

# **LOCAL CODE OF GOOD PRACTICE FOR COUNCILLORS AND OFFICERS INVOLVED IN THE PLANNING PROCESS**

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## 1. Introduction

- 1.1 This updated Code of Practice has been prepared based on advice issued in the 2019 version of the Local Government Association's Probity in Planning guide and the 2014 version of the Lawyers in Local Government Model Members' Planning Code or Protocol.
- 1.2 Planning has a positive and proactive role to play at the heart of local government. It helps councils to stimulate growth whilst looking after important environmental areas. It can help to translate goals into action. It balances social, economic and environmental needs to achieve sustainable development.
- 1.3 The planning system works best when officers and councillors involved in planning understand their roles and responsibilities, and the context and constraints in which they operate.
- 1.4 Planning decisions involve balancing many competing interests. In doing this, decision makers' need an ethos of decision-making in the wider public interest on what can be controversial proposals.
- 1.5 It is recommended that councillors should receive regular training on code of conduct issues, interests and predetermination, as well as on planning matters.

## 2. Background

- 2.1 In 1997, the Third Report of the Committee on Standards in Public Life (known as the Nolan Report) resulted in pressures on councillors to avoid contact with developers in the interests of ensuring probity. In today's place shaping context, early councillor engagement is encouraged to ensure that proposals for sustainable development can be harnessed to produce the settlements that communities need.
- 2.2 This Local Code of Good Practice is intended to reinforce councillors' community engagement roles whilst maintaining good standards of probity that minimises the risk of legal challenges.
- 2.3 Planning decisions are based on balancing competing interests and making an informed judgement against a local and national policy framework.
- 2.4 Decisions can be controversial. The risk of controversy and conflict are heightened by the openness of a system which invites public opinion before taking decisions and the legal nature of the development plan and decision notices. Nevertheless, it is important that the decision-making process is open and transparent.
- 2.5 One of the key aims of the planning system is to balance private interests in the development of land against the wider public interest. In performing this role, planning necessarily affects 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.

- 2.6 Whilst councillors must take account of these views, they should not favour any person, company, group or locality, nor put themselves in a position where they may appear to be doing so. It is important, therefore, that planning authorities make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons.
- 2.7 The process should leave no grounds for suggesting that those participating in the decision were biased or that the decision itself was unlawful, irrational or procedurally improper.

### 3. The General Role and Conduct of Councillors and Officers

- 3.1 Councillors and officers have different but complementary roles. Both serve the public but councillors are responsible to the electorate, whilst officers are responsible to the council as a whole. Officers advise councillors and the council and carry out the council's work. They are employed by the council, not by individual councillors. A successful relationship between councillors and officers will be based upon mutual trust, understanding and respect of each other's positions.
- 3.2 Both councillors and officers are guided by codes of conduct. The Code of Conduct for Members is consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership and promotes and supports high standards of conduct when serving in public posts.
- 3.3 Officers who are chartered town planners are subject to the Royal Town Planning Institute (RTPI) Code of Professional Conduct, breaches of which may be subject to disciplinary action by the Institute. Similarly, staff who are solicitors are subject to Solicitor's practice rules and various Codes made under these Rules.
- 3.4 In addition to these codes, the council's standing orders set down rules which govern the conduct of council business.
- 3.5 Councillors and officers should be cautious about accepting gifts and hospitality and should exercise their discretion. Guidance on these issues for both councillors and officers are included in the Guidance for Councillors and Officers on Gifts and Hospitality. As a general rule, business gifts and hospitality should not be accepted by any councillor. However, if a gift is received or hospitality accepted, unless it is of a purely "token" value, it should be declared to the Monitoring Officer as soon as possible and, in any case, within 28 days of receipt. Such details will be recorded in the Register of Gifts and Hospitality which is open to inspection by the public. Prior to accepting any gift or hospitality with a value of £50 or more a Councillor must seek authorisation from the Monitoring Officer.
- 3.6 Similarly, officers, during the course of carrying out their duties, may be offered hospitality from people with an interest in a planning proposal. The Council have adopted a policy for Officers on gifts and hospitality, which is contained in the Guidance for Councillors and Officers on Gifts and Hospitality. Wherever possible, offers should be declined politely. If the receipt of hospitality is unavoidable, officers should ensure that it is of the minimal level and unless it is of "token value" declare its receipt as soon as possible to the officer's Line Manager and the Audit and Risk Manager. Prior permission of the officer's Line Manager or Director is required before accepting gifts or hospitality of £25.00 or over. The Council provides a register to

record such offers whether or not accepted which is held by the Head of Governance. This register is reviewed regularly by the Council's Monitoring Officer. Failure by an officer to make an entry is likely to lead to disciplinary measures.

- 3.7 Employees must always act impartially and in a politically neutral manner. The Local Government and Housing Act 1989 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.
- 3.8 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 it.
- 3.9 Whilst the determination of a planning application is not a 'quasi-judicial' process, it is a formal administrative process involving the application of national and local policies, reference to legislation and case law as well as rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly. All involved should remember the possibility that an aggrieved party may seek a Judicial Review and/or complain to the Ombudsman on grounds of maladministration or a breach of the authority's code.
- 3.10 Finally, as planning can sometimes appear to be complex and as there are currently many changes in planning taking place, the Local Government Association endorses the good practice of many councils which ensures that their councillors receive training on planning when first appointed to the planning committee or local plan steering group, and regularly thereafter. The Council provides training on the planning process.

<b>DO</b>	first apply the rules in the Member's Code of Conduct. This includes the rules on, Disclosable Pecuniary Interests (DPIs), any other interests, and the general rules giving effect to the seven principles of public life: <b>selflessness, integrity, objectivity, accountability, openness, honesty and leadership.</b>
<b>DO</b>	then apply the rules in this Local Code of Good Practice. Failure to do so may put: - the Council at risk of proceedings on the legality of the related decision or maladministration; and - yourself at risk of being named in a report made to the Council; and, - if the failure is also likely to be a breach of the interest provisions in the Localism Act 2011, a complaint being made to the police to consider criminal proceedings.
<b>DON'T</b>	accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable ensure that: - it is of a minimum, - prior authorisation has been obtained from the Monitoring Officer where necessary;

	- its acceptance is declared to the Monitoring Officer as soon as possible and always within 28 days of receipt; and it is recorded in the Register of Gifts and Hospitality where necessary.
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#### 4. Registration and Declaration of Interests Predetermination, Predisposition or Bias and 'Calling-in' a Planning Application

- 4.1 Chapter 7 of the Localism Act 2011 places requirements on councillors regarding the registration and disclosure of their pecuniary interests and sets out the consequences for a councillor taking part in consideration of an issue in the light of those interests. The definitions of disclosable pecuniary interests are set out in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. A failure to register a disclosable pecuniary interest within 28 days of election or co-option or the provision of false or misleading information on registration, or participation in discussion or voting in a meeting on a matter in which a councillor or co-opted member has a disclosable pecuniary interest, are criminal offences.
- 4.2 For full guidance on interests, see Openness and transparency on personal interests: guidance for councillors, Department for Communities and Local Government, March 2013. (This Code of Practice does not seek to replicate the detailed information contained within the DCLG guidance note). Advice should always be sought from the Council's Monitoring Officer or Deputy Monitoring Officer. Ultimately, responsibility for fulfilling the requirements rests with each councillor.
- 4.3 The provisions of the Localism Act 2011 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.
- 4.4 The Code of Conduct for Members establishes what interests need to be disclosed. All disclosable interests should be registered and a register is maintained by the Council's Monitoring Officer and made available to the public. Councillors should also disclose that interest orally at the committee meeting when it relates to an item under discussion.
- 4.5 A councillor must provide the Monitoring Officer with written details of any disclosable interest which the Council has decided should be included in the register within 28 days of their election or appointment to office. Any new interests or changes to those interests must similarly be notified within 28 days of the councillor becoming aware of such changes.
- 4.6 A disclosable pecuniary interest relating to an item under discussion requires the withdrawal of the councillor from the committee during any discussion or voting. In certain circumstances, a dispensation can be sought from the appropriate body or officer to take part in that particular item of business.
- 4.7 If a councillor has another interest (as described in the Council's Code of Conduct for Members) he or she should disclose that interest but then, depending on the circumstances may speak and vote on that particular item. This includes being a member of an outside body or any other significant interest (for example where a councillor anticipates that a decision might reasonably be deemed to benefit or disadvantage him or herself a member of the councillor's family or a person with

whom the councillor has a close association to a greater extent than another Council constituent). In such circumstances, the councillor must consider whether his/her participation in the matter relating to his/her interest would be reasonable in the circumstances particularly if the interest may give rise to a perception of a conflict of interest and/or is likely to prejudice his/her judgement. If this is the case, the councillor may make representations if there is an entitlement for a member of the public to speak but must not participate or vote on the matter being discussed and must leave the room whilst any discussion or voting takes place.

- 4.8 It is always best to identify a potential interest early on. If a councillor thinks that they may have an interest in a particular matter to be discussed at a planning committee he or she should raise this with their Monitoring Officer or Deputy Monitoring Officer as soon as possible.
- 4.9 Members of a planning committee, Planning Policy Working Group (or full Council when the local plan is being considered) need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application or on planning policies.
- 4.10 The courts have sought to distinguish between situations which involve predetermination or bias on the one hand and predisposition on the other. The former is indicative of a 'closed mind' approach and likely to leave the committee's decision susceptible to challenge by Judicial Review.
- 4.11 Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a councillor makes it clear they are willing to listen to all the considerations presented at the committee before deciding on how to vote (predisposition). The latter is alright, the former is not and may result in a court quashing such planning decisions.
- 4.12 Section 25 of the Localism Act 2011 also provides that a councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter.
- 4.13 This reflects the common law position that a councillor may be predisposed on a matter before it comes to Committee, provided they remain open to listening to all the arguments and changing their mind in light of all the information presented at the meeting. Nevertheless, 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.
- 4.14 For example, a councillor who states "Windfarms are blots on the landscape and I will oppose each and every windfarm application that comes before the committee" will be perceived very differently from a councillor who states: "Many people find windfarms ugly and noisy and I will need a lot of persuading that any more windfarms should be allowed in our area."
- 4.15 If a councillor has predetermined their position, they should withdraw from being a member of the decision-making body for that matter.



- 4.16 This will apply to any member of the planning committee who wanted to speak for or against a proposal, as a campaigner (for example on a proposal within their ward).
- 4.17 A councillor is not required to cast aside views on planning policy that he or she held when seeking election or otherwise acting as a member, in giving fair consideration to points raised.
- 4.18 A ward councillor representing the ward within which a planning application site lies or a ward councillor representing an adjoining ward can request that a planning application be considered by the Planning Committee rather than by the Head of Planning & Regeneration in accordance with Part 7.02 of the Constitution - Scheme of Delegation. In doing so the councillor must not have a disclosable pecuniary interest relating directly to the planning application.

<b>DO</b>	disclose the existence and nature of any interests as required by the Members' Code of Conduct
<b>DO</b>	take into account <b>that</b> the Principle of Integrity is defined in terms that " <i>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</i> ".
<b>DON'T</b>	seek or accept any preferential treatment or place yourself in a position that could lead the public to think that you are receiving preferential treatment because of your position as a councillor. This would include where you have a disclosable or other interest in a proposal using your position to discuss that proposal with officers or councillors when other members of the public would not have the same opportunity to do so.
<b>DO</b>	note that you are not prevented from seeking to explain and justify a proposal in which you may have a conflict of interest to an appropriate officer, in person or in writing, but that your role as a councillor may place additional limitations on you in representing the proposal in which you have a personal interest.
<b>DO</b>	notify the Monitoring Officer where you have a disclosable pecuniary interest in an application and note that where possible you should notify the Monitoring Officer no later than submission of that application and you must not get involved in the processing of the application.
<b>DON'T</b>	fetter your discretion by approaching a decision with a closed mind.
<b>DO</b>	keep at the front of your mind that, when you come to make a decision, you: <ul style="list-style-type: none"> <li>- are entitled to have and to have expressed your own views on the matter, provided you are prepared to reconsider your position in the light of all the evidence and arguments;</li> <li>- keep an open mind and hear all of the evidence before you, both the officers' presentation of the facts and their advice as well as the arguments from all sides;</li> <li>- are only entitled to take account of material considerations; and you must disregard considerations irrelevant to the question and legal context at hand; and</li> <li>- only come to a decision after giving what you feel is the right weight to those material considerations.</li> </ul>



<b>DO</b>	<p>consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the parish council, for example, or both a district/borough and county councillor), provided:</p> <ul style="list-style-type: none"> <li>- the proposal does not substantially effect the well-being or financial standing of the consultee body;</li> <li>- you make it clear to the consultee body that: <ul style="list-style-type: none"> <li>· your views are expressed on the limited information before you only;</li> <li>· you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Committee and you hear all of the relevant information;</li> </ul> </li> <li>and</li> <li>- you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee.</li> </ul>
<b>DO</b>	<p>take the opportunity to exercise your speaking rights as a member of the public where you have represented your views or those of local electors and predetermined the matter or have an Other Significant Interest, but do not have a Disclosable Pecuniary Interest .</p>

## 5. Development Proposals Submitted by Councillors and Officers; and Council Development

- 5.1 Proposals submitted by serving and former councillors, officers and their close associates and relatives can easily give rise to suspicions of impropriety. Proposals could be planning applications or local plan proposals.
- 5.2 Such proposals must be handled in a way that gives no grounds for accusations of favouritism.
- 5.3 A councillor would undoubtedly have a disclosable pecuniary interest in their own application and should not participate in its consideration. They do have the same rights as any applicant in seeking to explain their proposal to an officer, but the councillor, as applicant, should also not seek to improperly influence the decision.
- 5.4 Proposals for a council's own development should be treated with the same transparency and impartiality as those of private developers.
- 5.5 Proposals submitted by serving and former councillors, officers and their close associates and relatives are more likely to be presented to the Planning Committee for a decision than would otherwise be the case.

<b>DO</b>	<p>be aware that you can be biased where the Council is the landowner, developer or applicant if you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership of the planning committee, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)</p>
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## 6. Lobbying of and by Councillors

- 6.1 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.
- 6.2 As the Nolan Committee's 1997 report stated: "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".
- 6.3 Lobbying, however, can lead to the impartiality and integrity of a councillor being called into question and require that councillor to declare an interest unless care and common sense is exercised by all the parties involved.
- 6.4 As noted earlier in this Code, the common law permits predisposition but nevertheless it remains good practice that, when being lobbied, councillors (members of the planning committee in particular) should try to take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such situations, they should restrict themselves to giving advice about the process and what can and can't be taken into account.
- 6.5 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 having heard all the relevant arguments and taken into account all relevant material and planning considerations at committee.
- 6.6 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 once any public or ward member speaking opportunities had been completed in order to counter any suggestion that members of the committee may have been influenced by their continuing presence.
- 6.7 It is very difficult to find a form of words which conveys every nuance of these situations and which gets the balance right between the duty to be an active local representative and the requirement when taking decisions on planning matters 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.
- 6.8 This Local Code of Good Practice addresses 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.

6.9 The responsibilities and duties under the Code of Conduct apply equally to matters of lobbying as they do to the other issues of probity explored elsewhere in this code.

<b>DO</b>	explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it may subsequently prejudice your impartiality, and therefore your ability to participate in the Committee's decision making, to make any sort of promise to vote one way or another or have such a firm point of view that it amounts to the same thing.
<b>DO</b>	remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
<b>DO</b>	pass on any lobbying correspondence you receive to the Head of Planning Services at the earliest opportunity.
<b>DO</b>	promptly refer to the Head of Planning Services any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
<b>DO</b>	inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
<b>DON'T</b>	become a member of, lead or represent an organisation whose primary purpose is to lobby, promote or oppose planning proposals unless it is your intention to openly campaign on the matter and will therefore step away from the Committee when it comes to make its decision.
<b>DO</b>	join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals (such as the Victorian Society, CPRE, Ramblers Association or a local civic society), but you should seek to disclose that interest on the grounds of transparency where the organisation has made representations on a particular proposal.
<b>DON'T</b>	excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
<b>DON'T</b>	decide or discuss how to vote on any application at any political group meeting, or lobby any other councillor to do so. Political Group Meetings should never dictate how councillors should vote on a planning issue.

## 7. Pre-Application Discussion

7.1 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.

- 7.2 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. Now, through the Localism Act and previously the Audit Commission, the Local Government Association and Planning Advisory Service recognise that councillors can have an important role to play in pre-application discussions, bringing their local knowledge and expertise, along with an understanding of community views. Involving councillors can help identify issues early on, helps councillors lead on community issues and helps to make sure that issues don't come to light for the first time at committee. The Planning Advisory Service recommends a 'no shocks' approach.
- 7.3 The Localism Act 2011, particularly section 25, by endorsing this approach, has given councillors' much more freedom to engage in pre-application discussions. Nevertheless, in order to avoid perceptions that councillors' might have fettered their discretion, such discussions should take place within clear, published guidelines which are attached as an appendix to this document.

<b>DO</b>	refer those who approach you for planning, procedural or technical advice to officers.
<b>DON'T</b>	agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should ask the Head of Planning Services to organise it. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the pre- application file.
<b>DO</b>	<ul style="list-style-type: none"> <li>- follow the Council's rules on lobbying;</li> <li>- consider whether or not it would be prudent in the circumstances to make notes when contacted; and</li> <li>- report to the Head of Planning Services any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.</li> </ul>
	<b>In addition in respect of presentations by applicants/developers:</b>
<b>DON'T</b>	attend a planning presentation without requesting an officer to be present.
<b>DO</b>	ask relevant questions for the purposes of clarifying your understanding of the proposals.
<b>DO</b>	remember that the presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the planning committee.
<b>DO</b>	be aware that a presentation is a form of lobbying and, whilst you may express any view on the merits or otherwise of the proposal presented, you should never state how you or other Members would intend to vote at a committee meeting.

## 8. Officer Reports to Committee

- 8.1 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 consultations.
- Relevant information should include a clear assessment against the relevant development plan policies, relevant parts of the National Planning Policy Framework (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 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 also failure to do so may constitute maladministration or give rise to a Judicial Review challenge 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 s38A of the Planning and Compensation Act 2004 and s70 of the Town and Country Planning Act 1990.

8.2 Any oral updates or changes to the report should be recorded.

## 9. Public Speaking at Planning Committee Meetings

9.1 The Council agreed on 20 September 2007 to introduce a process to enable members of the public to speak at Planning Committee meetings. The arrangements were implemented from December 2007, and have since been reviewed in June 2008, in 2015, in February 2017, and in April 2021.

9.2 The revised arrangements reflect national best practice and are intended to provide more open, transparent and informed decision making whilst making effective use of Member and Officer time.

### 9.3 Who can speak at the Planning Committee meeting?

Members of the public who are supporting or objecting to a proposal which is the subject of a planning application can make a request to address the Committee. Ward, Parish, Town, and County Councillors representing the ward or parish within which the application site lies may also address the Committee under the provisions of this guidance. In addition, the Ward councillor representing an adjoining ward, who has called the application in, can address the Committee under the provisions of the guidance. A Ward, adjoining Ward, Parish, Town, or County Councillor may speak only once and cannot speak as a representative of more than one body. The applicant and/or agent (which can include any person employed or engaged by the applicant to support the application) may also address the Committee to put their case, or to reply to matters raised by other speakers. Speakers may only speak in relation to applications for planning permission and not in relation to any other report presented to the Planning Committee for consideration, including any proposals relating to Tree Preservation Orders.

### 9.4 How much time is allowed?

Each speaker will have a maximum of 3 minutes. The time will be controlled by the Chairman and by a 'traffic light' system operated by the Committee Clerk.



Objectors will have a maximum of 12 minutes in total, supporters will have 12 minutes in total, Ward, adjoining Ward, Parish or Town and County Councillors will have 3 minutes each.

The applicant may speak for 3 minutes but if the applicant does not wish to speak, the applicant may instead nominate another person to speak in substitution on their behalf for 3 minutes.

In addition, the applicant's planning or other agent may also speak for 3 minutes.

**An individual may only speak for a maximum of 3 minutes.**

#### 9.5 How many people are allowed to speak?

In circumstances where there are a number of members of the public who wish to speak, either as objectors or supporters of an application, it is recommended that up to a maximum of 4 spokespersons should be nominated to speak. In any event, no individual may speak for more than 3 minutes unless under exceptional circumstances at the discretion of the Chairman.<sup>1</sup>

Only one Parish or Town Councillor, one adjoining Ward Councillor (if they called in the application) and the County Councillor, may speak.

Where a ward in Wyre is represented by more than one councillor, each of those councillors will be able to speak on an application if they wish, i.e. up to three Wyre Councillors representing the ward in which the application site is located. Where there is no Wyre Ward Councillor available or wishing to speak under the provisions of this scheme, a member of the Planning Committee who is also a member for the ward within which the application site lies may, if they wish, speak as a Ward Councillor but would then be limited to 3 minutes and thereafter would not be able to take part in the debate as a member of the Planning Committee and would not be able to vote on that item.

Members of the Committee may ask the speaker questions of clarification on factual matters after they have finished speaking.

#### 9.6 Registering to speak

Those wishing to speak must register a request to speak with the Council's Committee Clerk no later than 24 hours before the start of the meeting. Any requests to speak received after the deadline will not be accepted except under exceptional circumstances at the Chairman's discretion.<sup>2</sup>

Not more than one person per household may register to speak and any person registering to speak must confirm that they will be available on the day of the

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<sup>1</sup> The Chairman in liaison with officers will be responsible for continuing to ensure that there is equality of access to the public speaking process and time limits for speaking can be extended, late registration to speak accepted and/or a spokesperson nominated in appropriate circumstances. See paragraph 'Additional Help' for further detail.

<sup>2</sup> The Chairman in liaison with officers will be responsible for continuing to ensure that there is equality of access to the public speaking process and time limits for speaking can be extended, late registration to speak accepted and/or a spokesperson nominated in appropriate circumstances. See paragraph Additional Help for further detail.

meeting. Unless there are exceptional circumstances (and at the Chairman's discretion) speakers may not use proxies to speak or read out statements on their behalf.

The requirement to pre-register also applies to applicants and/or agents

Ward, adjoining Ward, Parish, Town, or County Councillors do not need to register their intention to speak in advance.

- 9.7 The procedure allows the public to speak to the Committee, but when addressing the committee under this procedure no material or information may be displayed or circulated to the Committee Members. This is because 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. It may also result in delays to the proceedings.

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.

#### 9.8 Additional Help

The Council is committed to ensuring equality of access to the public speaking process.

Individuals who have a disability or do not speak English as their first language or have some other appropriate need (for example require an interpreter/spokesperson) should contact [democraticservices@wyre.gov.uk](mailto:democraticservices@wyre.gov.uk) and reasonable adjustments will be made to assist which may include extending the timescales for speaking, accepting late registration to speak and/ or accepting the nomination of a spokesperson.

#### 9.9 The procedure

1. The application will be introduced by the Chairman.
2. If there is an update from the Head of Planning & Regeneration requesting the deferment of the application, the Chairman will ask the Committee to consider this request without any public speaking. If the motion to defer the application is carried, the Chairman will move on to the next item, otherwise he will move to the next stage as set out below.
3. The Chairman will introduce the item stating whether or not the members of the Committee have visited the site.
4. ,The Head of Planning & Regeneration, the Development Manager or other planning officer will then present any updates, play any video showing the site, display relevant plans, photographs or other information.
5. The order in which the Chairman will call the public to speak will be:
  - Those objecting to the application
  - Those supporting the application



- A local Parish or Town Council Member
- Wyre Ward Councillors
- The Adjoining Ward Councillor (if they called in the application)
- A County Councillor
- The applicant and/or agent for the application

6. After each person has spoken the Members of the Committee may ask the speaker questions of clarification on factual matters only.

7. The Committee will then debate the application without further public involvement under the direction of the Chairman. The Chairman may also invite the Head of Planning & Regeneration to comment on matters raised or respond to questions as appropriate during or at the end of the debate.

8. The Committee will then reach a decision by voting on any properly tabled recommendation/ motion.

9. After each decision the Chairman will inform the meeting of the decision.

If, during the debate of an item by the Committee (point 7 above), there is a motion to defer the application which is carried, when the application is brought back to the Committee, there shall be no further opportunities for the public or non-committee members to speak, unless the deferral has resulted in a material change to the application, additional information, or revised plans upon which there has been further publicity and/or consultation.

A guide explaining the procedures is available on the Council's website.

<b>DON'T</b>	allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking or through the Chair, as this may give the appearance of bias
<b>DO</b>	ensure that you comply with the Council's procedures in respect of public speaking.

## 10. Decisions Contrary to Officer Recommendations and/or the Development Plan

- 10.1 The law requires that decisions should be taken in accordance with the development plan, unless material considerations (which specifically include the NPPF) indicate otherwise (s38A Planning & Compensation Act 2004 and s70 of the Town and Country Planning Act 1990).
- 10.2 This applies to all planning decisions. Any reasons for refusal must be justified against the development plan and other material considerations.
- 10.3 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 material or non-material planning considerations which might cause local controversy will rarely satisfy the relevant tests.

- 10.4 Planning committees can, and often do, make a decision which is different from the officer recommendation. Sometimes this will relate to conditions or terms of a S106 obligation. Sometimes it 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.
- 10.5 Planning committees should take the following steps before making a decision which differs from the officer recommendation:
- if a councillor is concerned about an officer recommendation they should discuss their areas of difference and the reasons for that with officers in advance of the committee meeting
  - record the detailed reasons as part of the mover's motion.
- 10.6 Councillors must not 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. If an application has previously been deferred then the same councillors will be asked to reconsider the application when it is returned to committee. If this renders the committee inquorate then the item will have to be considered afresh and public speaking rights triggered again.
- 10.~~7~~<sup>6</sup> If the planning committee makes a decision contrary to the officer's recommendation (whether for approval or refusal or changes to conditions or S106 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, and by reference to planning policy and/or other material planning considerations their planning reasons for not agreeing with the officer's recommendation. Pressure should never be put on officers to 'go away and sort out the planning reasons'.
- 10.~~8~~<sup>7</sup> The officer should also be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome, and chances of a successful award of costs against the council, should one be made.
- 10.~~9~~<sup>8</sup> The application may then have to be referred to the relevant secretary of state, depending upon the type and scale of the development proposed (s77 of the Town and Country Planning Act 1990). If the officer's report recommends approval of such a departure, the justification for this should be included, in full, in that report.

## 11. Committee Site Visits

- 11.1 National standards and local codes also apply to site visits. Councils 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.
- 11.2 This Code applies whenever the councillor is conducting official business, which will include site visits. The council has set out the criteria for deciding when a site visit is justified and considered the procedures for such visits, the details of which can be found at Appendix 2 to this Code.
- 11.3 Site visits are for observing the site and gaining a better understanding of the issues. Visits made by committee members, with an officer present to assist, 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.

- 11.4 Once a councillor becomes aware of a proposal they may wish to visit the site alone. In such a situation, a councillor is only entitled to view the site from public vantage points (e.g. the public highway) 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.

<b>DO</b>	try to attend site visits organised by the council where possible.
<b>DO</b>	ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
<b>DO</b>	ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
<b>DON'T</b>	hear representations from any other party. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.
<b>DON'T</b>	express opinions or views.
<b>DON'T</b>	enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless: <ul style="list-style-type: none"> <li>- you feel it is essential for you to visit the site other than through attending the official site visit,</li> <li>- you have first spoken to the Head of Planning Services about your intention to do so and why (which will be recorded on the file) and</li> <li>- you can ensure you will comply with these good practice rules on site visits.</li> </ul>

## 12. Annual Review of Decisions

- 12.1 It is good practice for councillors to visit a sample of implemented planning permissions to assess the quality of the decisions and the development. 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.
- 12.2 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.
- 12.3 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.

## 13. Complaints and Record Keeping

- 13.1 The Council has a complaints procedure.

- 13.2 So that complaints may be fully investigated and as general good practice, record keeping should be complete and accurate. Every planning application file should, up to the point of decision (including any decision on appeal or legal challenge) 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.

## **APPENDICES TO THE LOCAL CODE OF GOOD PRACTICE FOR COUNCILLORS AND OFFICERS INVOLVED IN THE PLANNING PROCESS**

### **(1) PROTOCOL FOR THE INVOLVEMENT OF MEMBERS IN PRE- APPLICATION DISCUSSIONS**

### **(2) PROTOCOL FOR COMMITTEE SITE VISITS**

**Appendix 1****Protocol for the Involvement of Members in Pre-application Discussions (to be attached as an appendix to the Local Code of Good Practice for Councillors and Officers Involved in the Planning Process')****1. Existing Guidance**

1.1 Existing guidance for members involved in the planning process may be found in Part 5.07 of the Council's Constitution to which this protocol is an appendix. Additionally, members may refer to other national publications including:

- Positive Engagement – a guide for planning councillors (CLG, PAS, POS, LGA)
- Probity in Planning for councillors and officers (Local Government Association, Planning Advisory Service)
- Model Council Members' Planning Code or Protocol (Lawyers in Local Government)

**2. Ways to be involved****2.1 Informal Member Briefing**

Following the formal closure of the Planning Committee each month, the Head of Planning & Regeneration or Development Manager will report to members on the details of any pre-application discussions held in respect of a 'Major' or 'Large Major' development proposal since the previous Committee meeting.

- Once the Committee meeting has been formally closed and after all members of the public and other non committee members have left, the Head of Planning & Regeneration, or Development Manager, will inform Members of the Planning Committee of any pre-application discussions commenced or ongoing since the previous committee meeting.
- The presentation will include a display of any plans submitted by the prospective applicant, a summary of the key issues identified, and the key policy considerations.
- In order not to influence members or give rise to any possibility of predetermination or bias, officers will not report to members on any views that they have previously expressed or forwarded to the prospective applicant.
- Members may ask questions or comment on the proposals identifying:
  - Consultation gaps or the need for wider consultation (within limits)
  - Issues that have not been identified but are of local significance
  - Issues that have not been identified and are of wider significance
  - Issues that will be of concern to the community that the applicant can be asked to resolve
  - What opportunities exist to incorporate a development into the local context
- In order to provide transparency to this process, members' questions and comments will be noted in writing and used to provide feedback to a developer.

- All members of the Planning Committee are aware of the law relating to predetermination and will disqualify themselves from considering future applications if they have actually predetermined the matter. Any statements which members make therefore at this stage which might be interpreted as indicating that a member has a view on the merits of the application should be taken as indicating a preliminary view which is capable of being changed and that the member will consider the application on its merits if presented to the Planning Committee. The test here is whether a fair-minded and informed observer, having considered the facts, would decide that there was a real possibility that the councillor had predetermined the issue or was biased.

## 2.2 Developer Presentation

Following a written request to the Head of Planning & Regeneration, and subject to the agreement of the Head of Planning & Regeneration, in consultation with the Chairman of Planning Committee and the Planning and Economic Development Portfolio Holder, a developer may make a formal presentation to members and officers in order to seek their views in a prearranged and time limited meeting.

- For certain applications which have strategic implications or are likely to raise significant public interest, officers may suggest to a developer that they request the opportunity to make a presentation.
- Any member who considers that a presentation by a developer is appropriate/desirable, should make their request via the Head of Planning & Regeneration and should not approach the developer direct.
- The types of scheme that may be presented include major development proposals, development proposals that otherwise raise complex policy issues, or schemes that are wholly innovative in terms of design or concept.
- There will usually only be one opportunity to make a presentation to members per proposal.
- In order to ensure that the developer also carries out a pre-application consultation with the public (including the Parish/Town Council where appropriate), a request for a meeting will only be accepted provided that the developer has, prior to making such request, held a separate public consultation event in accordance with the council's Statement of Community Involvement.
- The meeting will be held at the Civic Centre
- Invitations to the meeting will be extended to the members of the Planning Committee, the Planning and Economic Development Portfolio Holder, the Leader of the Council and any ward member for the ward within which the proposed development is situated.
- The meeting will be chaired by the Chairman of Planning Committee who will explain the role of Members at the meeting. It should be explained that the main purpose is to learn about the emerging proposal, and to identify outstanding issues to be dealt with. Planning Committee members will not be in a position to indicate any view as they need to balance all material considerations before



reaching a view on any application in due course. This can act as a reminder to Councillors as well as a general explanation to all present. Where non Planning Committee members are present, they can express initial views on behalf of communities, whilst planning committee members should restrict themselves to questions or clarification.

- At least two officers must attend, one of which should be the Head of Planning & Regeneration or the Development Manager.
- The meeting will not be open to the public.
- The senior officer present will introduce the purpose of the meeting and advise how it will be conducted. Members will be advised as to the confidentiality status of the proposal (unless the developer advises otherwise).
- Developers will be given the opportunity to make a presentation that should describe their proposal and should explain how the proposal relates to both relevant national and local policy, and any other material considerations that they believe members should give weight to. The format and length of the presentation should be agreed with the Head of Planning & Regeneration beforehand (to ensure that it will not lead members into negotiations and to check for accuracy) and should be limited to the development proposal. They should not normally last longer than 20 minutes.
- Members will be able to ask questions following the presentation but must refrain from entering into debate directly with the applicant or giving advice that indicates a pre-judging of the proposals.
- Members must maintain an impartial listening role and Planning Committee members must avoid expressing an opinion to the applicants. Questions and comments should focus upon clarifying aspects of the proposal or to flag up issues of concern but must not develop into negotiations. It is equally important at this stage for members not to have closed minds as to the merits of the proposal.
- The Chairman will then conclude the meeting. After the applicants have left the meeting members can then discuss the proposals with officers and may advise officers of any concerns they may have and any elements with which they feel would benefit from negotiation with the developer. They will then be guided by professional officers as to what negotiations would be reasonable and would align with policy. Negotiations will be undertaken by professional officers only.
- A planning officer will record the meeting and take a note of all persons present, the issues discussed and the follow up actions. This will be placed on the file by the officer involved, to protect the members and the authority by showing what issues were discussed and that no pre-determination arose.
- The involvement of members will be recorded in any subsequent Committee Report.

## 2.3 Developer Forums

Within the Council's Statement of Community Involvement developers are encouraged to present their proposals to the public prior to the submission of an application, and incorporate a mechanism for getting the views of the public on such proposals.

Such events may simply involve written consultation with local residents around the site, or may (more likely) to be in the form of an exhibition held in a local venue where the proposed plans are on display and the public are invited to ask questions of the prospective applicant or their agents, and are asked for their views. Such views may be expressed verbally (and may be recorded by the event organisers) or they may be made in writing (often on pre-printed response forms).

Members are encouraged to attend such events but should act in accordance with the following guidance:

- Do not go 'incognito' – if approached (as you may well be) be open about your position as a councillor.
- Do not express an opinion until you have looked at the information (plans/models etc.) that is on show, as to do otherwise may indicate bias.
- Non planning Committee members may freely express an opinion on the proposals but are advised to make it clear whether this is a personal opinion or one made on behalf of local residents.
- Planning Committee members must maintain an impartial role and must avoid expressing an opinion to the prospective applicants. Questions and comments should focus upon clarifying aspects of the proposal or to flag up issues of concern. Comments should not be made in writing.

## 2.4 Private meetings/briefings involving officers and developers/landowners.

There may be some occasions where developers or landowners wish to discuss strategic developments or developments on strategic sites, which have implications for the council's corporate priorities and aims regarding regeneration and its economy. At the early stage of any discussions it may be appropriate to involve the Leader of the Council and/or the Planning and Economic Development Portfolio Holder in such discussions. Occasionally, other relevant Portfolio Holders may also be required. It would not be appropriate to involve any other Wyre Member.

- An invitation to the Leader of the Council and /or relevant Portfolio Holder to attend such a meeting shall come only from the Head of Planning & Regeneration or more senior officer.
- The Head of Planning & Regeneration shall attend all such meetings.
- The Leader and/or Portfolio Holder shall not, at any time, discuss the proposals with the developer/landowner without the Head of Planning & Regeneration or more senior officer being present.

## 2.5 Ward Members and rural affordable housing schemes.

The provision of affordable housing is a key priority and the delivery of schemes in rural areas requires a partnership approach involving officers, Registered Providers, landowners, Parish Councils and local Ward members. This requires that local Ward members should be involved in the delivery of rural affordable housing schemes from the site identification stage, through to the completion of the development. Much of this is at pre application stage. As community leaders they need to be actively seeking out landowners to bring forward suitable sites that would otherwise be unacceptable for development if they were not for affordable housing. Local Ward Members need to be sponsors of suitable affordable housing sites in their Wards and be a key link with local people, developers and Parish Councils.

- Local Ward Members may identify sites within their own area and seek the views of planning officers on the suitability of such sites for development.
- Local Ward Members may attend relevant meetings between the partners during the design stage of the proposal and should feel free to contribute views and comments which enable the scheme to evolve.
- Any local Ward Member who is also a Member sat on Planning Committee shall not, at any time during the pre application or application stage, publicly express a view for or against a development prior to its formal consideration.

## 3. General Guidelines

- Wyre Members' involvement in pre-application discussions should be limited to the ways set out in this protocol. Members of the Planning Committee should not arrange private meetings with developers.
- Any Planning Committee Member who elects to publicly support a view for or against a proposed development prior to its subsequent determination will predetermine their position to the extent that they will be advised to declare an other significant interest and thus be free to present their views to Committee in the event of the Committee considering the subsequent application, but they should not be able to take part in the debate or vote on the application.
- Wyre Members should not, at any time, seek to influence or put pressure on officers to support a particular form of action or a particular view.

## Appendix 2

### Committee Site Visits

#### Introduction

This protocol relates to Section 11 of the Local Code of Good Practice for Councillors and Officers involved in the Planning Process.

A lack of any common approach on when and why to hold a site visit and how to conduct it can leave a council open to the accusation that such visits are arbitrary and unfair or a covert lobbying device. A protocol setting out the arrangements for the Planning Committee encourages consistency and transparency of process.

The general approach should be that a site visit should only be used where the expected benefit is clear and substantial given that officers will have already visited the site and identified material considerations on behalf of the council.

Site visits should be carefully organised to ensure that the purpose, format and conduct are clearly established at the outset and subsequently adhered to throughout the visit.

#### When will a site visit be carried out?

A site visit will be carried out where one or more of the following criteria are met:

- a) the impact of the proposed development is difficult to visualise from the plans or from any supporting material, including photographs taken by officers.
- b) there is a good reason why the written comments of the applicant and objectors cannot be understood or appreciated without a site visit (e.g. to see particular features of the neighbourhood or wider landscape), or if the proposal is particularly contentious.
- c) a ward Councillor makes a request in writing to the Head of Planning & Regeneration not later than 2 working days after the publication of the agenda, and such a request contains reasons that show that there would be a clear and substantial benefit from visiting the site.
- d) the development is a major development and is considered to be of strategic importance/significance.

In all cases, the decision as to whether sites are visited rests with the Head of Planning & Regeneration or Development Manager in consultation with the Chairman of the Planning Committee. The reason(s) for carrying out a site visit will be recorded in the report of the Head of Planning Services.

#### How will the site visit be conducted?

It should be noted that any Member, may, at any time visit an application site, although any such visit will be restricted to that which can be viewed/assessed from any public land (e.g. highway or other public right of way). Members must not enter onto private land unless it is with the express permission of the landowner. In such circumstances members must be careful to remain impartial and not express any opinion indicating support for or objection to the development. For such reason, independent site visits are not recommended.

As at present, the site visits will be carried out prior to the Committee Meeting and will not constitute a part of the meeting.

The site visits will consist of an inspection by Members of the Planning Committee only, accompanied by planning officers (normally the Development Manager and/or the Head of Planning & Regeneration). The inspection should be unaccompanied (i.e. without the applicant/agent and/or objectors/supporters).

Prior to Members viewing the site (and during the site visit as appropriate), the officers shall describe the proposal and any accompanying plans and explain the key issues, particularly where relevant to what Members will be looking at on the site visit. Members may ask questions of the officers for clarification on any matter relating to the application, but should not express their opinion on the merits of the application, nor enter into any debate on the merits of the application with other Members at this time.

For particularly contentious applications objectors/supporters may be at the site (or gathered on public land adjacent to the site) and will be looking to make representations verbally to Members or to hand out material to Members to support their case. In these instances Members should explain that the purpose of their visit is to view the site and its surroundings and that they cannot enter into any discussion in respect of the merits of the application, and cannot accept any written or other material.

If the applicant or agent needs to be present to provide access to the site, they shall be requested to allow the Members to view the site unaccompanied. An exception to this would be where the applicant/agent is required to show the Planning Committee around – either for safety or security reasons or where it involves looking inside any occupied building. Under such circumstances, the applicant/agent will be asked not to speak on any issues concerning the merits of the application.