).
- 4 complaints were judge not to engage the Code of Conduct and were rejected at the initial filter stage.
- 1 complaint was referred to the Group disciplinary process but was unresolved before the councillor stood down.
- 1 complaint was found to be trivial and was dismissed with no further action.

The associated annexes A and B also provided data on the timeliness of responses to acknowledge and answer complaints.

The Committee considered the 15 best practice recommendations for local authorities from the Committee on Standards in Public Life. They agreed that public consultation for the Members Code of Conduct was not necessary as the Standards Committee already reviewed this on an annual basis. Regarding access to at least two Independent Persons; the Committee noted that if an additional independent person was required then neighbouring local authorities would be contacted. Also, the Berkshire Monitoring Officers were considering recruiting a shared panel member for all Berkshire unitary authorities.

The Committee discussed the publication of the councillors' gifts and hospitality register and agreed that the register should be provided to the Standards Committee on an annual basis.

## STANDARDS COMMITTEE MINUTES - 10 OCTOBER 2022

**Resolved -**

- (1) That the complaints received in the financial year 2020/2021 and 2021/2022 be noted.**
- (2) That the Councillors' Gifts and Hospitality Register be provided to the Standards Committee on an annual basis.**

### **3. CODE OF CONDUCT**

The Monitoring Officer submitted a report outlining the new proposed Member Code of Conduct reflecting changes agreed at the meeting in March 2021 for recommendation to Council.

A new model Councillor Code of Conduct had been published by the Local Government Association (LGA) on 23 December 2020. The Committee at its meeting on 10 March 2021 considered the Code and had agreed two amendments to the final documents. These included:

- That the monetary threshold relating to gifts or hospitality received of £50.00 be reduced to £25.00 as they considered that the current amount of £25.00 was an appropriate figure.
- That the clauses regarding matters a councillor were required to consider when dealing with exempt and confidential information, as set out in 4.1 of the Model Code, were complicated. The Committee agreed that Councillors should seek advice from the Monitoring Officer before releasing confidential or exempt papers.

These amendments were included in the new Councillor Code of Conduct.

The Committee considered changes to Article 9 of the Constitution and a revised set of Arrangements for dealing with complaints. The revised Article 9 provided better accessibility for members of the public. The current 'arrangements' would be moved to a separate document and published on the Council's website with a copy of the new Code.

The Standards Committee would keep the Arrangements under review and amended if necessary. The Committee also considered an assessment criteria for the initial disposal of complaints and a Hearings Procedure.

The Committee noted that training would be provided on the new Code of Conduct and associated procedures.

The Monitoring Officer informed the Committee of appropriate amendments within the Code of Conduct, Article 9 of the Constitution, Arrangements, and Policy for Unreasonable and Unreasonably Persistent Complaints that would be made ahead of submission to Council on 18 October 2022. The Committee agreed with the amendments and thanked the Monitoring Officer for the work undertaken.

**Resolved -**

- (1) That the proposed Revision to Article 9 of the Constitution (as shown in Appendix 1 to the report) be recommended to Council for adoption, with appropriate revisions made by the Monitoring Officer, be agreed.**

## STANDARDS COMMITTEE MINUTES - 10 OCTOBER 2022

- (2) That the proposed Member Code of Conduct (as shown in Appendix 2 to the report) be recommended to Council for adoption, with appropriate revisions made by the Monitoring Officer, be agreed.
- (3) That the proposed Arrangements for Dealing with Allegations of Misconduct (as shown in Appendix 3 to the report), be recommended to Council for adoption, with appropriate revisions made by the Monitoring Officer, be agreed.
- (4) That the Proposed Policy for Unreasonable and Unreasonably Persistent Complaints, (as shown in Appendix 4 to the report) be recommended to Council for adoption, with appropriate revisions made by the Monitoring Officer, be agreed.
- (5) That the proposed Hearing Procedures (as shown in Appendix 5 to the report, be recommended to Council for adoption.
- (6) That training be provided to all councillors about the Code and the new Arrangements

(The meeting commenced at 6.00pm and closed at 6.30pm).

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## Standards Committee

14 September 2023



**Reading**  
Borough Council  
*Working better with you*

<b>Title</b>	Planning Code of Conduct Review
<b>Purpose of the report</b>	To make a decision
<b>Report status</b>	Public report
<b>Report author</b>	Michael Graham, Assistant Director for Legal and Democratic Services
<b>Lead Councillor</b>	Cllr Jason Brock, Leader of the Council
<b>Corporate priority</b>	Our Foundations
<b>Recommendations</b>	To: 1. Consider the draft Planning Code attached as Appendix 1 2. To make recommendations to officers to finalise the updating of the Planning Code

### 1. Executive Summary

- 1.1. The Council has a Planning Code within the Constitution. Article 9 of the Constitution places this Policy within the remit of the Standards Committee.

### 2. Policy Context

- 2.1. The Planning Code of Conduct within the Constitution was adopted by Council in 2015 (and updated in May 2019).
- 2.2. In December 2019 the Local Government Association published *Probity in planning: Advice for councillors and officers making planning decisions*. Whilst our 2015 document was based on the 2013 version of the same LGA advice, we have not subsequently updated the Planning Code to take into account the updated advice. A review is therefore overdue.
- 2.3. In October 2022, the remit of the Standards Committee was expanded to include oversight of the Planning Code of Conduct:

9.1.2 The purpose of the Standards Committee is to oversee and develop the Council's ethical framework which includes, but is not limited to, the following policies:

Councillor Code of Conduct  
Overall standards of conduct and ethics of Members and co-opted Members of the Council  
Arrangements for Dealing with Allegations of Misconduct (the "Arrangements Document")  
Staff Code of Conduct  
Planning Code of Conduct  
Member Officer Protocol  
Policies in relation to Gifts and Hospitality

### 3. The Proposal

- 3.1. The Committee is invited to review the Planning Code of Conduct.
- 3.2. In order to facilitate this review, an external firm of solicitors have been engaged to prepare the first draft, and to draw in their experience from across the country to assist in the revision. The draft document is attached at Appendix 1.

- 3.3. Officers from Planning and Legal will be in attendance to assist the Committee to discuss this draft document and to identify areas where it can be improved to offer the best advice to councillors. The Code applies not just to Planning Application Committee members but also to ward councillors.

#### **4. Contribution to Strategic Aims**

- 4.1. Putting a new Planning Code in place will allow the Council to comply with best practice and to protect itself from the risk of legal challenges to planning permission decisions. It is a key policy for good governance in the Council.

#### **5. Environmental and Climate Implications**

- 5.1. There are no environmental or climate implications arising from the decision, which only concerns the Council's internal operational procedures.

#### **6. Community Engagement**

- 6.1. No Community Engagement has been carried out as this relates to Council operational procedures to comply with a regulatory requirement and best practice.

#### **7. Equality Implications**

- 7.1. Under the Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to the need to—
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 7.2. There are no Equality implications stemming from the matters covered by this report.

#### **8. Other Relevant Considerations**

- 8.1. There are none.

#### **9. Legal Implications**

- 9.1. One of the main issues to be considered in the revised Planning Code is how to deal with situations where members wish to depart from officer recommendations so that they can give cogent reasons for their decision. The Supreme Court held in *Dover District Council v CPRE Kent (2017)* that when reasons for a decision are required, their adequacy is to be determined in the case of committees of elected members of a local authority by the same standard as is applicable to others (such as the Secretary of State). The reasons to be provided should not leave room for genuine doubt as to what has been decided and why, dealing with the main issues. It also held that the common law may impose a duty on such a committee to give reasons for the grant of planning permission for a development which is contrary to policy and against the advice of their own officers.
- 9.2. Our procedures have not been updated since this judgement to take into account the enhanced duty to give reasons, and whilst we have not had any challenges since that time, our policies and procedures should be effective and up to date to guard against that risk.

#### **10. Financial Implications**

- 10.1. There are no financial implications, as the change of policy represents a change of internal procedures and so will be covered by existing officer time.

#### **11. Timetable for Implementation**



11.1. The Policy is within the remit of the Committee. If the Committee has enough information to proceed, it can determine the Policy at its September meeting. If further consideration is required, then the Committee can devise a work plan to conclude the matter.

## **12. Background Papers**

12.1. There are none.

## **Appendices**

1. Draft Planning Code of Conduct
2. Probity In Planning LGA document

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## PLANNING CODE OF CONDUCT FOR COUNCILLORS

**ADOPTED BY COUNCIL, 20 OCTOBER  
2015 (updated [1] 2023)**

### 1. INTRODUCTION

- 1.1 The purpose of the Planning Code of Conduct (**Code**) is to provide clear guidance to all Councillors who deal with planning matters at Reading Borough Council (**Council**).
- 1.2 The Council recognises that planning decisions must be made in a fair, impartial, open and consistent manner and the Code is designed to assist Councillors with maintaining high standards of conduct. This Code is both complementary and additional to the Councillors' Code of Conduct.
- 1.3 Councillors should read this Code thoroughly and apply themselves to it consistently. If Councillors have any doubts about the application of this Code they should seek early advice, preferably well in advance of any meeting from the Council's Monitoring Officer.
- 1.4 Councillors should first adhere to the Councillors' Code of Conduct and thereafter apply this Code together when involved in the planning process. If Councillors do not abide by this Code they may put the Council at risk of proceedings on the legality or maladministration of the related decision.

### 2. OUTLINE OF PLANNING

- 2.1 One of the key purposes of the planning system is to control development in the public interest. Planning law requires that planning applications are determined in accordance with the relevant development plan unless "material considerations" indicate otherwise. What constitutes a "material consideration" is very wide in scope but, in general, the courts focus on the "public interest" element and therefore the protection of purely private interests, such as the impact of a development on the value of private property, is not considered to be a material consideration.
- 2.2 As planning decisions affect the daily lives of the public and of private individuals (developers), they are often highly contentious. Accordingly, the decision-making process needs to be fair, impartial, open and consistent in order to avoid criticism. The parties involved in the decision-making process, namely Councillors and Officers, need to work together but with their differing roles clearly defined to help demonstrate impartiality as well as the other values required of the planning system.

### 3. GENERAL ROLE OF OFFICERS AND COUNCILLORS

- 3.1 Officers and Councillors have different but complementary roles within the planning system. Ultimately, their aim is to serve the public interest and therefore effective communication between both parties is imperative for delivering a good planning service.

#### General Role of Officers

- 3.2 The duty of Officers is to the Council as a whole. Officers are employed by and work for the Council and planning Officers carry out tasks such as preparing the development plan, assessing planning applications (in light of the development plan and any material considerations) and making recommendations to Councillors as regards such planning applications. Officers are governed by the Officers' Code of Conduct contained at Part 5 of the Constitution.

### General Role of Councillors

- 3.3 The duty of Councillors is to the borough as a whole. Councillors have to balance their role of listening to the views of their ward residents, with making planning decisions against a local and national policy framework designed to promote the wider public interest. It is acknowledged that Councillors have a special duty to their ward constituents but their overriding duty is to the whole community. It is therefore very important for Councillors' decisions to be open and transparent and Councillors must not, or appear to, favour any person, company, group or area, otherwise there is a risk of complaints for maladministration or calls for judicial review of a council's decision.
- 3.4 A Councillor is not under any obligation to represent a resident on a specific planning application if, in the opinion of the Councillor, there are no issues which have a wider significance for the area, ward or administrative area as a whole.
- 3.5 Councillors are bound by the Councillors' Code of Conduct contained in Part 5 of the Constitution. Breaches of the Councillors' Code of Conduct or this Planning Code can result in a Councillor being reported to the Monitoring Officer of the Council and/or the Council's Standards Committee.

### 4. **REGISTRATION AND DISCLOSURE OF INTERESTS**

- 4.1 The Localism Act 2011 and the Councillors' Code of Conduct place requirements on Councillors about the registration and declaration of their interests and the consequences of having such interests. This is of particular importance when Councillors are involved in the planning application/determination process in order to avoid accusations of bias and pre-determination. It is important for Councillors to ensure that registration and disclosure requirements are followed strictly and Councillors should review their interests regularly. Ultimate responsibility for declaring an interest rests individually with each councillor.

### 5. **COUNCILLORS PRE-DETERMINATION, PRE-DISPOSITION AND BIAS**

#### Pre-determination

- 5.1 Councillors need to avoid being deemed to have "pre-determined" views when making planning decisions. It is important for Councillors to remain measured in any correspondence held with anyone involved in a planning application. Councillors should avoid expressing extreme views and ensure that there is no doubt that they will be entering a decision making process with an "open mind". For example, a clear indication by a Councillor of their intention to vote in a particular way before a meeting occurs illustrates that that Councillor's mind is already made up before hearing all of the relevant evidence; that the Councillor has a "closed mind".

#### Bias

- 5.2 Bias can also arise from a Councillor's relationship or interests as well as their state of mind. There is clear guidance in the Councillor's Code of Conduct on declaration of interests and acceptance of gifts and hospitality. If such guidance is followed then most forms of bias will be identified. However, Councillors also need to be alive to the risk of apparent bias which can arise from non-pecuniary or personal/conflicts of interest. The legal test for apparent bias is:

*"whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the decision maker was biased".*

Councillors who feel they may have an interest but are not sure whether it precludes them

from being involved in determining the planning application should seek early advice from the Council's Monitoring Officer before removing themselves from the process.

Pre-disposition

- 5.3 Pre-disposition is where a Councillor may have an existing or strong opinion about a planning matter but they keep their mind open to the information presented to them at the relevant meetings. The key issue is that the Councillor ensures that their pre-disposition does not prevent them from consideration of all the other factors that are relevant to a decision, such as committee reports, supporting documents and the views of objectors and they have an "open mind". Where expressions/opinions are provided by a Councillor, it should be made clear that they may change their view once all of the information is presented to them.
- 5.4 Section 25 of the Localism Act 2011 confirms that this position by providing that a decision will not be unlawful because of an allegation of bias or predetermination "just because" a Councillor has done anything that would indicate what view they may take in relation to a matter relevant to a decision. However if a Councillor has done something more than indicate a view on a decision, this may be unlawful bias or predetermination so it is important that early advice is sought from the Council's Monitoring Officer where this may be the case.

**6. LOBBYING OF AND BY COUNCILLORS**

Expressing Opinions and Conduct at Committee

- 6.1 Part of the role of a Councillor involves listening to the views of their electorate in respect of planning decisions. The lobbying of Councillors is therefore a normal part of a Councillor's role, e.g. an aggrieved member of the public voicing their concerns to a Councillor about a proposed planning application .
- 6.2 The rules of natural justice mean that planning applications should be determined in an open and fair manner and taking account of relevant information and arguments.
- 6.3 It is in this context that a Councillor must be careful not to be perceived as having pre-determined its views in relation to a planning matter.
- 6.4 It should be noted that:
- planning decisions must not be made on a party political basis and the use of political whips to try and secure a particular planning decision is likely to be deemed maladministration;
  - planning Councillors should try and avoid organising support for or against a particular planning decision and avoid lobbying other Councillors;
  - Councillors should not pressure Officers into making a particular recommendation or decision or do anything to compromise/likely to compromise the Officers ' impartiality.
- 6.5 Councillors should feel free to engage in free and frank discussion about all aspects of planning applications in advance of their determination. It is often the case that Councillors will have a strong view on a proposed application and may be open about this view in the public domain however this in itself would not preclude a Councillor from participating in the decision making process as a member of the Council's Planning Committee. However, care does need to be taken to ensure probity in the decision making process and therefore members of the Planning Committee are advised to:
- if lobbied, explain that whilst they are able to listen to the points raised they cannot indicate how they will vote prior to hearing that item at Planning Committee and before

- they have been afforded the opportunity to consider all information before them;
- ensure that if they participant in any discussions in respect of a planning application it is made clear from the outset that such discussions are not binding, are the opinion of the Councillor only and that they will only be able to reach a final decision on the merits of the planning applications after consideration of all relevant information and arguments presented to the Planning Committee;
- consider whether they should be open and transparent at a Planning Committee meeting about any conversations/contact held with applicants/developers in respect of a planning application falling to be determined at that Committee;
- advise the Democratic Services team/Planning Department of any correspondence received with the intention of lobbying the Councillor in relation to a planning application so that any objections/issues raised can be addressed by officers (where possible) ahead of a determination/Planning Committee meeting;
- make themselves familiar with any handling arrangements that have been introduced in respect of a planning application and adhere to their requirements;
- be responsive to their constituents about planning related matters as they are often very important/emotive for residents and discussions with Councillors are permitted even if they are on Planning Committee. The key consideration for a Councillor who will be involved in the determination of the planning application is to ensure that they are seen to be open minded until they have been afforded the opportunity to consider all of the relevant information.

#### Gifts and Hospitality

- 6.6 Councillors should be wary about accepting gifts and hospitality, especially from lobbyists or repeatedly from the same organisation. Receipt of gifts/hospitality of £25 or more should be disclosed to the Council's Monitoring Officer in writing in accordance with the Councillor's Code of Conduct.

#### Call-in procedures

- 6.7 Councillors have the power to "call-in" to Committee a planning proposal which would ordinarily be determined by a senior officer under delegated authority. Should Councillors exercise such power, the call-in should be in writing and set out the rationale for the call-in which must include reference to policies in the development plan and any other material planning considerations.

### **7. PRE-APPLICATION AND PRE-DECISION DISCUSSIONS**

- 7.1 Early engagement between Officers and Councillors and developers can be very useful, particularly for more complex planning proposals, as such discussions can identify and resolve issues early on, avoiding them being addressed for the first time at the Committee meeting. However, there are risks that such discussions are viewed by objectors as part of a lobbying process by applicants or that applicants consider Councillors to have pre-determined their position prior to submission of a planning application or the making of a planning decision.

- 7.2 To avoid these issues, the following guidelines should be followed:

- Councillors should always have an officer present at any pre-application or pre-decision meeting with a developer, and a written record of the meeting should be taken (this should note the issues raised and the advice given). In addition, written records of any related telephone conversations and emails should be kept on file. 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 to reassure others not party to the discussion;

- the advice provided by Officers should be consistent and premised on the development plan and any material considerations. Councillors should avoid giving separate advice on these items as this is the role of the Officers whose knowledge will be most-up-to-date in this respect;
- any negotiations should be carried out by Officers, updating the Councillors as necessary, to clearly demonstrate the differing roles;
- if a Councillor is invited and decides to attend a public meeting arranged by residents or interested groups about a particular planning application, the principles outlined above will apply;
- it is not unusual for planning officers to decline to attend public meetings arranged by residents or interested groups on particular planning applications unless both the applicant and objectors are properly represented or at least afforded the opportunity to attend.

7.3 Similar arrangements can also be used when the Council is looking at new policy documents and particularly when making new site allocations in emerging development plans and wish to engage with different parties, including Councillors, at an early stage in the process.

7.4 For large and complex schemes the Council may arrange appropriate presentations to Councillors by the applicant. This is seen to be beneficial to inform Councillors at an early stage and to encourage pre-application discussion and free flow of information on what are often complex or controversial issues. The Council itself will also organise presentations to keep Councillors informed generally on matters which to have or are likely to have a strategic importance to the Borough. At any such presentations/briefings Councillors should abide by the guidance in this Code, listening to presentations, raising concerns and questions, debating issues but not closing their mind or fixing on a final position in advance of a full debate at Planning Committee.

7.5 The Statement of Community Involvement will set out the Council's approach to involving communities and other consultees in pre-application discussions. Some authorities have public planning forums to explore major pre-application proposals with the developer outlining their ideas and invited speakers to represent differing interests and consultees. As well as being transparent, these forums allow Councillors and consultees to seek information and identify important issues for the proposal to address, although still bearing in mind the need to avoid pre-determination.

## 8. **SITE VISITS**

8.1 In addition to pre-application and pre-decision discussions, site visits can assist Councillors with gaining a better understanding of the planning proposals and therefore Councillors are encouraged to make their own visits to a site without officers or interested parties to get the "lie of the land". If another party is present then Councillors should be mindful of the advice on lobbying earlier in this document.

8.2 To lessen the risk, site visits should take place in accordance with the protocol at Appendix [ ]:

- only be used where the expected benefit is substantial;
- have a clear purpose and format which is adhered to throughout the visit;
- involve a record being kept of the rationale for the site visit;

- be made by Councillors with officer accompaniment or alone but should not be used as a lobbying opportunity by supporters or objectors. If supporters or objectors do attend, an officer should also be present and the supporters or objectors will have no right to speak but will merely observe the process and answer questions when asked;
- be notified to the applicant.

## 9. THE DECISION MAKING PROCESS

9.1 In determining planning applications the Council must follow the guidelines adopted as part of this Code (Guidelines). The Guidelines will be amended from time to time to reflect the latest government guidance and law and are appended to this Code as **Appendix [ ]**.

### Procedure and conduct at Committee Meetings

9.2 Applicants and objectors will be able to address the Planning Committee in accordance with the protocol attached at **Appendix [ ]**.

9.3 Where Councillors who are not members of the Planning Committee have indicated to the Chairman prior to Committee that they wish to speak on an item in their ward they will be entitled to speak immediately after representatives of the applicant and/or objectors have addressed Committee.

9.4 Planning law requires any decision to be taken in accordance with the development plan unless material considerations indicate otherwise. This means that any reasons for refusing an application must be justified with reference to the development plan or other material considerations. Councillors must give reasons for deciding to grant an application; this will be particularly useful in scenarios where the Councillors have overturned the Officers' recommendation or where the application is very controversial. Where the proposed development requires an environmental impact assessment, there is in fact a statutory requirement to provide reasons for granting permission.

9.5 Councillors should prepare in advance of the Committee meeting by reading relevant material/Committee papers and should request information not contained within the Officers' report/recommendation [at least one working day] before the Committee meeting. Councillors should not be involved in the decision-making if they have not prepared in advance or read the Officers' report/recommendation.

9.6 In making decisions on planning matters Councillors should:

- ensure that, if they call-in a proposal to go before the Planning Committee rather than be determined through officer delegation, that their reasons are recorded and repeated in the report to the Committee; come to meetings with an open mind and demonstrate that they are open-minded;
- comply with section 70(2) of the Town and Country Planning Act 1990 and make decisions in accordance with the development plan unless material considerations indicate otherwise;
- come to their decision only after due consideration of all of the information reasonably required upon which to base a decision. If they feel there is insufficient time to digest new information or that there is simply insufficient information before them, request that further information. If necessary, defer or refuse
- not vote or take part in the meeting's discussion on a proposal unless they have been present to hear the entire debate, including the Officers' introduction to the matter;
- have recorded the reasons for the Committee's decision to defer any proposal;
- make sure that if they are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that they clearly identify and understand the



planning and policy reasons leading to this conclusion/decision. These reasons must be given prior to the vote. Councillors must be aware that they may have to justify the resulting decision by giving evidence in the event of any legal challenge.

Committee decisions which differ from a recommendation of the Planning Officer.

- 9.7 Councillors can make decisions which are contrary to the Officers recommendation . This could be in relation to the entire decision or perhaps in relation to some of the specific conditions and/or planning obligations which are put forward by the Officers.
- 9.8 If a Councillor is concerned about an officer’s recommendation they should discuss their areas of difference and the reasons for that with the Development Manager in advance of the Committee meeting. This will allow the Development Manager to understand concerns, provide advice and support the Committee meeting with considered views on suggested alternatives.
- 9.12 Where a Councillor decides to vote against a recommendation, this should only arise once:
- (a) clear and convincing reasons have been provided with reference to the development plan policies and any other relevant planning considerations;
  - (b) the concerns have been articulated by the Councillor to allow other Councillors of the Committee to comment on them and Officers to advise on them; or
- 9.13 Where there is concern about the validity or strength of reasons, consideration should be given to the deferral of the item to another meeting to have the officer report reviewed to cover the salient points.
- 9.14 If the Committee wish to make a decision contrary to Officers recommendation, a planning officer present at the meeting should be given the opportunity to explain the implications of such a decision.
- 9.15 If the Committee wish to refuse an application the reasons for doing so must be clear, cogent and comprehensive. Councillors should be prepared to explain in full their planning reasons for not agreeing with the officer’s recommendation, which should be set in the context of the development plan or the National Planning Policy Framework. The decision and reasons for it must be minuted. The common law on giving a statement of reasons for decisions has developed significantly in the last few years. It is important that the report that supports planning decisions clearly shows how that decision has been reached – whether for the grant or refusal of permission. The procedure outlined in **Appendix [ ]** should be followed (unless there are clear reasons for deviating from it).
10. **PLANNING APPEALS** Appeals by applicants against the decisions of the Council, and which are heard by an Inspector, are open to the public and Councillors are able to attend.
- 10.2 If Councillors wish to attend a public inquiry or informal hearing as ward Councillors they are free to do so but it is strongly recommended that they discuss their participation with the [Head of Planning ] to ensure that they are aware of the process and that they do not act in a manner which may expose the Council to criticism or a claim of costs.
- 10.3 A Councillor cannot attend an appeal on behalf of the Planning Committee. The decision of the Committee will be documented in the minutes and the case officer will present the Council's case on its planning merits in accordance with the Committee's decision. The

Inspector is required to determine the appeal on its planning merits and therefore all representations should be so directed. Where the appealed decision was contrary to the officer recommendation the case may be presented by a planning consultant employed by the Council.

**11. APPLICATIONS SUBMITTED BY THE COUNCIL/COUNCILLORS/OFFICERS**

- 11.1 The Council is empowered to act as local planning authority in respect of certain planning applications that it has submitted to itself for development in respect of its own land. This allows the Council to grant planning permission for its own development.
- 11.2 A general principle underpinning such planning applications is that there must be a clear separation of functions between the part of the Council that is promoting the planning application and the part of Council that is tasked with determining the application. The Council must make appropriate administrative arrangements to ensure that there is a functional separation, when dealing with such applications, between the persons bringing forward a proposal for development and the officer responsible for the recommendation to planning committee. In addition, the Council's own development proposals should be treated in the same way as those of private developers.
- 11.3 Where appropriate, the Council will publish a Handling Note which details how such applications will be processed. The Council will publish this note on the relevant planning application web page.
- 11.4 Proposals to their own authority by serving Councillors and Officers can easily give rise to suspicions of impropriety. Proposals can take the form of either planning applications, development plan proposals or relate to other planning matters including enforcement. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations or favouritism.
- 11.5 Accordingly a Councillor or an Officer making an application should follow the procedures set out below:
- (a) if a Councillor or an Officer submit their own proposal to the Council which they serve, they should take no part in its processing or the decision making process;
  - (b) Councillors who act as agents/consultants for people pursuing a planning matter with the authority should take no part in its processing or the decision making process;
  - (c) in the circumstances outlined at (a) and (b) above, such Councillors must not seek to influence the case officer's assessment or recommendation on the proposal;
  - (d) the Councillor or Officer concerned in (a) or (b) should inform the Monitoring Officer of such proposals no later than the date on which formal proposals are submitted.
- 11.6 All planning matters that relate to serving Councillors should be reported to the relevant Planning applications committee as main items and not dealt with by Officers under delegated powers. In addition, planning matters that relate to any member of the Corporate Management Team, and any person employed or engaged by the Planning and Legal Services team, must be dealt with in the same way and be determined by the Committee. The Committee report should make it clear that the applicant is a member or a relevant officer of the Council.
- 11.7 Enforcement matters relating to serving Councillors and Officers will also dealt with in the same way as any other enforcement case.
- 11.8 The Council's Monitoring Officer should be informed of any development proposals of the

Council or of any other planning matters relating to serving Councillors and Officers.

12. **TRAINING**

- 14.1 Councillors may not participate in decision making at meetings of the Planning Committees unless they have attended the mandatory planning training sessions prescribed by the Council on probity and planning. This includes Councillors who are acting as a substitute for regular Councillors of these committees.
- 14.2 All Planning Committee Councillors (and substitutes) should endeavour to attend any other specialised training sessions provided, since these will be designed to extend their knowledge of planning law, regulations, procedures, codes of practice and development plans, which will assist them in carrying out their role properly and effectively.

## APPENDIX A

### COUNCIL GUIDELINES FOR DETERMINING PLANNING APPLICATIONS

1. The emphasis in determining applications is upon a plan led system. Section 70(2) of the Town and Country Planning Act 1990 requires all planning applications to be determined by reference to the development plan if material to the application, and any other material considerations. Officers will advise what constitutes a material consideration.
2. Frequently referred to material considerations include government policy in the form of the National Planning Policy Framework, the National Planning Practice Guidance, proposals in the relevant development plan, previous planning decisions (including appeal decisions), and so forth.
3. Other examples of material considerations include (but are not limited to):
  - design, appearance and materials;
  - layout and density of building;
  - disabled persons' access;
  - effect on listed building and conservation area;
  - nature conservation;
  - traffic generation, highway safety and parking;
  - overshadowing, overlooking and loss of privacy;
  - noise, disturbance or other loss of amenities.
4. Examples of matters which are not material considerations include (but are not limited to):
  - reduction in property values;
  - loss of private view over the land;
  - boundary disputes, covenants or other property rights;
  - personal remarks (e.g. the applicant's motives).
5. The personal circumstances of an applicant for planning permission are not generally a material consideration because they do not relate to the character or use of the land. However, in exceptional circumstances they may outweigh other material planning considerations. Where this is the case, specific and valid reasons must be given to justify the exception.
6. What constitutes a material consideration is a matter of law. The weight to be attached to the consideration is a matter of planning judgement for the decision-maker having regard to the planning evidence.
7. It is essential to consider thoroughly any advice given by a statutory consultee or relevant government department, including views expressed by Historic England or the Environment Agency.
8. The views of local residents are relevant when determining a planning application, but it must be recognised that such opposition cannot be reason in itself for refusing or granting planning permission unless founded on valid planning reasons, which are supported by substantial evidence.

9. Account should be taken of previous Council decisions, appeal decisions in relation to the site, or other related appeal decisions.
10. It is not permissible to prevent, inhibit or delay development which could reasonably be permitted.
11. Planning conditions should only be imposed for a planning purpose and not for any ulterior one. They must fairly and reasonably relate to the development. Thus it is essential to avoid conditions which are unnecessary, unreasonable, unenforceable, imprecise or irrelevant.
12. A S106 legal agreement, or undertaking, includes obligations entered into by the developer, landowner and other relevant parties to mitigate the impacts of a development proposal. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms. They must be:
  - necessary to make the development acceptable in planning terms;
  - directly related to the development; and
  - fairly and reasonably related in scale and kind to the development.
13. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

**APPENDIX B**  
**PLANNING COMMITTEE PROTOCOL**

- [Meetings of the Planning Committee take place in the Council Chamber of the Council Offices at [Civic Offices, Bridge Street, Reading, RG1 2LU]<sup>1</sup>.
- The Committee Manager will ask members of the public (including those wishing to speak) to sit at the back of the Council Chamber.
- Planning applications are dealt with in agenda order and it is impossible to predict how long it will take to debate each application.
- The Chairman will announce the application and invite public speakers by name to go to the place set aside for public speaking.
- Once any additional information has been reported, objectors will be invited to speak first, followed by supporters for up to [three]<sup>2</sup> minutes each. The time limit will be strictly enforced and the Committee Manager will warn you when you have only 30 seconds left.
- Representations should refer to planning policies as this may give the arguments more weight. If irrelevant issues are raised by public speakers, officers may offer comment to direct Councillors as to the appropriate weight to be placed on irrelevant considerations.
- After a public speaker has finished they will be asked to return to their seat. Although welcome to sit and listen to the debate, they are not permitted to take part in the discussion. Planning Committees are held in public but are not public debates and members of the public should not shout out comments when the matter is being debated. In the event that inappropriate disruption/comments continue then the Chairperson may ask that member of the public to leave the meeting.
- After public speakers have finished, any ward Councillors will be afforded the opportunity to address the Planning Committee for up to [three] minutes.
- Following this, the Planning Officer will offer any necessary factual clarifications and then the Planning Committee will debate the application, provide clear reasons for any motion (including specific and cogent references to planning policies and material considerations that support the position) and only then will they move to a vote.
- Councillors voting need to raise their arm clearly at the appropriate juncture so that the Committee Manager is able to properly register their vote.
- Usually the matter is determined but in a small number of cases, consideration may be deferred for the Planning Committee to visit the site or to receive further information.
- Once a vote has been taken, members of the public and ward Councillors need not stay, but are welcome to remain for some or the rest of the meeting if they so wish.
- The Chairman has responsibility for the smooth running of the meeting. His/her decision on procedural matters is final.]

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<sup>1</sup> **WBD comment:** Council to confirm if this is the correct meeting location.

<sup>2</sup> **WBD comment:** Council to confirm the time limit.

**APPENDIX [ ]**  
**SITE VISIT PROCEDURE AND PROTOCOL**

[Council to consider whether it sees merit in introducing the above. Many other Councils do adopt this approach to regulate the number of site visits arranged or deferrals]

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# Probity in planning

Advice for councillors  
and officers making  
planning decisions

This advice was first published in 1992. This version has been prepared by CITIESMODE Planning. It updates and expands the April 2013 document prepared by Trevor Roberts Associates for the Planning Advisory Service.

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# 1. Introduction

## Background

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. This guide has been written for officers and councillors involved in making planning decisions in their local authority. It is informed by contributions from councillors and officers and includes:

- a brief overview of the planning system and the role of decision makers
- councillor and officer conduct
- registration and disclosure of interests
- predisposition, predetermination or bias
- lobbying of and by councillors
- discussions before a decision is taken
- officer reports
- public speaking at planning committees
- decisions which differ from an officer's recommendation
- committee site visits
- reviewing past planning decisions and the outcomes
- complaints and record keeping.

Councillors and officers should be familiar with, and adhere to, their own local authority codes of conduct and guidance. This advice is not intended to be prescriptive. Local circumstances may necessitate local variations of policy and practice. Every council should regularly review the way in which it conducts its planning business.

The Local Government Association (LGA) endorses the good practice of many councils who ensure their councillors receive training on planning when first appointed to the planning committee or local plan steering group. It is recommended that councillors receive regular ongoing training on probity in decision making and the local code of conduct as well as on planning matters. The Planning Advisory Service (PAS) can provide training to councillors.<sup>1</sup>

**“To new committee members... Get as much training as you can, and not just the standard ‘in house’ two hour session with your own planning officers – but also from other bodies like PAS, Urban Design London<sup>2</sup> and the Royal Town Planning Institute (RTPI), and look at how colleagues in other authorities do things.”**

**Councillor Sue Vincent, Camden**

This guide does not constitute legal advice. Councillors and officers will need to obtain their own legal advice on any matters of a legal nature concerning matters of probity. Where there are any doubts or queries, advice should always be sought from the council's monitoring officer.

<sup>1</sup> [contact\\_pas@local.gov.uk](mailto:contact_pas@local.gov.uk)

<sup>2</sup> [www.urbandesignlondon.com/library/sourcebooks/councillors-companion-design-planning-2018](http://www.urbandesignlondon.com/library/sourcebooks/councillors-companion-design-planning-2018)

# 2. The planning system and the role of decision makers

The National Planning Policy Framework 2019 (NPPF)<sup>3</sup> states that the purpose of the ‘planning system is to contribute to the achievement of sustainable development. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.’ Planning has a positive and proactive role to play at the heart of local government and local communities. It can:

- help councils stimulate growth and translate goals into action
- balance social, economic and environmental needs to achieve sustainable development
- deliver important public benefits such as new housing, infrastructure and local employment opportunities.

“Everything starts with planning! The way our neighbourhoods develop to meet the challenges of a growing population is determined by the placemaking that is done through the planning policy process, which in turn informs the development management process. It is important for the planning committee members to give careful consideration to the impact that all applications will have on an area, as they will (hopefully) be in place for many

<sup>3</sup> [www.gov.uk/government/publications/national-planning-policy-framework--2](http://www.gov.uk/government/publications/national-planning-policy-framework--2)

years to come.”

**Councillor Adele Morris, Southwark**

Planning law requires that applications for planning permission be determined in accordance with the development plan (the ‘local plan’ document(s) and if relevant spatial development strategy), unless ‘material considerations’ indicate otherwise. National planning practice guidance<sup>4</sup> (NPPG) explains that a material planning consideration is one which is relevant to making a planning decision to grant or refuse an application for planning permission. It states that the ‘scope of what can constitute a material consideration is very wide and so the courts often do not indicate what cannot be a material consideration.’<sup>5</sup> However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations.’

Local planning authorities are tasked with both preparing the development plan that applications will be assessed against and making planning decisions. In England the NPPF must be taken into account in preparing the development plan and is a material consideration in planning decisions. Planning policies and decisions must also reflect other relevant international obligations and statutory requirements. Local planning decisions are made in this wider national and international context.

<sup>4</sup> [www.gov.uk/government/collections/planning-practice-guidance](http://www.gov.uk/government/collections/planning-practice-guidance)

<sup>5</sup> However, for a recent judicial interrogation of material consideration, see the recent case of R (Wright) v Resilient Energy Severdale Ltd and Forest of Dean District Council [2019] UKSC 53

The determination of a planning application is a formal administrative process involving:

- the application of national and local planning policies
- reference to legislation, case law and rules of procedure
- rights of appeal and an expectation that local planning authority will act transparently, reasonably and fairly.

Planning decisions are based on balancing competing interests and making an informed judgement against a local and national policy framework in the wider public interest. Planning affects people's lives and land and property interests, particularly the financial value of landholdings, and the quality of their settings. Opposing views are often strongly held by those involved. Whilst councillors must take account of these views, they should not favour any person, company, group or locality, or appear to be doing so. Decisions need to be taken in the wider public interest on what can be controversial proposals.

Because planning decisions can be controversial, it is particularly important that the process is open and transparent. The risk of controversy and conflict is heightened by a system which invites public opinion before taking decisions. The legal and procedural nature of the planning system means there is a risk of complaints to the Ombudsman for maladministration or a breach of the authority's code. There may also be a legal challenge, in the form of a judicial review in which a judge reviews the lawfulness of a decision or action made by a public body.

Councillors and officers have different but complementary roles within this system, and effective communication and a positive working relationship between officers and councillors is essential to delivering a good planning service.

Officers prepare the development plan (the local plan document or documents) which must conform to the policies set out in the NPPF and be adopted by a meeting of the full council. Applications for planning permission submitted to the local planning authority are assessed by planning officers who will, based on the development plan and any material planning considerations, make recommendations to planning committees who then resolve to grant or refuse the application. Councillors can be involved in decisions on planning enforcement action or compulsory purchase orders.

Most councils also delegate powers to senior officers to determine a large proportion of planning applications – the advice in this document and the council's code of conduct as it relates to planning decisions will apply to these officers too. The applications that go to committee, or are determined by an officer, will be set out in the local authority's scheme of delegation. Effective delegation can help ensure that decisions on planning applications that raise no significant planning issues are made quickly, and that resources are appropriately concentrated on the applications of greatest significance to the local area. These will typically be larger or more complex applications and potentially controversial – and are defined locally through authority schemes of delegation.

Therefore, whilst councillors are ultimately responsible for decision making in local planning authorities, officers who have delegated authority to make decisions need to be aware of the issues covered in this document – and the advice and principles discussed apply to them too.

# 3. Councillor and officer conduct

The seven principles of public life apply to anyone who works as a public office-holder. This includes people who are elected or appointed to public office, both nationally and locally, and as such applies to councillors and officers. The overarching principles were first set out by Lord Nolan in 1995 in the Government's First Report on Standards in Public Life. They were reasserted and refined in subsequent reports of the Committee on Standards in Public Life, most recently the Local Government Ethical Standards Report published in 2019.<sup>6</sup> These principles are:

- **Selflessness:** holders of public office should act solely in terms of the public interest.
- **Integrity:** holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- **Objectivity:** holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- **Accountability:** holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- **Openness:** holders of public office should act and take decisions in an open and transparent manner. Information should not

be withheld from the public unless there are clear and lawful reasons for so doing.

- **Honesty:** holders of public office should be truthful.
- **Leadership:** holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Section 27 of the Localism Act 2011 (as amended)<sup>7</sup> requires local planning authorities to promote and maintain high standards of conduct and adopt a local code of conduct, which should reflect these principles. It must cover:

- the registration of pecuniary interests (explained in Section 4)
- the role of an 'independent person' to investigate alleged breaches
- sanctions, to be imposed on any councillors who breach the code.

Parish and town councils are covered by the requirements to have a code of conduct and to register interests. They can choose to 'opt in' to the code of conduct adopted by their principal authority (the local district or unitary council).

The Local Government Ethical Standards Report published in 2019 suggests that many codes of conduct fail to adequately address important areas of behaviour, such as social media use and bullying and harassment.

<sup>6</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/777315/6.4896\\_CO\\_CSPL\\_Command\\_Paper\\_on\\_Local\\_Government\\_Standards\\_v4\\_WEB.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777315/6.4896_CO_CSPL_Command_Paper_on_Local_Government_Standards_v4_WEB.PDF)

<sup>7</sup> [www.gov.uk/government/collections/planning-practice-guidance](http://www.gov.uk/government/collections/planning-practice-guidance)

It includes a number of recommendations for codes of conduct – some of which will require changes to primary or secondary legislation. It also includes a series of best practice recommendations, which they recommend are addressed in codes.

Many local planning authorities have also adopted their own codes relating specifically to planning, which should be read alongside the substantive code of conduct for the council. In addition to these codes, a council's standing orders also set down rules which govern the conduct of council business.

Officers who are chartered town planners are subject to the Royal Town Planning Institute (RTPI) Code of Professional Conduct,<sup>8</sup> breaches of which may be subject to disciplinary action by the Institute. The RTPI provides advice for planning professionals on matters of probity aimed at supporting planners in exercising their independent professional judgement, and promoting public confidence in the planning system.

Officers and serving councillors 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.

In addition, officers must always act impartially and in a politically neutral manner. The Local Government and Housing Act 1989 (as amended)<sup>9</sup> enables restrictions to be set on the outside activities of senior officers, such as membership of political parties and serving on another council. Councils should carefully consider which of their officers are subject to such restrictions and review this regularly.

Care needs to be taken in the use of social media, such as Twitter, Facebook or Instagram, by officers and councillors, where it relates to decision making functions (see Section 5 on predetermination and bias). The Local Government Ethical Standards Report 2019 also addresses issues related to social media use.

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8 [www.rtpi.org.uk/media/1736907/rtpi\\_code\\_of\\_professional\\_conduct\\_-\\_feb\\_2016.pdf](http://www.rtpi.org.uk/media/1736907/rtpi_code_of_professional_conduct_-_feb_2016.pdf)

9 [www.legislation.gov.uk/ukpga/1989/42/contents](http://www.legislation.gov.uk/ukpga/1989/42/contents)



# 4. Registration and disclosure of interests

## Pecuniary interests

Decision makers must make known any pecuniary interests – that is any business or wider financial interests – and other personal interests their code requires them to disclose.

Councillors must provide the monitoring officer with written details of relevant interests within 28 days of their election or appointment to office. Any changes to those interests must also be registered with the monitoring officer within 28 days of the councillor becoming aware of them.

Each council's code of conduct should establish what interests need to be disclosed. The council's monitoring officer should maintain a register of these disclosable interests, which should be made available to the public. Councillors should also disclose any interest orally at a committee meeting if it relates to an item under discussion.

Chapter 7 of the Localism Act 2011 (as amended)<sup>10</sup> places explicit requirements on councillors to register and disclose their pecuniary interests. The definitions of disclosable pecuniary interests are set out in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.<sup>11</sup> It is a criminal offence to:

- Fail to register a disclosable pecuniary interest within 28 days of election or co-option
- Give false or misleading information on registration
- Participate in discussion or vote in a meeting on a matter in which a councillor or co-opted member has a disclosable pecuniary interest.

<sup>10</sup> [www.legislation.gov.uk/all?title=Localism%20Act](http://www.legislation.gov.uk/all?title=Localism%20Act)

<sup>11</sup> [www.legislation.gov.uk/uksi/2012/1464/made](http://www.legislation.gov.uk/uksi/2012/1464/made)

## Personal Interests

The Localism Act also includes the need to register and disclose personal interests with other councillors, officers, and the public.

A councillor with a disclosable pecuniary interest relating to an item under discussion must withdraw from the committee (or other decision forum) and not participate in discussions and debate, nor vote. This applies to all planning decisions and not just on individual planning applications. For example, a development plan document might cover sites or property where a councillor has an interest in the land. Officers involved in making recommendations and decisions should adopt the same approach, and seek advice from the authority's monitoring officer.

If a councillor has a non-pecuniary personal interest, including being a member of an outside body, they should disclose that interest, but then may still speak and vote on that particular item. However, the Local Government Ethical Standards Report (2019) highlights the potential for conflicts and potential need to withdraw from committee in relation to non-pecuniary interests as well.

## Dispensation and handling relevant interests

In certain circumstances, a dispensation can be sought from the appropriate body or officer to take part in that particular item of business. A dispensation may be granted for any reason, but the Act specifies a number of scenarios where this might apply.

This includes the number of councillors having an interest being so great that the meeting cannot proceed, with the political balance of the meeting being substantially affected.

It is always best to identify a potential interest in a planning decision early on and raise this with the monitoring officer as soon as possible. Advice should always be sought from the council's monitoring officer. Ultimately, responsibility for fulfilling the requirements rests with each councillor.

Appendix 1 on page 25 includes a flowchart of how councillors' interests should be handled. For comprehensive guidance on interests, see Openness and transparency on personal interests: guidance for councillors, Department for Communities and Local Government, March 2013.<sup>12</sup>

The provisions of the Localism Act 2011 (as amended) seek to separate interests arising from the personal and private interests of the councillor from those arising from the councillor's wider public life. Councillors should think about how a reasonable member of the public, with full knowledge of all the relevant facts, would view the matter when considering whether the councillor's involvement would be appropriate or not.

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<sup>12</sup> [www.gov.uk/government/publications/openness-and-transparency-on-personal-interests-guidance-for-councillors](http://www.gov.uk/government/publications/openness-and-transparency-on-personal-interests-guidance-for-councillors)

# 5. Predisposition, predetermination or bias

## Predetermination

Members of a planning committee, local plan steering group or full council (when the local plan is being considered) need to avoid any appearance of bias or having 'predetermined' views when making a decision on a planning application or policy.

Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is indicative of a 'closed mind' approach and may leave the grant of planning permission vulnerable to challenge by Judicial Review.

## Predisposition

Predisposition is where a councillor may have a pre-existing opinion or attitude about the matter under discussion, but remains open to listening to all the arguments and changing their mind in light of the information presented at the meeting. Section 25 of the Localism Act 2011 (as amended) clarifies that a councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicates what view they might take in relation to any particular matter.

A councillor in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the councillor was biased. For example, a councillor who says or 'tweets' from their Twitter account: 'Wind farms are blots on the landscape and I will oppose each and every wind farm application that comes before the committee' will be perceived very differently from a councillor who states: 'Many people

find wind farms ugly and noisy and I will need a lot of persuading that any more wind farms should be allowed in our area'.

## Impartiality and avoiding bias

Planning issues must be assessed fairly and on their planning merits, even when there is a predisposition in favour of one side of the argument or the other. Avoiding predetermination and the impression of it is essential. The decision making process must be seen to be fair and impartial from the perspective of an external observer.

If a decision maker has predetermined their position, they should withdraw from being a member of the decision making body for that matter. This applies to any member of the planning committee who wants to speak for or against a proposal as a campaigner (for example on a proposal within their ward).

Local planning authorities will usually have a cabinet or executive member responsible for development and planning (sometimes known as the portfolio holder). PAS advise that the leader and portfolio holder of a local authority, who play an important role driving planning policies and proposals, should normally exclude themselves from decision making committees. This is to avoid the perception of a conflict of interests and predisposition.

In smaller councils it may be necessary for a portfolio holder to be on a planning committee. PAS suggest that in these situations they will need to be extremely careful and will need to withdraw when the committee is considering the council's own schemes or other applications that they have been seen to support previously.

# 6. Development proposals

Planning applications or proposals for changes to a local plan submitted by serving and former councillors, officers and their close associates and relatives can easily give rise to suspicions of impropriety. Such proposals must be handled in a way that gives no grounds for accusations of favouritism. Any local guidance should address the following points in relation to proposals submitted by councillors and planning officers:

- if they submit their own proposal to their authority they should play no part in its consideration
- a system should be devised to identify and manage such proposals and ensure probity in decision making
- the council's monitoring officer should be informed of such proposals.

A councillor would undoubtedly have a disclosable pecuniary interest in their own application and should not participate in its consideration. They have the same rights as any applicant in seeking to explain their proposal to an officer, but the councillor, as an applicant, should also not seek to improperly influence the decision.

Proposals for a council's own development should be treated with the same transparency and impartiality as those of private developers.

# 7. Lobbying of and by councillors

## Reporting on local concerns

Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, a site allocation in a development plan or an emerging policy, will often seek to influence it through an approach to their ward member or to a member of the planning committee.

As the Nolan Committee's 1997 report<sup>13</sup> states: 'It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the councillors themselves'.

Lobbying, however, can lead to the impartiality and integrity of a councillor being called into question, and so care and common sense must be exercised by all parties involved.

## Expressing opinions

As noted earlier in this guidance note, the common law permits predisposition. However it remains good practice that, when being lobbied, councillors (members of the planning committee in particular) should try to take care expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have considered all the application materials and arguments for and against the development proposal.

In such situations, a councillor could restrict themselves to giving advice about the process and what can and can't be taken into account. Councillors can raise issues which have been raised by their constituents with officers. If councillors do express an opinion to objectors or supporters, it is good practice that they make it clear that they will only be in a position to take a final decision after they have heard all the relevant arguments, and have taken into account all relevant material and planning considerations at committee.

## Conduct at committee

If any councillor, whether or not a committee member, speaks on behalf of a lobby group at the decision making committee, they would be well advised to withdraw from the meeting once any public or ward member speaking opportunities have been completed. This is to counter any suggestion that members of the committee may have been influenced by their continuing presence. This should be set out in the authority's code of conduct for planning matters.

It is very difficult to convey every nuance of these situations and get the balance right between the duty to be an active local representative, and the need to take account of all arguments in an open-minded way. It cannot be stressed too strongly, however, that the striking of this balance is, ultimately, the responsibility of the individual councillor. Again, where there are concerns, advice should immediately be sought from the local authority's Monitoring Officer.

<sup>13</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336864/3rdInquiryReport.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336864/3rdInquiryReport.pdf)

## Local codes

A local code on planning should also address the following more specific issues about lobbying:

- planning decisions cannot be made on a party political basis in response to lobbying - the use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration
- planning committee or local plan steering group members should in general avoid organising support for or against a planning application, and avoid lobbying other councillors
- councillors should not put pressure on officers for a particular recommendation or decision, and should not do anything which compromises, or is likely to compromise, the officers' impartiality or professional integrity.

Call-in procedures, whereby councillors can require a proposal that would normally be determined under the delegated authority to be called in for determination by the planning committee, should require the reasons for call-in to be recorded in writing and to refer solely to matters of material planning concern. As previously outlined, councillors must always be mindful of their responsibilities and duties under their local codes of conduct. These responsibilities and duties apply equally to matters of lobbying as they do to the other issues of probity explored elsewhere in this guidance.

## Gifts and hospitality

Councillors and officers should be cautious about accepting gifts and hospitality in general and especially where offered by lobbyists. It is not enough to register such gifts. Any councillor or officer receiving offers over an agreed value should let the council's monitoring officer know, in writing, and seek advice as to whether they should be accepted or declined. Councillors and officers involved in planning decisions should not accept over-frequent or over-generous hospitality, especially where from the same organisation. They should always ensure that acceptance of such hospitality does not constitute a conflict of interest. Guidance on these issues should be included in the local code of conduct, and the Local Government Ethical Standards Report suggests adherence to consideration be given to the purpose of the hospitality, proportionality and the avoidance of any conflict of interest.

# 8. Discussions before a decision is taken

## Early engagement and pre-application discussions

Early councillor engagement is encouraged to ensure that proposals for sustainable development will lead to settlements that communities need. This guidance is intended to reinforce councillors' community engagement role whilst maintaining good standards of probity to minimise the risk of legal challenges. It is also important to encourage good decision-making that is transparent and upholds public confidence in the planning system. Ultimately, the public are a critical part of the planning process and the role of councillors provides democratic legitimacy for decisions.

Pre-application discussions between a potential applicant and a council can benefit both parties and are encouraged. However, it would be easy for such discussions to become, or be seen by objectors to become, part of a lobbying process on the part of the applicant.

## Avoiding predetermination

Some councils have been concerned about probity issues raised by involving councillors in pre-application discussions, worried that councillors would be accused of predetermination when the subsequent application came in for consideration. The Localism Act 2011 (as amended) acknowledges that councillors have an important role to play in pre-application discussions, bringing their local knowledge and expertise along with an understanding of community views.

There is a difference between being predisposed to the planning policies set out in the NPPF or adopted development plan principles such as delivering housing, sustainable transport or good design and expressing views on this – and being predetermined in relation to a specific case.

Some local planning authorities have, or encourage, public planning forums to explore major pre-application proposals, with the developer outlining their ideas and inviting speakers to represent differing interests and consultees. As well as being transparent, these forums allow councillors and consultees to seek information and identify important issues for the proposal to address, although such discussions still need to avoid pre-determination.

Councillor involvement can help identify issues early on, help councillors lead on community issues, and help to make sure that issues don't come to light for the first time at committee. PAS recommends a 'no shocks' at committee approach.

## Meetings and discussions before a decision

The Localism Act, particularly Section 25, which establishes prior indications of view of a matter not to amount to predetermination, has given councillors much more freedom to engage in pre-application discussions. Nevertheless, in order to avoid the perception that councillors might have fettered their discretion, such discussions should take place within clear, published guidelines.



Discussions before a decision is taken should ensure:

- Clarity at the outset that the discussions will not bind a council to making a particular decision and that any views expressed are provisional. By the very nature of such meetings not all relevant information may be at hand, nor will formal consultations with interested parties have taken place.
- Consistent advice is given by officers based upon the development plan and material planning considerations.
- That councillors avoid giving separate advice on the development plan or other material planning considerations, as they may not be aware of all the issues at an early stage. Councillors should not become drawn into any negotiations, which should be done by officers (keeping interested councillors up to date) to ensure that the authority's position is co-ordinated.
- A commitment is made that care will be taken to ensure that advice is impartial, otherwise the subsequent report or recommendation to committee could appear to be advocacy.

Officers should arrange any meetings, attend these with councillors and make a written record of the meeting placing this note on the case file. A note should also be taken of any phone conversations, and relevant emails recorded for the file. Notes should record issues raised and advice given. 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 to reassure others not party to the discussion.

Councillors also talk regularly to constituents to gauge their views on matters of local concern – which can include planning applications. The Nolan Committee acknowledged that keeping a register of these conversations would be impractical and unnecessary; however, local planning authorities should think about when discussions should be registered and notes written.

## Other approaches to early engagement

Local planning authorities have other mechanisms to involve councillors in pre-application discussions including:

- committee information reports by officers
- discussions to enable councillors to raise issues, identify items of interest and seek further information
- developer presentations to committees which have the advantage of transparency if held in public as a committee would normally be (with notes taken).
- ward councillor briefing by officers on pre-application discussions.

Similar arrangements can also be used when local planning authorities are looking at new policy documents and particularly when making new site allocations in emerging development plans and wish to engage with different parties, including councillors, at an early stage in the process.



# 9. Officer reports

Officer reports are a critical part of the decision-making process. They can also be difficult to write, as officers have to grapple with complex and technical information such as viability and daylight and sunlight analysis along with matters such as any equalities impacts of the proposed development. Conclusions can be finely balanced, having exercised planning judgement as to the merits of a scheme.

Sometimes, the local planning authority will engage external consultants to interrogate the applicant's material on specialist areas of expertise, and advise the officer accordingly. The presentation of this information in the report is particularly important – along with the availability of any background papers. Whilst the Courts are generally reluctant to interfere in the exercise of planning judgement, officer reports can nonetheless be fertile ground for judicial review challenges. This is particularly so where there is a risk that the officer may have inadvertently misled the committee, therefore tainting the resulting decision.

Careful reviews of draft reports, which may involve consultation with the council's legal team, is always recommended. Similarly, appropriate interventions by the legal officer at the committee meeting itself might be needed in order to correct any misconceptions on specific issues.

As a result of decisions made by the courts and Ombudsman, officer reports on planning applications must have regard to the following:

- Reports should be accurate and should include the substance of any objections and other responses received to the consultation.
- Relevant information should include a clear assessment against the relevant development plan policies, relevant parts of the NPPF, any local finance considerations, and any other material planning considerations.
- Reports should have a written recommendation for a decision to be made.
- Reports should contain, where relevant, technical appraisals which clearly justify the recommendation.
- If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated. This is not only good practice, but failure to do so may constitute maladministration or give rise to a Judicial Review on the grounds that the decision was not taken in accordance with the provisions of the development plan and the council's statutory duty under Section 38A of the Planning and Compensation Act 2004 and Section 70 of the Town and Country Planning Act 1990.
- Any oral updates or changes to the report should be recorded.

# 10. Public speaking at planning committees

Whether to allow public speaking at a planning committee or not is up to each local authority. Most local planning authorities do allow it and some authorities film and broadcast committee meetings. As a result, public confidence is generally enhanced and direct lobbying may be reduced. The disadvantage is that it can make the meetings longer and sometimes harder to manage.

Where public speaking is allowed, clear protocols should be established about who is allowed to speak, including provisions for applicants, supporters, ward councillors, parish councils and third party objectors.

In the interests of equity, the time allowed for presentations for and against the development should be the same, and those speaking should be asked to direct their presentation to reinforcing or amplifying representations already made to the local planning authority in writing.

New documents should not be circulated to the committee as councillors may not be able to give proper consideration to the new information, and officers may not be able to check for accuracy or provide considered advice on any material considerations arising. Late information might lead to a deferral. This should be made clear to those who intend to speak.

Messages should never be passed to individual committee members, either from other councillors or from the public. This could be seen as seeking to influence that member improperly and will create a perception of bias that will be difficult to overcome.

# 11. Decisions which differ from a recommendation

The law requires that decisions should be taken in accordance with the development plan, unless material considerations (which specifically include the NPPF) indicate otherwise (Section 38A of the Planning and Compensation Act 2004 and Section 70 of the Town and Country Planning Act 1990).

This applies to all planning decisions. Any reasons for refusal must be justified against the development plan and other material considerations.

The courts have expressed the view that the committee's reasons should be clear and convincing. The personal circumstances of an applicant or any other non material considerations which might cause local controversy, will rarely satisfy the relevant tests.

Planning committees can, and do, make decisions which are different from the officer recommendation. Sometimes this will relate to conditions attached to the permission or planning obligations secured through a legal agreement pursuant to Section 106 (S106) of the Town and Country Planning Act 1990 (as amended).<sup>14</sup> A S106 legal agreement, or undertaking, includes obligations entered into by the developer, landowner and other relevant parties to mitigate the impacts of a development proposal.

Sometimes the committee's decision will change the outcome from an approval to a refusal, or vice versa. This will usually reflect a difference in the assessment of how a policy has been complied with, or different weight ascribed to material considerations.

Planning committees are advised to take the following steps before making a decision which differs from the officer recommendation:

- If a councillor is concerned about an officer's recommendation they should discuss their areas of difference and the reasons for that with officers in advance of the committee meeting. Care should be taken however to ensure that this does not lead to predetermination of a decision.
- Recording the detailed reasons as part of the mover's motion.
- Adjourning for a few minutes for those reasons to be discussed and then agreed by the committee.
- Where there is concern about the validity of reasons, considering deferring to another meeting to have the reasons tested and discussed.

If the planning committee makes a decision contrary to the officers' recommendation (whether for approval or refusal or changes to conditions or S106 planning obligations), a detailed minute of the committee's reasons should be made and a copy placed on the application file. Councillors should be prepared to explain in full their planning reasons for not agreeing with the officer's recommendation, which should be set in the context of the development plan or the NPPF. The officer should also be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome based on policies set out in the development plan and the NPPF, and chances of a successful award of costs against the local authority, should one be made.

<sup>14</sup> [www.legislation.gov.uk/ukpga/1990/8/contents](http://www.legislation.gov.uk/ukpga/1990/8/contents)

The decision is ultimately the committee's; however, it is imperative that the decision is made with regard to relevant planning considerations.

All applications that are clearly contrary to the development plan must be advertised as such, and are known as 'departures' from the development plan. If it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and how these considerations justify overriding the development plan must be clearly demonstrated.

The application may then have to be referred to the relevant secretary of state, and/or the Mayor, depending upon the type and scale of the development proposed (Section 77 of the Town and Country Planning Act 1990).<sup>15</sup> If the officers' report recommends approval of such a departure, the justification for this should be included, in full, in that report.

The common law on giving a statement of reasons for decisions has developed significantly in the last few years. It is important that the report that supports planning decisions clearly shows how that decision has been reached – whether for the grant or refusal of permission.

Whilst a committee giving reasons for refusing an application might be common, it may also be sensible to give reasons for resolving to grant permission, and having those accurately captured in minutes of the meeting. This may be particularly so where there is an overturn of an officer recommendation and/or where the application is particularly controversial due to planning policy protections and/or weight of objections. Where the development is EIA development, there is, in any event, a separate statutory requirement to give reasons for the grant of permission.

It should always be remembered that the public have a stake in the planning process and are entitled to understand how decisions are reached.

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<sup>15</sup> [www.legislation.gov.uk/ukpga/1990/8/section/77](http://www.legislation.gov.uk/ukpga/1990/8/section/77)

# 12. Committee site visits

National standards and local codes also apply to site visits. Local planning authorities should have a clear and consistent approach on when and why to hold a site visit and how to conduct it. This should avoid accusations that visits are arbitrary, unfair or a covert lobbying device. The following points may be helpful:

- visits should only be used where the benefit is clear and substantial. Officers will have visited the site and assessed the scheme against policies and material considerations already
- the purpose, format and conduct should be clear at the outset and adhered to throughout the visit
- where a site visit can be 'triggered' by a request from the ward councillor, the 'substantial benefit' test should still apply
- a record should be kept of the reasons why a site visit is called.

A site visit is only likely to be necessary if:

- the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers
- the comments of the applicant and objectors cannot be expressed adequately in writing
- the proposal is particularly contentious.

Site visits are for observing the site and gaining a better understanding of the issues. Visits made by committee members, with officer assistance, are normally the most fair and equitable approach. They should not be used as a lobbying opportunity by objectors or supporters. This should be made clear to any members of the public who are there.

Once a councillor becomes aware of a proposal they may be tempted to visit the site alone. In such a situation, a councillor is only entitled to view the site from public vantage points and they have no individual rights to enter private property. Whilst a councillor might be invited to enter the site by the owner, it is not good practice to do so on their own, as this can lead to the perception that the councillor is no longer impartial.

# 13. Reviewing past planning decisions and the outcomes

It is good practice for councillors to visit a sample of implemented planning permissions to assess the quality of the decisions and the development, ideally on an annual or more frequent basis. This should improve the quality and consistency of decision making, strengthen public confidence in the planning system, and can help with reviews of planning policy.

Reviews should include visits to a range of developments such as major and minor schemes, upheld appeals, listed building works and enforcement cases. Briefing notes should be prepared on each case. The planning committee should formally consider the review and decide whether it gives rise to the need to reconsider any policies or practices.

Scrutiny or standards committees may be able to assist in this process but the essential purpose of these reviews is to assist planning committee members to refine their understanding of the impact of their decisions. Planning committee members should be fully engaged in such reviews.

# 14. Complaints and record keeping

All local planning authorities should have a complaints procedure which may apply to all of its activities. Local planning authorities should also consider how planning related complaints will be handled, in relation to the code of conduct adopted by the authority.

So that complaints may be fully investigated and as general good practice, record keeping should be complete and accurate. Every planning application file should contain an accurate account of events throughout its life. It should be possible for someone not involved in that application to understand what the decision was, and why and how it had been reached. This applies to decisions taken by committee and under delegated powers, and to applications, enforcement and development plan matters.

# List of references

## **The Localism Act 2011**

[www.legislation.gov.uk/all?title=Localism%20Act](http://www.legislation.gov.uk/all?title=Localism%20Act)

## **National Planning Policy Framework Department for Communities and Local Government, March 2019**

[www.gov.uk/government/publications/national-planning-policy-framework--2](http://www.gov.uk/government/publications/national-planning-policy-framework--2)

## **Committee on Standards in Public Life (1995) First Report: Standards of Conduct in Local Government in England, Scotland and Wales, Volume 1 Report**

<https://webarchive.nationalarchives.gov.uk/20131205113448/http://www.archive.official-documents.co.uk/document/cm28/2850/285002.pdf>

## **Committee on Standards in Public Life (1997) Third Report: Standards of Conduct in Local Government in England, Scotland and Wales, Volume 1 Report**

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336864/3rdInquiryReport.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336864/3rdInquiryReport.pdf)

## **Royal Town Planning Institute Code of Professional Conduct**

[www.rtpi.org.uk/media/1736907/rtpi\\_code\\_of\\_professional\\_conduct\\_-\\_feb\\_2016.pdf](http://www.rtpi.org.uk/media/1736907/rtpi_code_of_professional_conduct_-_feb_2016.pdf)

## **RTPI Guidance on Probity for Professional Planners**

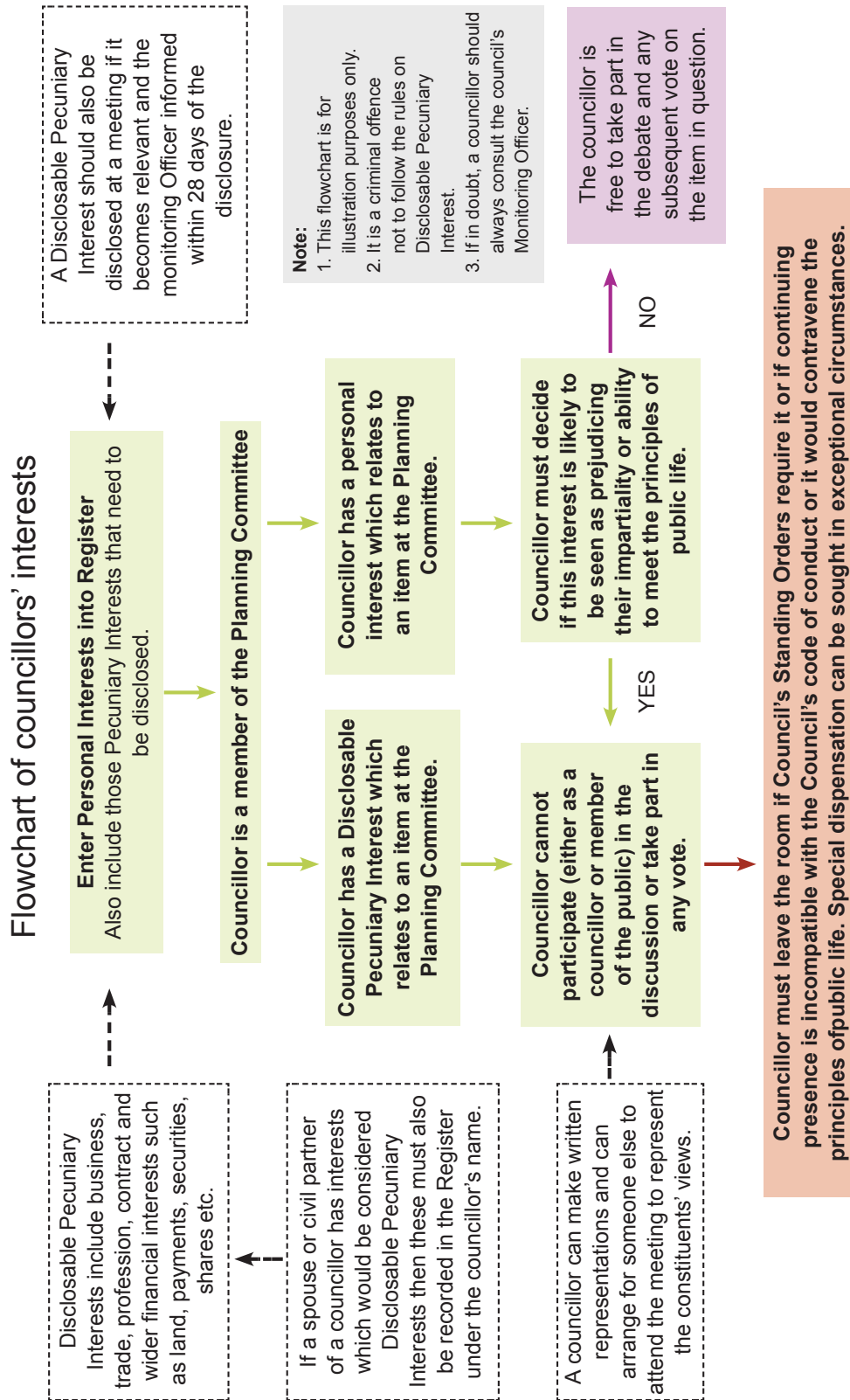
[www.rtpi.org.uk/probity](http://www.rtpi.org.uk/probity)

## **Openness and transparency on personal interests: guidance for councillors, Department for Communities and Local Government, March 2013**

[www.gov.uk/government/publications/openness-and-transparency-on-personal-interests-guidance-for-councillors](http://www.gov.uk/government/publications/openness-and-transparency-on-personal-interests-guidance-for-councillors)



# Appendix 1 Flowchart of councillors' interests









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## Standards Committee

14 September 2023



**Reading**  
Borough Council  
*Working better with you*

<b>Title</b>	Handling Arrangements for Council Developments
<b>Purpose of the report</b>	To make a recommendation to Council
<b>Report status</b>	Public report
<b>Report author</b>	Dave Anthony, Planning & Highways Legal Team
<b>Lead Councillor</b>	Cllr Jason Brock, Leader of the Council
<b>Corporate priority</b>	Our Foundations
<b>Recommendations</b>	<p>To:</p> <ol style="list-style-type: none"> <li>1. Agree the Handling Arrangements for Council Developments Policy</li> <li>2. Note the arrangements put in place for the Minster Quarter Development</li> </ol> <p>To recommend to Council that:</p> <ol style="list-style-type: none"> <li>3. the Scope of the Standards Committee’s powers be increased to explicitly include Handling Arrangements for Council Developments Policy; and</li> <li>4. the decision of the Standards Committee as regards adoption of the Handling Arrangements for Council Developments Policy be endorsed.</li> </ol>

### 1. Executive Summary

- 1.1. The Council can act as local planning authority in respect of planning applications for development of its own land (“Council Developments”) and can grant planning permission to itself.
- 1.2. Council developments that are likely to have significant environmental effects are subject to enhanced scrutiny known as environmental impact assessment. For these applications, regulations require the Council to put in place appropriate administrative arrangements (“Handling Arrangements”) to ensure separation of functions and an “information barrier” between teams of officers acting for the Council as applicant and the Council as local planning authority.
- 1.3. The Handling Arrangements must be published on the Council’s website and must set out the officers in each team, appropriate communications between those teams, and how access to the Council’s document storage systems will be restricted to maintain an information barrier between those teams.
- 1.4. It is proposed to also put Handling Arrangements in place for Council developments which do not require environmental impact assessments, in order to improve the transparency of Council decision-making.
- 1.5. The policy is attached at Appendix 1. It is proposed that the Committee adopt this policy and recommend that Council endorse Committee’s adoption of the policy.
- 1.6. While Handling Arrangements are considered to fall within the scope of the Committee’s powers under the Council’s Constitution, it is also proposed to recommend to Council

that the Committee's powers be explicitly expanded to include Handling Arrangements Policy.

- 1.7. The redevelopment of Minster Quarter is one such Council Development and its proposed Handling Arrangements are attached to this report as Appendix 2. This provides an illustration of how the Handling Arrangements work in a current scheme.

## **2. Policy Context**

- 2.1. The Council currently has informal arrangements in place to separate its functions as developer and local planning authority. As set out in the Legal Implications section below, formal Handling Arrangements are now required and must be made publicly available in order to comply with regulatory requirements.

## **3. The Proposal**

- 3.1. In accordance with Article 9.3.1 of the Council's Constitution, the remit of the Standards Committee currently includes:

*6. To monitor the probity and propriety of all aspects of Council business ...*

*8. To make recommendations to the Council on any matters or issues relating to probity, propriety and general conduct where the Panel considers it appropriate to do so in the interests of maintaining the highest standards in the carrying out of the Council's functions.*

- 3.2. Although it is likely that these points would cover Handling Arrangements, the first part of the proposal is to recommend to Council that the Committee's scope be explicitly expanded to include the Council's Handling Arrangements Policy. This is achieved by adding "Handling Arrangements for Council Developments Policy" to the list of policies within the remit of the Committee at paragraph 9.1.2 of Article 9. This currently reads:

**9.1.2** The purpose of the Standards Committee is to oversee and develop the Council's ethical framework which includes, but is not limited to, the following policies:

Councillor Code of Conduct  
Overall standards of conduct and ethics of Members and co-opted Members of the Council  
Arrangements for Dealing with Allegations of Misconduct (the "Arrangements Document")  
Staff Code of Conduct  
Planning Code of Conduct  
Member Officer Protocol  
Policies in relation to Gifts and Hospitality

- 3.3. The second part of the proposal is to adopt a policy requiring Handling Arrangements for current and future Council Developments, so as to satisfy the legal requirements (as set out in "Legal Implications" below). The proposed policy is attached as Appendix 1.
- 3.4. While strictly the requirement for Handling Arrangements only applies to Council Developments which are likely to have significant environmental effects, the proposal is to routinely put such arrangements in place for all Council Development. This is because most Council Developments will be substantial, and the environmental impacts of development do not always become apparent until later in the assessment process. Putting Handling Arrangements in place for all Council Developments will also improve the transparency to the Council's decision-making and help to remove any suggestion of bias.
- 3.5. Council would then be asked to endorse the decision of the Standards Committee to adopt the Handling Arrangements Policy.

## **4. Contribution to Strategic Aims**

- 4.1. Putting Handling Arrangements in place will allow the Council to comply with regulatory requirements relating to Council Developments. This will reduce the risk of challenge to planning permission decisions relating to council developments, avoiding risks of costly legal challenges and consequent delays to implementing Council Developments.

## **5. Environmental and Climate Implications**

- 5.1. There are no environmental or climate implications arising from the decision, which only concerns the Council's internal operational procedures.

## **6. Community Engagement**

- 6.1. No Community Engagement has been carried out as this relates to Council operational procedures to comply with a regulatory requirement. The affected teams within the Council have been involved in the preparation of the Handling Arrangements policy.

## **7. Equality Implications**

- 7.1. Under the Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to the need to—
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 7.2. There are no Equality implications stemming from the matters covered by this report.

## **8. Other Relevant Considerations**

- 8.1. There are none.

## **9. Legal Implications**

- 9.1. Regulation 64(1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the "EIA Regulations") sets out a general requirement that a Council (in its role as Local Planning Authority) must perform its duties under the EIA Regulations in an objective manner and so as not to find itself in a situation giving rise to a conflict of interest.
- 9.2. Regulation 64(2) of the EIA Regulations requires that where an authority is bringing forward a proposal for development and that authority will also be responsible for determining its own proposal, the authority must make appropriate administrative arrangements to ensure that there is a functional separation between the persons bringing forward a proposal for development and the person responsible for determining the proposal.
- 9.3. The Council already had informal arrangements in place, in that officers involved in deciding planning applications would have no part in promoting Council Developments and different lawyers would advise the Council as developer and as local planning authority.
- 9.4. However, the High Court judgment of *London Historic Parks and Gardens Trust v Secretary of State for Housing, Communities and Local Government* [2020] EWCA 2580 (Admin) (also known as the *Holocaust Memorial* decision) has made it necessary for local authorities to review how Regulation 64(2) is implemented and to put more formal measures in place.
- 9.5. The Court found that, in order to comply with the EIA Regulations, the Handling Arrangements should:
- 9.5.1. be made public;
  - 9.5.2. specifically refer to Regulation 64(2) and make it clear that they set out a regime that is necessary to comply with the Council's legal obligations, not just guidance;

- 9.5.3. identify the teams within the Council which will carry out the functions of promoting and deciding the development;
  - 9.5.4. prohibit those in the team deciding the application from being involved in promoting or assisting in the promotion of the application;
  - 9.5.5. prohibit communications between the two teams other than through the formal channels appropriate to the application process; and
  - 9.5.6. set out the measures put in place to implement an information barrier between the two teams, such as restricting access to files in the Council's legal and planning document management systems.
- 9.6. There are two Council IT systems where an information barrier will need to be in place. Firstly, the lawyers advising each team will keep their advice in the IKEN system and will need to ensure that lawyers for each team cannot see the advice given to the other team. Secondly, planning officers store work in the NEC EDMS system. The system can be configured so as to restrict access to the appropriate planners. The Council lawyers can also get access to NEC EDMS and arrangements can also be put in place to restrict the access to the relevant materials only.
- 9.7. Not having appropriate Handling Arrangements in place for Council Developments would put the Council in breach of its regulatory requirements, which could increase a risk of objectors taking judicial review against any planning permissions granted for Council Development. Such challenges would be based on the failure to follow regulatory requirements and on the appearance of biased decision-making caused by the lack of transparency in the Council's internal procedures.

## **10. Financial Implications**

- 10.1. There are no financial implications, as the change of policy represents a change of internal procedures and so will be covered by existing officer time.

## **11. Timetable for Implementation**

- 11.1. Handling Arrangements for the Minster Quarter Redevelopment have already been put in place and are attached at Appendix 2.
- 11.2. Similar Handling Arrangements will need to be put in place for future Council development projects, where the Council is both applicant and decision maker. The detailed arrangements will need to be in place before applications are made.

## **12. Background Papers**

- 12.1. There are none.

## **Appendices**

1. Handling Arrangements for Council Developments Policy
2. Example Handling Arrangements for the Minster Quarter Redevelopment



## **Handling Arrangements for Council Developments Policy**

### **1. Summary**

- 1.1. The Council can act as local planning authority in respect of planning applications for development of its own land (“Council Developments”) and can grant planning permission to itself.
- 1.2. Council Developments that are likely to have significant environmental effects are subject to enhanced scrutiny known as environmental impact assessment. For these applications, regulations require the Council to put in place appropriate administrative arrangements (“Handling Arrangements”) to ensure separation of functions and an “information barrier” between teams of officers acting for the Council as applicant and the Council as local planning authority.
- 1.3. The Handling Arrangements must be published on the Council’s website and must set out the officers in each team, appropriate communications between those teams, and how access to the Council’s document storage systems will be restricted to maintain an information barrier between those teams.
- 1.4. The Council will also put Handling Arrangements in place for Council Developments which do not require environmental impact assessments, in order to improve the transparency of Council decision-making.

### **2. Policy Context**

- 2.1. The Council previously had informal arrangements in place to separate its functions as developer and local planning authority. As set out below, formal Handling Arrangements are required and must be made publicly available in order to comply with regulatory requirements.

### **3. The Policy**

- 3.1. The Council will put in place Handling Arrangements for current and future Council Developments.
- 3.2. The Handling Arrangements will:
  - 3.2.1. be made public by publication on the Council’s website;
  - 3.2.2. specifically refer to Regulation 64(2) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the “EIA Regulations”) and make it clear that they set out a regime that is necessary to comply with the Council’s legal obligations, not just guidance;
  - 3.2.3. identify the teams within the Council which will carry out the functions of promoting and deciding the development;
  - 3.2.4. prohibit those in the team deciding the application from being involved in promoting or assisting in the promotion of the application;
  - 3.2.5. prohibit communications between the two teams other than through the formal channels appropriate to the application process; and

- 3.2.6. set out the measures put in place to implement an information barrier between the two teams, such as restricting access to files in the Council's legal and planning document management systems.

**Standards Committee  
September 2023**

## HANDLING ARRANGEMENTS

### READING BOROUGH COUNCIL

Handling Arrangements in relation to Minster Quarter Area redevelopment

Regulation 64(2) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017

#### INTRODUCTION

##### 1. BACKGROUND

- 1.1 Reading Borough Council (**RBC**) is the developer and landowner of Minster Quarter and is looking to bring forward plans and proposals for the redevelopment of Minster Quarter in accordance with the Minster Quarter Area Development Framework published by the Council in December 2018 (the **Development**). The Development shall be carried out with a procured development partner pursuant to the Public Contracts Regulations 2015. The development partner will submit the planning application subject to RBC's approval.
- 1.2 This document sets out the administrative arrangements (the "**Handling Arrangements**") made by RBC under Regulation 64(2) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 ("the **EIA Regulations**") for the separation of functions between persons acting for or assisting RBC in its capacity as Local Planning Authority (**LPA**) and persons acting for or assisting RBC in its capacity as developer, land owner and planning applicant (**Applicant**) in connection with plans for the Development.

##### 2. EIA REGULATIONS

- 2.1 Regulation 64(2) provides that where an authority is bringing forward a proposal for development and that authority will also be responsible for determining its own proposal, the authority must make appropriate administrative arrangements to ensure there is a functional separation, where performing any duty under the EIA Regulations, between the persons bringing forward a proposal for development and the persons responsible for determining that proposal.

##### 3. ACTIONS

- 3.1 For all intents and purposes RBC is both the Applicant and the LPA in connection with all planning applications for the MQAD ("the Planning Application"). In accordance with the provisions of Regulation 64(2), RBC has put in place these Handling Arrangements to ensure the separation of functions between the Applicant and the LPA and to thereby safeguard the independence and objectivity of decisions made by the LPA in connection with the Planning Application.
- 3.2 RBC has put measures in place to ensure that:
  - 3.2.1 the functions of the LPA are undertaken by identified persons with the necessary resources and acting impartially and objectively;

- 3.2.2 any person acting or assisting in the handling and determination of the Planning Application is not involved in promoting or assisting in the promotion of the Planning Application;
- 3.2.3 any person involved in promoting or assisting in the promotion of the Planning Application does not give any instructions to, or put pressure upon, any person acting or assisting in the handling of the Planning Application;
- 3.2.4 any discussions or communications about the Planning Application do not take place, otherwise than in accordance with these Handling Arrangements, between persons acting for or assisting:
- the LPA in its handling and determination of the Planning Application;
  - the Applicant in its promotion of the Planning Application

and between persons acting for or assisting:

- the LPA and the Applicant in their respective functions; and
- any other member of RBC.

#### **4. ACCEPTABLE INTERACTIONS**

- 4.1 The measures put in place will not prevent discussions or communications about the Planning Application between the LPA and the Applicant through the formal channels commensurate with the ordinary planning application process.
- 4.2 Such interactions may include but are by no means limited to:
- 4.2.1 the terms of any Planning Performance Agreement;
- 4.2.2 pre-application meetings or correspondence;
- 4.2.3 screening and scoping for the purposes of the EIA Regulations;
- 4.2.4 post- application correspondence to discuss and agree actions in respect of consultation responses; and
- 4.2.5 discussion on planning conditions or s106 obligations.
- 4.3 The Handling Arrangements do not prevent:
- 4.3.1 communications between the LPA and/or the Applicant and other officers of RBC in order to provide factual updates. For example, timetable queries;
- 4.3.2 communication as is necessary to inform any executive or non- executive decisions by RBC directly or indirectly in connection with the plans or proposals for the Planning Applications. It should be noted that such decisions are separate to the LPA's determination of the Planning Application; or
- 4.3.3 performance of ordinary staff management functions at RBC subject to these Handling Arrangements.

## PART ONE

### The Handling Arrangements for the Planning Applications

#### Resourcing and Allocation of Roles and Responsibilities

##### A. Officials acting for or assisting the LPA

<b>Name</b>	<b>Role</b>
Tom Bradfield	Principal Planner
Richard Eatough	Area Planning Team Leader
Steve Vigar	Area Planning Team Leader
Mark Worringham	Area Planning Team Leader
Julie Williams	Planning Manager
Poonam Rajput	Lawyer
Patricia Tavernier	Reserve Lawyer

##### B. External persons appointed to act for or assist the LPA

None.

##### C. Officials acting for or assisting the Applicant

<b>Name</b>	<b>Role</b>
Ben O'Connor	Regeneration Project Officer
Ruth Okonkwo	Regeneration Lawyer
Dave Anthony	Planning Lawyer

##### D. External persons appointed to act for or assist the Applicant

<b>Name</b>	<b>Role</b>
Freeths LLP	Advisory lawyers

For the purposes of this Planning Application, those persons listed in groups A and B are the "LPA Team".

For the purposes of this Planning Application, those persons listed in groups C and D are the "Applicant's Team".

Both teams are able to receive information on the Planning Applications in order for each to effectively deliver their respective roles and to undertake their responsibilities.

No person on the Applicant's Team will be involved in the case work or decision making in connection with the Planning Applications.

No person on the LPA Team will be involved in promoting the Planning Applications. Any discussion or communication between the LPA Team and the Applicant's Team shall be carried out in accordance with these Handling Arrangements.

## **PART TWO**

### **Detailed Handling Arrangements**

#### **1. PUBLICATION**

- 1.1 These Handling Arrangements shall be made available to the public subject to the redaction of personal information as appropriate for data protection reasons.
- 1.2 All persons on the Applicant's Team and the LPA Team shall be provided with a copy of these Handling Arrangements and where necessary training will be offered/provided in order to ensure compliance with Handling Arrangements.

#### **2. UPDATES**

- 2.1 These Handling Arrangements will be republished and recirculated to the Applicant's Team and the LPA Team if material amendments are made to them.

#### **3. INFORMATION SHARING**

- 3.1 Information can be shared orally or in writing.
- 3.2 Written information can take the form of words or images (maps, plans, drawings, photos, etc.).
- 3.3 Written information includes information shared electronically (by e-mail, data sharing or information exchange platforms, social media, etc.).
- 3.4 All information on the Planning Applications shall be shared between the Applicant's Team and the LPA Team through the formal channels appropriate to the planning application process.
- 3.5 Discussion or other communication about the merits of the Planning Applications shall not take place between the Applicant's Team and the LPA Team (or with other members of RBC) outside of the parameters set out in these Handling Arrangements.
- 3.6 In respect of written information, persons on the Applicant's Team and the LPA Team shall clearly identify the intended recipient of the information. This can be done, for example, by marking the information for the attention of the Applicant's Team / the LPA Team, as applicable.

#### **4. DOCUMENT STORAGE BY THE APPLICANT**

- 4.1 The lawyers working in the Applicant's Team will use IKEN (the legal team's document management system) to create a file for that team, to which only lawyers working for that team will have access. The lawyers for that team will not (in relation to their work on the Planning Applications) report directly to a line manager who also has responsibility for any of the lawyers in the LPA Team.
- 4.2 The other officers working for each team will store documents and emails in folders which are not accessible to the LPA Team.

## **5. DOCUMENT STORAGE BY THE LPA**

- 5.1 The lawyers working in the LPA Team will use IKEN (the legal team's document management system) to create a file for that team, to which only lawyers working for that team will have access. The lawyers for that team will not (in relation to their work on the Planning Applications) report directly to a line manager who also has responsibility for any of the lawyers in the LPA Team.
- 5.2 The LPA Team planning officers will keep their documents in NEC (Electronic Document Management System (EDMS) folders in the usual way. However, as these folders will also contain legal advice given by the LPA Team Lawyers, the Applicant's Team's lawyers will be blocked from accessing those folders to keep the legal advice confidential. All other non-confidential planning documents in those folders will be visible on the Council's website as usual.

## **6. MANAGEMENT AND GOVERNANCE**

- 6.1 RBC has and will continue to put in place a range of appropriate governance, administrative and line management structures as required to safeguard the independence and objectivity of the LPA's decision-making.

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## Standards Committee

14 September 2023



**Reading**  
Borough Council  
Working better with you

<b>Title</b>	Standards Committee
<b>Purpose of the report</b>	To note the report for information
<b>Report status</b>	Public report
<b>Report author</b>	Michael Graham – Assistant Director of Legal and Democratic Services
<b>Lead Councillor</b>	Cllr Liz Terry
<b>Corporate priority</b>	Our Foundations
<b>Recommendations</b>	<ol style="list-style-type: none"> <li>1. To note the Member Complaints received in years 2022/2023</li> <li>2. To consider any further work which may be necessary to promote high standards of conduct in public life in the Council</li> </ol>

### 1. Executive Summary

- 1.1. Each year the Standards Committee receives a report on complaints activity in the previous year. This allows members of the Committee to scrutinise the workings of the complaints system.

### 2. Policy Context

- 2.1. The Localism Act requires all councils to have a local Member Code of Conduct. It also requires councils to put in place arrangements under which allegations can be investigated and arrangements under which decisions on allegations can be made. Currently the Council's arrangements are set out in Article 9 of the Constitution (which describes the remit of the Standards Committee). These arrangements have been in place since May 2013 although the Code and the Arrangements for Dealing with Complaints were substantively reviewed in 2022 with a new Code of Conduct agreed at Council in October 2022

### 3. Complaints In the Financial Year 2022/2023

- 3.1. Reports to the Standards Committee are usually made annually to update the Committee on the number of complaints made and other issues.
- 3.2. Annex A to this report contains a list of five complaints that were made to the Monitoring Officer in financial year 2022/2023, two of the complainants referred two councillors to the Monitoring Officer bringing the total number of complaints to seven.
- 3.3. The lists are anonymised. There is a public interest in the operation of a complaints procedure, that not every matter should be made public. Hence, details of councillors and members of the public are redacted in this summary. This encourages resolution of matters at the earliest stage possible, in the quickest timescale and with the least formality. This practice is consistent with Standards Committee proceedings elsewhere. If a serious matter is brought before the Committee, the Committee item would usually proceed as a Part 2 matter until the Committee had weighed up the public interest in

publicity and taken into account whether the subject councillor was proven to have breached the Code or not.

- 3.4. If a member is found to have breached the Code then this report will identify that councillor so that there is transparency in the public interest.
- 3.5. Members will note that of the seven complaints in Annex A:
  - 2 complaints resulted in no action as no evidence was provided when requested
  - 4 were judged not to engage the Code of Conduct and were rejected at the initial filter stage
  - 1 complaint was against a third-party contractor and not due to councillor conduct
- 3.6. It is suggested by the Monitoring Officer that there are no trends or conclusions which can be drawn from this data. The cases which are reported do not highlight any systemic issues of concern for the Council. This is a low level of complaint activity and demonstrates that councillors generally have good relations with the community. The Committee will no doubt wish to consider this for itself.

#### **4. Options**

- 4.1. The Committee is asked:
  - a) To note the Complaints received in financial years 2022/2023
  - b) To note training will be provided to all councillors on the Code of Conduct
  - c) To consider any further actions which are appropriate to improve standards in public life within the Council

#### **5. Environmental and Climate Implications**

- 5.1. The Council declared a Climate Emergency at its meeting on 26 February 2019 (Minute 48 refers).
- 5.2. There are no environmental or climate implications arising from this decision. This report is to consider member complaints. None of these complaints relate to environment or climate implications.

#### **6. Community Engagement**

- 6.1. Section 138 of the Local Government and Public Involvement in Health Act 2007 places a duty on local authorities to involve local representatives when carrying out "any of its functions" by providing information, consulting or "involving in another way".
- 6.2. It is not anticipated that there will be public consultation on the matters raised by this report.

#### **7. Equality Implications**

- 7.1. Under the Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to the need to—
  - eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 7.2. Equality Impact Assessment (EIA) is not relevant to this report.

**8. Legal Implications**

- 8.1. The Council is bound to maintain a Councillor Code of Conduct and to publish arrangements to advise residents how complaints can be made under the Code. These implications are covered in the main report.

**9. Financial Implications**

- 9.1. There are no direct financial implications arising from this report.

**10. Background Papers**

- 10.1. There are none.

## Annex A

### Councillor Complaints received between 1 April 2022 – 31 March 2023

Complaints are anonymised where there is an early resolution of the complaint. It is in the public interest to ensure that the complaints procedure can operate smoothly with issues which are resolved informally not subject to publicity.

No	Date	Complainant	Cllr	Acknowledged	W/Days	Complaint	Outcome	Stage	Date	W/Days
1	23-Jul-22	Ms A	Cllr A	09-Aug-22	12	Interference in employment contract and legal case	Evidence requested. None forthcoming.	0	09-Aug-22	12
1	23-Jul-22	Ms A	Cllr B	09-Aug-22	12	Interference in employment contract and legal case	Evidence requested. None forthcoming.	0	09-Aug-22	12
2	05-Aug-22	Cllr C	Cllr D	05-Aug-22	1	Using Council resources for political purposes	Mistake admitted and apology given. Words of advice given.	0	16-Aug-22	8
2	05-Aug-22	Cllr C	Cllr E	05-Aug-22	1	Using Council resources for political purposes	Mistake admitted and apology given. Words of advice given.	0	16-Aug-22	8
3	10-Oct-22	Mr F	Cllr G	20-Dec-22	52	Using Council resources for political purposes	Conduct complained of was due to contractor - not councillor	0	20-Dec-22	52

4	03-Jan-23	Miss H	Cllr I	03-Jan-23	1	Perceived religious intolerance online	Complaint misconceived, comments online were not related to any religious group.	0	22-Feb-23	37
5	05-Mar-23	Mr J	Cllr K	06-Mar-23	1	Lack of contact from councillor	Words of advice offered to councillor about managing expectations	0	23-Mar-23	14

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