



STANDARDS COMMITTEE

DATE: Wednesday, 3 February 2021
TIME: 10.00 am
VENUE: Meeting to be held under Statutory Instrument 2020/392. Link to live stream will be available via <https://www.tendringdc.gov.uk/livemeetings>

MEMBERSHIP:

Councillor Land (Chairman)
Councillor Steady (Vice-Chairman)
Councillor Fowler
Councillor J Henderson

Councillor S Honeywood
Councillor Turner
Councillor Wiggins

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Meeting papers can be provided, on request, in large print, in Braille, or on disc, tape, or in other languages.

For further details and general enquiries about this meeting, contact Debbie Bunce Email: democraticservices@tendringdc.gov.uk or Telephone on 01255 686573.

DATE OF PUBLICATION: Tuesday, 26 January 2021

AGENDA

1 Apologies for Absence and Substitutions

The Committee is asked to note any apologies for absence and substitutions received from Members.

2 Minutes of the Last Meeting (Pages 1 - 8)

To confirm as a correct record, the minutes of the meeting of the Standards Committee, held on 16 July 2020.

3 Declarations of Interest

Councillors are invited to declare any Disclosable Pecuniary Interests or Personal Interest, and the nature of it, in relation to any item on the agenda.

4 Questions on Notice pursuant to Council Procedure Rule 38

Subject to providing two working days' notice, a Member of the Committee may ask the Chairman of the Committee a question on any matter in relation to which the Council has powers or duties which affect the Tendring District **and** which falls within the terms of reference of the Committee.

5 A.1 - Report of the Monitoring Officer - Review of Planning Probity Code and Protocol (Pages 9 - 52)

To review the Council's Members' Planning Code/Protocol adopted in 2015 following the Local Government Association (LGA) Probity in Planning Guidance – Advice for councillors and officers making planning decisions issued in December 2019.

6 A.2 - Report of the Monitoring Officer - Review of the Complaints Procedure (Pages 53 - 70)

To undertake a review of the Complaints Procedure and recommend any changes to Full Council for adoption.

7 Quarterly Complaints Update

The Monitoring Officer will give an update on existing cases together with general details of new cases, if any

8 Case Review Presentation and Guidance Update for the Committee on Decisions and Actions Taken Nationally

To give the Committee a presentation and guidance update on decisions and actions taken nationally.

Date of the Next Scheduled Meeting

The next scheduled meeting of the Standards Committee is to be held at 10.00 am on Wednesday, 21 April 2021.

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**MINUTES OF THE MEETING OF THE STANDARDS COMMITTEE,
HELD ON THURSDAY, 16TH JULY, 2020 AT 10.00 AM
THE MEETING WAS HELD IN ACCORDANCE WITH THE PROVISIONS OF SI
2020/392. LINK TO THE LIVE STREAM IS FOUND HERE:
[HTTPS://WWW.TENDRINGDC.GOV.UK/LIVEMEETINGS](https://www.tendringdc.gov.uk/livemeetings)**

| | |
|----------------------------|---|
| Present: | Councillors Dan Land (Chairman), Graham Steady (Vice-Chairman), Sue Honeywood and Ann Wiggins |
| Also Present: | Councillor Peter Cawthron |
| In Attendance: | Lisa Hastings (Assistant Director (Governance) & Monitoring Officer), Linda Trembath (Senior Solicitor (Litigation and Governance) & Deputy Monitoring Officer), Ian Ford (Committee Services Manager), Debbie Bunce (Legal and Governance Administration Officer) and Matt Cattermole (Communications Assistant) |
| Also in Attendance: | Sue Gallone, Clarissa Gosling, David Irvine and Jane Watts (the Council's four appointed Independent Persons) |

1. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies for absence were submitted on behalf of Councillors Jo Henderson (with no substitute) and Nicola Overton (with no substitute).

2. MINUTES OF THE LAST MEETING

It was moved by Councillor Steady, seconded by Councillor Wiggins and:-

RESOLVED that the Minutes of the last meeting of the Committee held on 5 February 2020 be approved as a correct record.

3. DECLARATIONS OF INTEREST

There were no declarations of interest made at this time.

4. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 38

There were no such questions on this occasion.

5. REPORT OF THE MONITORING OFFICER - A.1 - LOCAL GOVERNMENT ASSOCIATION MODEL MEMBER CODE OF CONDUCT CONSULTATION

There was submitted a report (A.1) by the Monitoring Officer which sought the Committee's agreement to this Council's formal response to the Local Government Association's (LGA) Model Member Code of Conduct consultation.

The Committee was informed that the LGA had launched its consultation on a draft Model Member Code that could be a template for councils to adopt in whole and/or in part with local amendments. The LGA Consultation document incorporating the draft Model Code of Conduct was attached as Appendix A to the Monitoring Officer's report for Members' consideration.

The Committee was aware that all Councils were required to have a local Member Code of Conduct and that Tendring District Council's Members' Code had been last reviewed and adopted by Full Council in 2018. The Code of Conduct was attached as Appendix B to the Monitoring Officer's report for Members' reference.

It was reported that the LGA draft Model Member Code of Conduct had been developed in consultation with the local government sector and that the LGA had committed to undertake an annual review of the Model Code in order to ensure it continued to be fit for purpose, particularly with respect to advances in technology, social media and any relevant changes in legislation.

Members were made aware that the draft Model Code covered its purpose and application, referred to the seven Principles of Public life, expressly stated what model member conduct as a councillor was expected and set out the minimum requirements through some specific obligations of general conduct. Under each of the specific obligations the LGA had a created additional guidance.

Members were also made aware that, in responding to the consultation, the LGA was asking a number of questions via an online form, however they had produced an information document setting out those questions for responders to consider in advance. That information document was attached as Appendix C to the report.

The Committee was advised that any individual whether an elected Member, Independent Person or Officer could respond to the consultation in their own right. The purpose of the report before it was to establish whether an agreed formal response could be submitted on behalf of Tendring District Council. Therefore Members of the Standards Committee were requested to give consideration to the questions set out in the aforementioned Appendix C.

The Committee was further advised that responding to the consultation would not commit this Council to adopting the Model Member Code of Conduct, in full or in part. The Monitoring Officer suggested that the Standards Committee would wish to consider each aspect, in detail, against a review of its existing Members' Code of Conduct, which could be undertaken later in the year as part of its work programme once the final version of the LGA Model Code was launched.

The Monitoring Officer sought the Committee's views, in particular, in respect of the following questions and matters:-

| <u>Question/Matter</u> | <u>Views expressed by the Committee (including the Independent Persons)</u> |
|--|---|
| The length, quality, clarity etc. of the LGS Model Member Code of Conduct | Consensus was that the Model Code was of good quality and, in particular, positive comments were expressed about its clarity. |
| Should the requested Councillor commitment to "Civility" towards others be amended to be a commitment to "Respect" towards others? | The majority view expressed was that the reference to "Civility" was acceptable. |

| | |
|--|---|
| Question 3: Do you prefer the use of the personal tense, as used in the Code, or would you prefer the passive tense? | The consensus was that the Committee would prefer “I will” or “Councillors will” rather than “Councillors should” as this implies definite, positive action will be taken rather than a perception of an indefinite may or may not take this action approach. |
| Question 8: To what extent do you think the concept of ‘bringing the council into disrepute’ is sufficiently clear? | The consensus of the Committee was that they would like to a widening within the Model Code of this concept. At the moment it is too narrowly focused on behaviour that is considered dishonest and/or deceitful. |
| Question 15: The draft code proposes £25 as the threshold for registering gifts and hospitality, is this an appropriate threshold? | The Committee Members and IPs were split in their views between supporting the LGA’s suggested £25 threshold or maintaining the £50 threshold included within TDC’s current Code of Conduct. |
| <p>Question 16: The LGA will be producing accompanying guidance to the code. Which of the following types of guidance would you find most useful? Please rank 1 – 5, with 1 being the most useful.</p> <ul style="list-style-type: none"> - Regularly updated examples of case law - Explanatory guidance on the code - Case studies and examples of good practice - Supplementary guidance that focuses on specific areas, e.g. social media - Improvement support materials, such as training and e-learning packages | The consensus of the Committee was that they were all very useful and of equal importance, with the exception of case law which should be given a slightly lower score. |

It was moved by Councillor Steady, seconded by Councillor Wiggins and:-

RESOLVED that the Monitoring Officer be authorised, on behalf of Tendring District Council, to submit the agreed response to the Local Government Association’s Model Member Code of Conduct consultation, following a further consultation with the Members of the Committee and the Independent Persons on the contents of that proposed response.

6. WORK PROGRAMME FOR 2020/2021

The Committee gave consideration to its work programme for the 2020/2021 Municipal Year.

Members had before them a suggested work programme which had been submitted by the Monitoring Officer.

It was moved by Councillor Land, seconded by Councillor Wiggins and –

RESOLVED that the annual Work Programme for 2020/2021, as set out below, be approved –

14 October 2020 (provisional date)

- Update on LGA Model Code of Conduct and commence review of Tendring District Council's Code of Conduct
- Review of Planning Probity Code and Protocol
- Quarterly Complaints update by Monitoring Officer

3 February 2021 (provisional date)

- Review of the Complaints Procedure
- Case review and guidance update for the Committee on decisions and actions taken nationally; and
- Quarterly Complaints update by Monitoring Officer

21 April 2021 (provisional date)

- Update on Mandatory training;
- Annual Report on declarations of interest (meetings, gifts and hospitality);
- Work Programme 2021/2022; and
- Quarterly Complaints update by Monitoring Officer

The Committee was aware that individual matters might be referred to the above meetings by the Monitoring Officer in accordance with the Committee's Terms of Reference as necessary, for example an appeal against a dispensation decision or a code of conduct hearing.

7. DISCUSSION TOPICS AND/OR UPDATES FROM THE MONITORING OFFICER

Quarterly Update on Complaints

The Monitoring Officer circulated to the Committee the following quarterly schedule of complaints, which gave an update on cases, without providing any names, and went through it with the Committee.

The Monitoring Officer gave details as follows:-

| Existing Cases since last update: | | | | |
|-----------------------------------|----------------------|----------------|-------------------|---|
| Council | Complainant | Current Status | Final Outcome | Comments |
| Parish | Member of the Public | Closed | No further action | <p>Independent Person consulted.</p> <p>No further action to be taken by the District Council, as it was a private contractual matter but it was recommended to the relevant parties that they consider their actions with a view to improving relationships within the Parish.</p> |
| District (x2) | Member of the Public | Closed | No further action | <p>Ward Councillors had chosen not to respond to the individual, but their actions were not discriminatory as suggested.</p> <p>Relevant Group Leaders were consulted.</p> <p>Councillors had been advised to consider their actions and the Council's reputation if</p> |

| | | | | <p>they continued to take this approach.</p> <p>Complainant had then requested a review, no appeal process in place but under General Complaints Procedure, the Complainant was notified that nothing further would be done but was given a further reassurance that the Councillors concerned had been advised of the perception of their failure to engage with the resident.</p> |
|------------------------------|-------------------|----------------|-------------------|---|
| New Cases since last update: | | | | |
| Council | Complainant | Current Status | Final Outcome | Comments |
| Parish | County Councillor | Closed | No further action | Deemed to be Politically motivated and the Parish Councillor had subsequently acknowledged that they had learnt from the minor error. |

General Notes:

The Monitoring Officer informed the Committee that she had delivered a second Code of Conduct training session to a number of Town and Parish Councillors on 18th February 2020, which had also been attended by a number of District Councillors. The session had been well received with positive feedback provided.

The Monitoring Officer reported that a complaint had been made to the Local Government and Social Care Ombudsman (LG&SCO) concerning a previous matter that had been decided last year. The LG&SCO had decided to take no further action and not to investigate. The LG&SCO had deemed that the Council's Complaints Procedure had been followed, the correct assessment criteria had been applied and their involvement would not produce a different outcome.

Dispensations:

The Monitoring Officer reported that there had been no requests for dispensations received from Members since the last update.

The Committee noted the foregoing.

The meeting was declared closed at 11.02 am

Chairman

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STANDARDS COMMITTEE

3 FEBRUARY 2021

REPORT OF THE MONITORING OFFICER

A.1 MEMBERS' PLANNING CODE/PROTOCOL

(Report prepared by Lisa Hastings)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To review the Council's Members' Planning Code/Protocol adopted in 2015 following the Local Government Association (LGA) Probity in Planning Guidance – Advice for councillors and officers making planning decisions issued in December 2019.

EXECUTIVE SUMMARY

In December 2019, the LGA issued its Probity in Planning Guidance – Advice for Councillors and Officers making planning decisions, which is included as Appendix A. The Standards Committee agreed through its work programme to review the Council's Planning Protocol following the LGA publication.

The LGA's Guidance was circulated to members of the Planning Committee in 2020. The Committee members were also later provided with a note on lobbying following a High Court decision involving the London Borough of Hackney, which confirmed the Council's Protocol was consistent with the practices established within the judgement, so long as it is done openly.

Officers have undertaken a review of the Council's Planning Protocol following both the LGA's Guidance and High Court decision, and it is considered that the recommended practice as set out within the advice and guidance issued by the LGA is covered within the Council's existing Protocol, Members' Code of Conduct and working practices. Consequently, no further changes are being suggested as a result of the LGA's guidance however, it is necessary to include additional wording within the Planning Protocol to cover situations when it is not possible to undertake Site Visits and to clarify this does not impact upon the Planning Committee's ability to determine planning applications.

It is also recommended regular training should be carried out to ensure the principles of Probity in Planning are known and fully understood by Councillors involved with planning decisions.

The LGA Guidance does state that particular care needs to be taken in the use of social media by both Officers and Councillors, where it relates to decision making functions. The use of social media is also an area which has been highlighted by the Local Government Ethical Standards Report published in 2019 and the LGA in its recent work to publish a Model Code of Conduct. Any training delivered for Tendring District Councillors should include a section on using social media.

RECOMMENDATION(S)

It is recommended that the Standards Committee:

1. Notes the contents of the Report and agrees no changes are required to the Council's adopted Members' Planning Protocol as a result of the LGA's Guidance;
2. Approves the recommended wording, as set out within the Report, to be added to the Member's Planning Protocol covering situations where it is not possible for organised Site Visits to be undertaken;
3. Agrees the amendments are minor in nature and follow the implications of the various Coronavirus Regulations in force during 2020 and supports the Monitoring Officer using her delegated powers in accordance with Article 14 of the Constitution;
4. Endorses awareness of the Council's Protocol and the LGA's Guidance on Planning Probity are covered within the regular training programmes for elected Members involved in planning decisions; and
5. Requests that Officers include a section on the use of social media in all training sessions for Members.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The Members' Planning Protocol forms part of the Council's Constitution and demonstrates effective and positive Governance arrangements and promotes the maintenance of integrity, both real and perceived within the Planning Committee's decision making as well as high standards of conduct.

FINANCE, OTHER RESOURCES AND RISK

Finance and Other Resources

Finance

None associated with the content of this report.

Risk

The Council must ensure that any Codes and Protocols which provide guidance for Councillors are up to date with current policy, legislation, case law, good practice and national guidance. The current Members' Planning Protocol was last reviewed in 2018 and it was essential to undertake a further review following the LGA's publication to minimise any risk that the Council's practices were not up to date. Up to date guidance will prevent confusion and legal challenges by way of judicial review to planning decisions based on failure to declare interests, predetermination or bias.

LEGAL

This Protocol follows best practice and assists the Council to fulfil its statutory duty to promote and maintain high standards of conduct for both members and officers.

The judgement of Mr Justice Dove can be found in R. (Holborn Studios Ltd) v. London Borough of Hackney [2020] EWHC 1509 (Admin).

The Planning Protocol is integrated within the Constitution at Part 6. The Monitoring Officer has delegated authority in accordance with Article 15 of the Constitution to make minor changes to the Constitution arising from new legislation. Although, the changes being recommended do not immediately stem from new legislation, they are necessary as a consequence of the COVID-19 pandemic and the restrictions which have been put in place through the various Regulations passed in 2020. Therefore, it is considered appropriate for the delegation to be used in this instance, the changes are very minor in nature and support the business continuity arrangements in place for the Planning Committee since March 2020.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder/Equality and Diversity/Health Inequalities/Area or Ward affected/Consultation/Public Engagement.

Wards Affected: All

PART 3 – SUPPORTING INFORMATION

BACKGROUND

In 2015, the Council adopted the Members' Planning Code/Protocol which was subsequently reviewed in 2018. The Council's Protocol is based on the Model Council Members' Planning Code or Protocol produced by the national body "*Lawyers in Local Government (LLG)*". The Model Code was produced in accordance with the changes to the ethical framework in 2012 and guidance issued by the then DCLG.

The adopted Members' Planning Protocol forms Part 6 of the Constitution, relating to Codes and Protocols and is attached to the report as Appendix B.

CURRENT POSITION

Officers have undertaken a review of the Council's Members' Planning Protocol following both the LGA's Guidance and High Court decision, and it is considered that the recommended practice as set out within the advice and guidance issued by the LGA is covered within the Council's existing Protocol, Members' Code of Conduct and working practices. The Council's Protocol already makes reference to the Probity in Planning guidance previously issued by the LGA. Consequently, no further changes are being suggested as a result of the LGA's guidance however, it is necessary to include additional wording within the Members' Planning Protocol to cover situations when it is not possible to undertake Site Visits and to clarify this does not impact upon the Planning Committee's ability to determine planning applications. The Planning Advisory Service has suggested that local authorities should review their Planning Committee Protocols in respect of site visits as a consequence of the COVID-19 pandemic.

SITE VISITS:

It is important to note that site visits are not legal requirements for the determination of planning applications but are carried out in practice. As highlighted in Section 12 of the

LGA Guidance, local planning authorities should have a clear and consistent approach on when and why to hold a site visit and how to conduct it. Prior to the COVID-19 pandemic Tendring District Council undertook site visits for all applications to be determined by the Planning Committee and the Members' Planning Code & Protocol contains site visit provisions.

When the Government introduced the lockdown at the end of March and strict social guidelines thereafter, local planning authorities shortly thereafter received a letter from the Ministry of Housing, Communities and Local Government's Chief Planner advising Councils to continue with the determination of planning applications, decision making and adopting innovative approaches to ensuring the planning system continued to function, especially where this will support the local economy. Shortly thereafter, new legislation was passed to allow Councils to conduct formal meetings remotely.

As part of the Council's Business Continuity arrangements for decision making during these times, how site visits could be undertaken and the health and safety considerations was taken into account. It was accepted that the previous arrangements would not be appropriate and at the time were in breach of the strict social distancing requirements and travel restrictions, as well as considering whether Members of the Planning Committee were shielding.

Even though some of the social distancing measures have been relaxed, at times, over the last 10 months, the ability for Planning Committee members to travel together and attend a site visit along with others has still not been considered to be a safe practice (and at the time of this Report is prohibited under current lockdown arrangements). Reviews were undertaken throughout 2020 following new government guidance and Regulations coming into force. The Planning Inspectorate published guidance on site visits, updated on 12th January 2021, confirmed although Inspectors had re-started site visits these are only being undertaken where safe and appropriate to do so (with very limited numbers in attendance and strict social distancing and face coverings being worn).

Members have been actively encouraged to make their own independent visit to the site (subject to the prevailing national restrictions on travel) and view it informally and where it is safe to do so, some members do this on their own, and others go in small groups (subject to the restrictions in place at the relevant time). The Committee are also provided with video footage and extra images are being sought where either the Members or Officers feel it would be necessary to do so. All of this information is published on the Council's planning portal together with the application for openness and transparency.

The above arrangements were put in place through Business Continuity and it is recommended that an additional paragraph is included to cover situations where it is not possible to undertake site visits and if unable to do so, this does not impact on the Committee's ability to determine a planning application.

RECOMMENDED ADDITIONAL WORDING FOR SITE VISITS:

Section 7 of the Council's Planning Protocol sets out the provisions relating to Site Visits, it is recommended that at the end of the section the wording below is inserted. The Chairman of the Planning Committee has been consulted on the proposed wording and is in agreement with the recommendation:

"Exception to the Council's Local Practice of Undertaking Site Visits

- *Whilst it is the Council's standard local practice to undertake site visits, there will be*

exceptional circumstances, where an organised site visit is not possible.

- *Site visits are not legally required for the determination of planning applications but forms part of local practice, which protocols must clearly set out. If a site visit cannot be organised, due to exceptional circumstances, a planning application can still be determined by the Committee, so long as the guidance issued by the Council is adhered to.*
- *Should circumstances prevail where the Council has had to determine it is not possible to organise a site visit, Members of the Committee will be issued with guidance by the Monitoring Officer, which is relevant to the particular situation arising. Such guidance will take into account health and safety risk assessments, current legislation and central government guidance, including that issued by the Planning Inspectorate and/or the Chief Planning Officer.*
- *Although this Protocol will not set out the guidance to be issued, being dependent upon the circumstances at the time, alternative arrangements will ensure the Principles of Planning in Probity are maintained and observed so as not to prejudice the Council's decision making."*

LOBBYING:

The High Court ruled in 2020, for the first time, whether members of the public can write to councillors, and whether councillors can read those letters in advance of taking decisions. The case concerned the practice of the London Borough of Hackney of prohibiting planning committee members from reading correspondence sent to them about forthcoming applications. This is not the position at Tendring District Council, the Members' Planning Protocol follows national guidance and has put in place protections for Councillors when being lobbied. Such provisions include advising Councillors not to agree to any meetings with applicants or objectors, without officers being present and to make sure that if Planning Committee members are approached directly they should make it clear they must remain open minded to be able to participate in the decision making. Members of the Planning Committee are advised to forward lobbying material onto officers for protection, but they are not prevented from reading it. If Members have been lobbied this should be referred to at the meeting for openness and transparency.

The particular issue at the heart of the case was whether the public could write to councillors about decisions they will be making and whether those councillors could consider those representations. The point was remarkably free of any judicial authority, apart from a passing comment by Dove J in [R\(Legard\) v Royal Borough of Kensington and Chelsea](#) [1] that "*As democratically elected representatives they are expected to receive and consider representations and lobbying from those interested in the issues they are determining*".

Dove J referred to the LGA's publication "*Probity in Planning*" which says "*Lobbying is a normal part of the planning process*". It was "*indisputably correct*" that "*that issues in relation to freedom of expression and the application of Article 10 of the ECHR were engaged in the communication between members of a local authority, and in particular members of a planning committee, and members of the public who they represent and on whose behalf they were making decisions in the public interest*". He held (para 78):

"Similarly, bearing in mind the importance of the decisions which the members of the planning committee are making, and the fact that they are acting in the context of a democratically representative role, the need for the communication of views and opinions between councillors and the public whom they represent must be afforded significant weight. In my view, it would be extremely difficult to justify as

proportionate the discouragement, prohibition or prevention of communication between public and the councillors representing them which was otherwise in accordance with the law. Here it was no part of the defendant's case to suggest that the communication which the claimant made in their correspondence in respect of the committee report was anything other than lawful."

Mr Justice Dove concluded (para 79):

"Receiving communications from objectors to an application for planning permission is an important feature of freedom of expression in connection with democratic decision-taking and in undertaking this aspect of local authority business. Whilst it may make perfect sense after the communication has been read for the member to pass it on to officers (so that for instance its existence can be logged in the file relating to the application, and any issues which need to be addressed in advice to members can be taken up in a committee report), the preclusion or prevention of members reading such material could not be justified as proportionate since it would serve no proper purpose in the decision-taking process. Any concern that members might receive misleading or illegitimate material will be resolved by the passing of that correspondence to officers, so that any such problem of that kind would be rectified. In my view there is an additional issue of fairness which arises if members of the planning committee are prevented from reading lobbying material from objectors and required to pass that information unread to their officers. The position that would leave members in would be that they would be reliant only on material from the applicant placed on the public record as part of the application or the information and opinions summarised and edited in the committee report. It is an important feature of the opportunity of an objector to a planning application to be able to present that objection and the points which they wish to make in the manner which they believe will make them most cogent and persuasive. Of course, it is a matter for the individual councillor in the discharge of his responsibilities to choose what evidence and opinion it is that he or she wishes to study in discharging the responsibility of determining a planning application, but the issue in the present case is having the access to all the material bearing upon the application in order to make that choice. If the choice is curtailed by an instruction not to read any lobbying material from members of the public that has a significant impact on the ability of a member of the public to make a case in relation to a proposed development making the points that they wish to make in the way in which they would wish to make them.

The judgment establishes, surprisingly for the first time, the right of local councillors to receive correspondence from the public and to consider it when making decisions. Part of that is the right of the public to write. There is also a recognition that Members can and will be lobbied, whether in writing, in meetings, at social events or chatting in the street. Provided that is done openly, in particular that correspondence is copied to officers whether by the writer or the recipient, that is not simply legitimate, but an important part of the democratic process.

The Case is helpful for written correspondence, but does not extend to face to face communication. The reason why site visits in Tendring were structured in the way they were was to ensure maximum protection to Councillors in the decision making process to avoid any accusations of pre-determination, bias or taking into account irrelevant factors instead of material considerations for planning purposes. During the time in which Members of the Planning Committee are attending the sites without the officers in

attendance, advice would be to make it clear to anyone who does approach the Member, the importance of Planning Probity and maintaining impartiality at all times. For additional protection and maximum openness and transparency Planning Committee Members should notify those that approach them that they'll be declaring they've been lobbied at the Planning Committee meeting. Members of the Planning Committee were provided with this advice following the High Court decision.

BACKGROUND PAPERS FOR THE DECISION

There are no background papers arising from this report.

APPENDICES

Appendix A: Local Government Association Probity in Planning Guidance – Advice for Councillors and Officers making planning decisions issued in December 2019.

Appendix B - Model Council Members' Planning Code/Protocol

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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.¹

“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 London² 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.

¹ contact_pas@local.gov.uk

² 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)³ 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

³ 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 guidance⁴ (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.’⁵ 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.

⁴ www.gov.uk/government/collections/planning-practice-guidance

⁵ However, for a recent judicial interrogation of material consideration, see the recent case of R (Wright) v Resilient Energy Severndale 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 2019.⁶ 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)⁷ 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.

⁶ 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

⁷ 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,⁸ 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)⁹ 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.

8 www.rtpi.org.uk/media/1736907/rtpi_code_of_professional_conduct_-_feb_2016.pdf

9 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)¹⁰ 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 2012.¹¹ 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.

¹⁰ www.legislation.gov.uk/all?title=Localism%20Act

¹¹ 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 2013.¹²

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.

¹² 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 report¹³ 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.

¹³ 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).¹⁴ 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.

¹⁴ www.legislation.gov.uk/ukpga/1990/8/contents

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.

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).¹⁵ 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.

¹⁵ 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

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

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

Royal Town Planning Institute Code of Professional Conduct

www.rtpi.org.uk/media/1736907/rtpi_code_of_professional_conduct_-_feb_2016.pdf

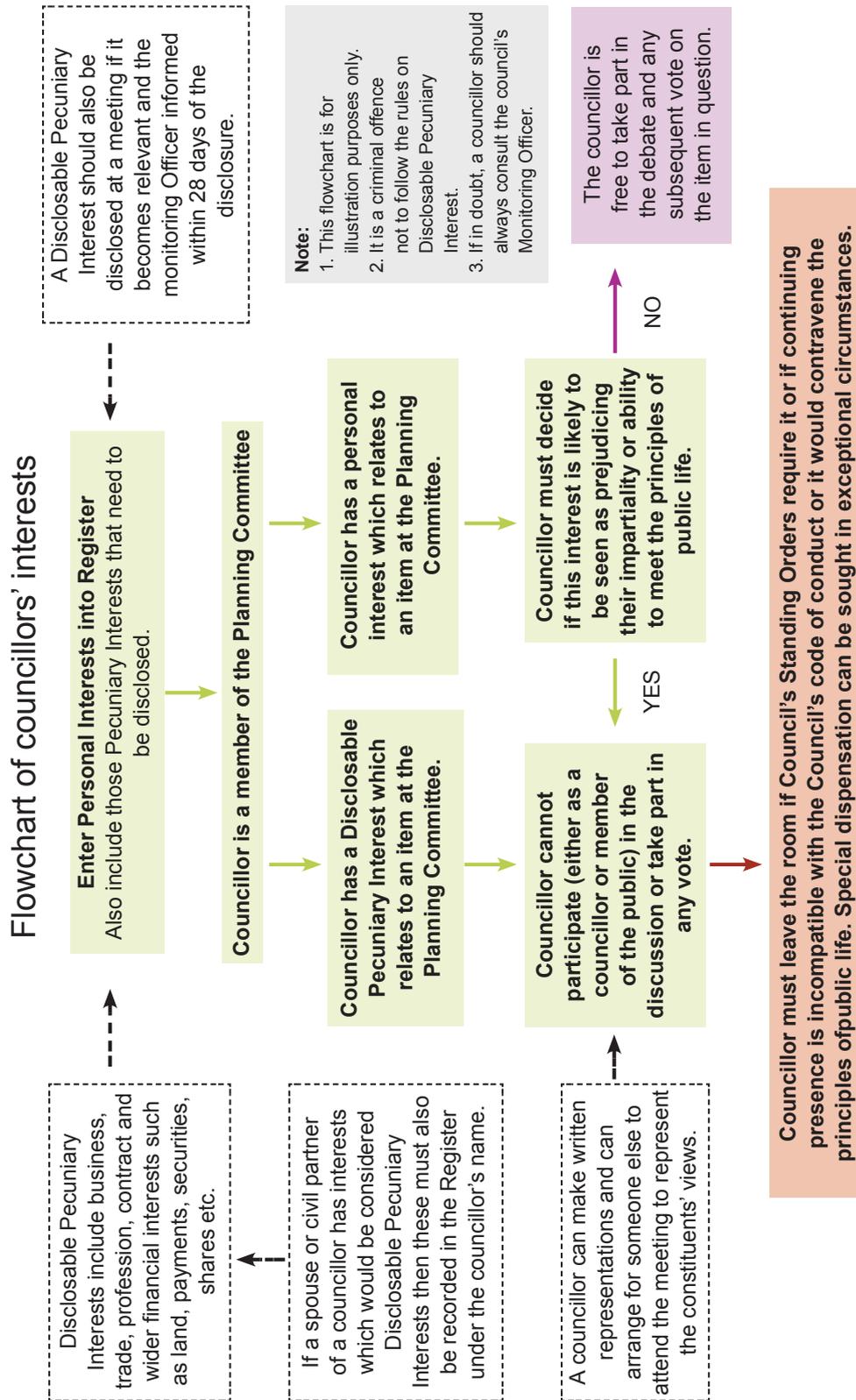
RTPI Guidance on Probity for Professional Planners

www.rtpi.org.uk/probity

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

Appendix 1 Flowchart of councillors' interests





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please contact us on 020 7664 3000.
We consider requests on an individual basis.

Tendring District Council



MEMBERS' PLANNING CODE & PROTOCOL Updated May 2018

Background:

The Members' Planning Code of Good Practice as originally prepared in response to a series of successful court challenges concerning themselves with local planning authorities and the Members' conduct or conflicts of interest. It replaced what was a number of individual and sometimes haphazard approaches in individual councils at the time.

The drafting of the model code was subject to consultation and comment from a number of local authorities through the machinery of the Association of Council Secretaries and Solicitors (now LLG), the Local Government Association, the Local Government Ombudsman, Audit Commission and from firms of solicitors or counsel acting on their behalf.

This update takes into account the update to the Seven Principles of Public Life (the "Nolan principles") and commentary from the Committee on Standards in Public Life, the changes in the approach to codes of conduct and also to predetermination introduced by the Localism Act 2011 and the guide on "Openness and Transparency on Personal Interests" published by the Department for Communities and Local Government in 2013.

For further reading please refer to "Probity in Planning" issued by the Local Government Association.

Introduction:

The aim of this Protocol: to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way. One of the key purposes of the planning system is to regulate the development and use of land in the public interest. **Your role as a Member of the Planning Committee** is to make planning decisions openly, impartially, with sound judgment and for justifiable reasons. You are also a democratically accountable decision-taker who had been elected to provide and pursue policies. You are entitled to be predisposed to make planning decisions in accordance with your political views and policies **provided** that you have considered all material considerations and have given fair consideration to relevant points raised.

When the Protocol applies this Protocol applies to Members at all times when involving themselves in the planning process (this includes when taking part in the decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

If you have any doubts about the application of this Protocol to your own circumstances you should seek advice early, from the Monitoring Officer or one of their staff, and preferably well before any meeting takes place.

1. Relationship to the Members' Code of Conduct

- Do apply the rules in the Members' Code of Conduct first, which must always be complied with. This is both the rules on Disclosable Pecuniary Interests (DPIs) and any other interests identified by your Authority, and the general rules and obligations giving effect to the Seven Principles of Public Life: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.
- Do then apply the rules in this Members' Planning Protocol, which seek to explain and supplement the Members' Code of Conduct and the law on decision making for the purposes of planning control. If you do not abide by this Members Planning Protocol, you 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 or, if the failure is also likely to be a breach of the interest provisions of the Localism Act 2011, a complaint being made to the Police to consider criminal proceedings.

2. Development Proposals and Interests (as defined by the Code of Conduct)

- Do disclose the existence and nature of your interest as required by the Members' Code of Conduct.
- Do take into account when approaching a decision that the principle of Integrity is defined in terms that

"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**".

It is therefore advisable that you:

- **Don't** 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 personal conflict of interest in a proposal, using your position to discuss that proposal with officers or Members when other members of the public would not have the same opportunity to do so.
- Do 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.
- Do notify the Monitoring Officer in writing where it is clear to you that you have a Disclosable Pecuniary Interest or other personal conflict of interest and note that:
 - you should send the notification no later than submission of that application where you can;

- the proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers;
- you must not get involved in the processing of the application; and
- it is advisable (but not mandatory) that you employ an agent to act on your behalf in respect of the proposal when dealing with officers and in public speaking at Committee.

3. Fettering Discretion in the Planning Process
(natural justice, predisposition and predetermination)

- **Don't** fetter your discretion by approaching the decision with a closed mind.
- **Do** be aware that in your role as an elected Member you are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the Localism Act 2011.
- **Do** keep at the front of your mind, when you come to make the decision, you
 - are entitled to have and to express your own views on the matter, provided you are prepared to reconsider your position in the light of all the evidence and arguments;
 - must 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;
 - are not required to cast aside views on planning policy you held when seeking election or otherwise acting as a Member, in giving fair consideration to points raised;
 - are only entitled to take account a material consideration and must disregard considerations irrelevant to the question and legal context at hand; and
 - are to come to a decision after giving what you feel is the right weight to those material considerations.
- **Do** 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 both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating that proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal on its planning merits.
- **Do** 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 and County Councillor), provided:
 - the proposal does not substantially affect the well-being or financial standing of the consultee body;
 - you make it clear to the consultee body that:
 - your views are expressed on the limited information before you only;
 - 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; and
 - you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee.

- **Do explain that you do not intend to speak and vote as a member of the Committee because you will be perceived as having judged (or you reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.**
- **Do take the opportunity to exercise your separate speaking rights as a Ward/Local Member where you have represented your views or those of local electors and fettered your discretion, but do not have a disclosable or other personal conflict of interest. Where you do:**
 - advise the proper officer or Chair that you wish to speak in this capacity before commencement of the item;
 - remove yourself from the seating area for members of the Committee for the duration of that item; and
 - ensure that your actions are recorded.

4. Contact with Applicants, Developers and Objectors

- **Do refer those who approach you for planning, procedural or technical advice to officers.**
- **Don't agree to any formal meetings 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 seek to arrange that meeting yourself through a request to the Head of Planning or Planning Manager 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 application file and the record of the meeting is disclosed when the application is considered by the Committee.**
- **Do otherwise:**
 - follow the Authority's rules on lobbying;
 - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
 - report to the Head of Planning or Planning Manager 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 [a proforma has been supplied to you for this purpose].

In addition in respect of presentations by applicants/developers:

- **Don't attend a planning presentation without requesting an officer to be present.**
- **Do ask relevant questions for the purposes of clarifying your understanding of the proposals.**
- **Do 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 appropriate Committee of the Planning Authority.**
- **Do 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.**

5. Lobbying of Councillors

- **Do 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 such a firm point of view that it amounts to the same thing.**

- **Do remember that your overriding duty is to the whole community not just to the people in your ward/division 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.**
- **Don't accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible, including its addition to your register of interests where relevant.**
- **Do copy or pass on any lobbying correspondence you receive to the Head of Planning or Planning Manager at the earliest opportunity.**
- **Do promptly refer to the Head of Planning or Planning Manager any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.**
- **Do 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.**
- **Do declare that you have been lobbied on any particular matter at the Planning Committee when the application is being considered under the Declaration of Interests item of the agenda.**
- **Do note that, unless you have a disclosable or overriding other personal conflict of interest, you will not have fettered your discretion or breached this Planning Protocol through:**
 - Listening or receiving viewpoints from residents or other interested parties;
 - Making comments to residents, interested parties, other Members or appropriate officers (making clear that you must keep an open mind when it comes to making the decision)
 - Seeking information through appropriate channels; or
 - Being a vehicle for the expression of opinion of others in your role as a ward/division Member.

6. Lobbying by Councillors

- **Don't become a member of, lead or represent an organisation whose primary purpose is to lobby or 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.**
- **Do join general interest groups which reflect your area of interest and which concentrate on issues beyond particular planning proposals (such as the Victorian Society, CPRE, Ramblers Association or local civic society), but you should normally seek to disclose that interest on the grounds of transparency where the organisation has made representations on a particular proposal.**
- **Don't 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.**

- **Don't** decide or discuss how to vote on any application at any political group meeting, or lobby any other Member to do so. Political Group Meetings should never indicate how Members should vote on a planning issue.

7. Site Visits/Inspections

- **Do** attend site visits organised by the Council, otherwise you will NOT be permitted to sit on the Committee for those items.
- **Do** ensure that you report back to the Committee any information gained from the site visit that you feel would benefit all Members of the Committee.
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- The Chairman will open the formal site visit and invite Officers to point out relevant features of the site and its surroundings. The Chairman will then invite one at a time, from those present, in the following order:
 - the applicant;
 - local Ward Members; and
 - Town and Parish Councillors

to point out any relevant features of the site and its surroundings and raise any site-related issues that they wish to draw to the attention of the Councillors. Councillors will be able to see the physical features of the site and ask questions of any speaker. There will be no discussion of the merits of the case, and all questions from Councillors and other speakers must be put through the Chairman.

- The Planning Committee party will stay together as a group. No lobbying by applicants or objectors will be allowed at the site visit. If an applicant or objector(s) persist(s) in attempting to lobby, all Councillors and Officers will leave the site.
- **Don't** express opinions or views
- **Don't** 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:
 - you feel it is essential for you to visit the site other than through attending the official site visit.
 - you have first spoken to the Head of Planning or the Planning Manager about your intention to do so and why (which will be recorded on the file) and
 - you can ensure you will comply with these good practice rules on site visits.

8. Public Speaking at Meetings

- **Don't** 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 Chairman, as this may give the appearance of bias.
- **Do** ensure that you comply with the Council's procedures in respect of public speaking.

9. Officers

- **Don't** put pressure on officers to put forward a particular recommendation. This does not prevent you from asking questions or submitting views to the Head of Planning or the Planning Manager, which may be incorporated into any committee report.
- **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with the Corporate Director or Head of Planning or those officers who are authorised by their Corporate Director or Head of Planning to deal with the proposal at a Member level.
- **Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

10. Decision Making

- **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your planning reasons are recorded and repeated in the report to the Committee.
- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **Do** comply with section 38 of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.
- **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present at the entire debate, including the officers introduction to the matter.
- **Do** have recorded the reasons for the Committee's decision to defer any proposal [and that this is in accordance with the Council's protocol on deferrals].
- **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan, that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

11. Training

- Members that have been nominated by their Group Leaders can act as a designated substitute member of the Planning or Planning Policy and Local Plan Committees. Any member of a political group is eligible to be a designated substitute member providing

that they have received training in relation to planning matters under a continuing programme arranged by the Council.

- The Council provides training for Councillors on development control, local plan making and/or other planning matters at least once a year. The Council also aims to provide more specialist training to update knowledge, cover particular copies or to look at matters in greater depth. Training events are open to all Councillors and where places are limited, current members and named substitutes of the Planning and Local Plan Committees will take priority.
- **Don't** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.
- **Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.
- **Do** participate in the organised training, reviewing a sample of planning decisions to ensure that Members judgements have been based on proper planning considerations.

Adapted from the Guidance Produced by Lawyers in Local Government (LLG) and adopted by the Standards Committee December 2014 (amended pursuant to a delegation from the Standards Committee in September 2016).

STANDARDS COMMITTEE

3 FEBRUARY 2021

REPORT OF THE MONITORING OFFICER

A.2 COMPLAINTS PROCEDURE

(Report prepared by Lisa Hastings, Monitoring Officer)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To undertake a review of the Complaints Procedure and recommend any changes to Full Council for adoption.

EXECUTIVE SUMMARY

The Standards Framework includes the Complaints Procedure (contained within the Members' Constitution Booklet). The Council's statutory duty is to promote and maintain high standards of conduct and building public confidence by demonstrating a commitment to maintaining positive behaviours in relation to all seven principles of public life.

The current Procedure, attached as Appendix A, was initially adopted by full Council in November 2013 and amended in 2017 following a review and recommended changes from the Standards Committee.

Delegation is given to the Monitoring Officer throughout the Procedure to undertake key elements of the complaints process to maximise independence from the political process.

Through a recent referral to Essex Police, regarding an alleged Disclosable Pecuniary Interest offence under the Localism Act 2011, the Monitoring Officer was requested to confirm the Legal Jurisdiction Criteria Test had been evaluated and met prior to referring the complaint to the Police. The Monitoring Officer was requested to provide assurance that the following applied prior to further Police involvement:

- (a) The alleged conduct took place after the commencement of Section 34 of the Localism Act 2011.
- (b) The Subject Member was a member of the Council at the time of the alleged conduct.
- (c) The Subject Member was acting in an official capacity as a Councillor at the time of the alleged conduct.
- (d) The Subject Member was not acting as a member of another authority at the time of the alleged conduct.
- (e) If the facts are capable of establishment as a matter of evidence, the alleged conduct could be capable of a breach of the Code of Conduct.
- (f) That the complaint is not about dissatisfaction with the Council's decisions, policies and priorities.

In the event, the above assurances are given, the Police will consider commencing a criminal investigation, if crucially part (e) can be established regarding actual evidence, which the Monitoring Officer may be asked to provide.

The test and evaluation is undertaken implicitly by the Monitoring Officer however it is not expressly referred to within the Complaints Procedure. Consequently, it is recommended that paragraph 4.5 of the Complaints Procedure is amended to state:

*“If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power and obligation to notify or refer to the Police or other regulatory agencies, **subject to the necessary Legal Jurisdiction Criteria Test being applied**”.*

No other changes to the Complaints Procedure are recommended however, the Standards Committee may wish to discuss and suggest additional amendments.

RECOMMENDATION

That the Standards Committee recommends to full Council that paragraph 4.5 of the Complaints Procedure contained within Part 6 of the Constitution is amended to include the additional text *“subject to the necessary Legal Jurisdiction Criteria Test being applied”.*

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The Complaints Procedure dealing with alleged breaches of the Members’ Code of Conduct forms part of the Council’s Constitution. The Procedure demonstrates effective and positive Governance arrangements and promotes the maintenance of integrity of decision making within the Standards Framework.

FINANCE, OTHER RESOURCES AND RISK

Finance and Other Resources

Finance

None associated with the content of this report.

Risk

The Council must ensure that any Codes and Protocols are up to date with current policy, legislation, case law, good practice and national guidance. The current Members’ Complaints Procedure was last reviewed in 2018 and it was essential to undertake a further review to ensure it remains up to date. The Local Government and Social Care Ombudsman has determined previously that the Council’s Complaints Procedure is robust and correctly followed.

LEGAL

Section 34 of the Localism Act 2011 creates a number of criminal offences in relation to failure to observe requirements in respect of Disclosable Pecuniary Interests, which fall to the Police to investigate. However, the Monitoring Officer may be required to produce evidence to assist with any enquires or assessment by the Police.

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| BACKGROUND PAPERS |
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| None |
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| APPENDICES |
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| Appendix A: Tendring District Council Complaints Procedure |
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TENDRING DISTRICT COUNCIL COMPLAINTS PROCEDURE

1. Context

- 1.1 These “Arrangements” set out how you may make a complaint that an elected or co-opted member (with voting rights) of this Authority (‘Tendring District Council’ or of a Town or Parish Council within its area (see 1.3.below)) has failed to comply with the Member Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the Member Code of Conduct.
- 1.2 Under **Section 28(6) and (7) of the Localism Act 2011**, Tendring District Council must have in place “arrangements” under which allegations that a Member or co-opted Member of the Authority (*or of a Town or Parish Council within the authority’s area*), or of a Committee or Sub-Committee of the Authority, has failed to comply with the Code of Conduct can be investigated and decisions made on such allegations.
- 1.3 Town and Parish Councils within the Tendring District are set out on the Council’s website.
- 1.4 Such arrangements must provide for the District Council to appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation against a Member, which it has decided shall be investigated, and whose views can be sought by the District Council at any other stage. The Council has adopted an Independent Person Protocol which sets out some general principles.

2. The Member Code of Conduct

- 2.1 The Council has adopted a Code of Conduct for Councillors, which is available on the website or on request from reception at the Council Offices.
- 2.2 Each Town or Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Town or Parish Council’s Code of Conduct, you should visit the website operated by the Town or Parish Council or request the Town or Parish Council Clerk to allow you to inspect the Town or Parish Council’s Code of Conduct.

3. Making a complaint

- 3.1 If you wish to make a complaint, please write to or email:

The Monitoring Officer, Tendring District Council
Corporate Services, Town Hall, Station Road
Clacton-on-Sea Essex CO15 1SE

standards@tendringdc.gov.uk

The Complaints Form can be downloaded from the website.

3.2 The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the system in respect of complaints of member misconduct. This information will be retained by the Council for a period of two years in accordance with its Retention and Destruction Policy. The Council has adopted a Monitoring Officer Protocol which sets out some general principles.

3.3 In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the complaint form which is available on request from the reception at the Council Offices or via the website. You must also include all relevant information relating to the complaint which you have to enable it to be fully considered.

Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. The name and address of a complainant will be provided to the member that is the subject of the complaint. In exceptional cases, we may agree to withhold your name and address from the member. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form along with the reasons why you feel it is necessary for your name and address to be withheld. The Monitoring Officer will consider your request and if granted we will not disclose your name and address to the member against whom you make the complaint, without your prior consent.

3.4 The authority does not normally investigate anonymous complaints, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct and there is a clear public interest in doing so.

3.5 Following receipt of your complaint, the Monitoring Officer will: -

- (a) acknowledge receipt of your complaint within 10 working days of receiving it;
- (b) notify, within 10 working days, the member that is the subject of the complaint that you have made a complaint about them and provide them with the information set out on the complaint form; excluding any personal information but including your name and address, unless this is to be withheld in accordance with section 3.3 above; and
- (c) keep you and the Member that is the subject of the complaint informed of the progress of your complaint.
- (d) Your complaint will be given a reference number which will appear on complaint documentation to preserve the privacy of the complainant and the subject Member until the complaint outcome is determined.

3.6 The Complaints Procedure Flowchart is set out at the end of this procedure for reference.

3.7 The Complaints Procedure follows the principles of natural justice and the presumption of innocence until proven otherwise.

3.8 Both Parties are encouraged to keep the matter of the complaint confidential whilst it is progressing in accordance with this complaints procedure. The Monitoring Officer

will also adhere to this confidentiality and only inform/contact any such individuals which are identified in the procedure or by the parties. If the details of the complaint are made public, it may be necessary for a statement to be issued by the Monitoring Officer for clarification only.

4. Will your complaint be investigated?

4.1 The Monitoring Officer will review every complaint received and, may consult with one of the Independent Persons before taking a decision as to whether the complaint:

4.1.1 Merits no further action

4.1.2 Merits early informal resolution or mediation

4.1.3 Merits further investigation.

4.2 In reaching a decision in respect of how to progress the complaint the Monitoring Officer will take account of the following factors where appropriate:-

- Was the Member acting in their official capacity?
- Was the Member in office at the time of the alleged misconduct?
- Is the complaint of a very minor or trivial nature?
- Is the complaint vexatious or malicious?
- Are there historical matters?
- Is there a potential breach of the Code?
- Assessment of public interest?
- Is additional information required prior to making a decision?

4.3 The decision as to how the complaint is to be progressed will normally be taken within 15 working days of receipt of your complaint. Your complaint will be considered in accordance with the Assessment Criteria included at **Annex D (set out at the end of this procedure for reference)**.

Where the Monitoring Officer has taken a decision, you will be informed of the decision and the reasons for that decision. The Monitoring Officer may require additional information in order to come to a decision, and may come back to you for such information. In the absence of a response from you within 15 working days the Monitoring Officer may close the complaint. Information may be requested from the member against whom your complaint is directed to enable the Monitoring Officer to take the decision. In the absence of the subject Member's response within 15 working days the Monitoring Officer may proceed with the complaint.

Where your complaint relates to a Town or Parish Councillor, the Monitoring Officer *may* also inform the Town or Parish Council of your complaint and seek the views of the Town or Parish Council before deciding whether the complaint merits formal investigation.

Any failure to comply with the time scale by the Monitoring Officer or parties concerned will be notified to the Standards Committee or Sub-Committee together with reasons for the delay and the member subject of the complaint and the complainant will be kept informed of progress and reasons for the delay.

- 4.4 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally through informal resolution, without the need for a formal investigation. Such informal resolution may involve notifying the Group Leader and the Member accepting that his/her conduct was unacceptable and/or offering an apology, and/or agreeing to mediation and/or other remedial action by the authority. Where the Member or the Authority make a reasonable offer of informal resolution, but you are not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint merits further investigation.

Where the Member subject of the complaint is the Group Leader, appropriate alternative arrangements will be required for informal resolution or mediation; this will be dependent upon whether the Group has allocated a Deputy to undertake this role, involve the Group Leader directly or an independent individual or suitable alternative, depending upon the circumstances.

- 4.5 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power and obligation to notify or refer to the Police or other regulatory agencies.

5. Referral to the Standards Committee or Sub-Committee and how is the Investigation conducted?

(The Committee and Sub-Committee Terms of Reference are included at **Annex C (set out at the end of this procedure for reference)**).

- 5.1 The Council has adopted a procedure for the investigation of misconduct complaints a summary of which is attached as **Annex E (set out at the end of this procedure for reference)**.

The Council has a Town and Parish Councils' Standards Sub-Committee which has responsibility for dealing with complaints regarding the actions of a Town or Parish Councillor, reference to the Sub-Committee throughout this procedure relates to the Town and Parish Council's Standards Sub-Committee.

- 5.2 If the Monitoring Officer decides that a complaint merits further investigation without referral to the Standards Committee or Sub-Committee, he/she will commission the investigation to be undertaken by a suitably qualified investigator with requisite experience and may include another officer of the Council, a senior officer of another authority or an appropriately experienced consultant, ensuring that independence and impartiality is maintained.

When deciding that a complaint merits further investigation, the Monitoring Officer may, in exceptional circumstances, refer the matter to the Council's Standards Committee or Sub-Committee, with a recommendation together with any information received from either the complainant or member who is the subject of the complaint. The Committee or Sub-Committee, upon consideration of this recommendation and information, may decide that the complaint merits no further action, conciliation or similar resolution.

- 5.3 The Investigating Officer or Monitoring Officer will decide whether he/she needs to meet you or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents need to be seen and who needs to be interviewed. Any information supplied to the Monitoring Officer or Investigating Officer will be kept confidential within the remit of the investigation and therefore, maybe shared with the parties. It is important to note that if a hearing is required at a later date, and the Standards Committee is convened the information disclosed will be available to the public in accordance with the Access to Information legislation, which the Council has to abide by when conducting meetings.
- 5.4 As referred to in section 3.5, upon receipt of your complaint the member that is the subject of the complaint will ordinarily be informed that you have made a complaint about them and will be provided with details of the complaint. If an investigation is to be undertaken, the Investigating Officer or Monitoring Officer will normally write to the Member against whom you have complained and provide him/her with full details of your complaint, (including your name and address but excluding any additional or sensitive personal information) and formally ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is felt appropriate to continue to keep your identity confidential or where disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay providing full details of the complaint to the member until the investigation has progressed sufficiently.
- 5.5 At the end of his/her investigation, the Investigating Officer or Monitoring Officer will produce a draft report (“the Investigation Report”) and will, in all cases, send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to identify any matters in that draft report which you disagree with or which you consider requires more consideration.
- 5.6 Having received and taken account of any comments which you, or the Member that is the subject of the complaint, may make on the draft Investigation Report, the report will be finalised. Where an Investigating Officer has been appointed the Investigating Officer will send his/her final report to the Monitoring Officer together with a conclusion as to whether the evidence supports a finding of failure to comply with the Code of Conduct.
- 6. What happens if the Investigating Officer or Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**
- 6.1 If an Investigating Officer has been appointed, the Monitoring Officer will review the Investigating Officer’s report and may consult with the Independent Person(s). If he/she is satisfied that the Investigating Officer’s report is sufficient, subject to 6.3 below, the Monitoring Officer will write to you and to the member concerned (*and, if appropriate, to the Town and Parish Council, where your complaint relates to a Town or Parish Councillor*), notifying you that he/she is satisfied that no further action is required, and give you both a copy of the Investigation Final Report. The Monitoring

Officer will also notify the Standards Committee or Sub-Committee and the relevant Independent Person.

- 6.2 If an Investigating Officer has been appointed and if the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.
- 6.3 The Monitoring Officer, may at their own discretion and only in exceptional cases, following consultation with the Chief Executive, decide to refer cases to the Committee for determination where the outcome of an investigation was to recommend no breach of the Code of Conduct. Exceptional cases may include but not limited to matters where the evidence is so finely balanced or is in the public interest to do so.

7. What happens if the Investigating Officer or Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

- 7.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and will then either refer the matter for a hearing before the Standards Committee or Sub-Committee or in consultation with one of the Independent Persons seek an informal resolution or mediation.

7.1.1 Informal Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with one of the Independent Persons and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member accepting that his/her conduct was unacceptable and/or offering an apology, and/or mediation and/or other remedial action by the Authority. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee or Sub-Committee (*and the Town or Parish Council*) for information, but will take no further action.

7.1.2 Hearing

If the Monitoring Officer considers that informal resolution is not appropriate, or the councillor concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigation Report to the Standards Committee or Sub-Committee which will conduct a hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

To conduct a hearing, the Standards Committee must be convened and a Committee Agenda and Report is published and available for public and press inspection, however, the Investigators Report will be kept confidential and will remain in Part B, until the day of the hearing to protect the parties.

At the hearing, following the Council's procedures, a copy of which will be provided, the Investigating Officer or the Monitoring Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer or Monitoring Officer may ask you as the complainant to attend and give evidence to the Standards Committee or Sub-Committee. The Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Standards Committee or Sub-Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Members of the Standards or Sub-Committee, after hearing all the evidence and information, may adjourn the meeting for a short period and deliberate together in private. The hearing will then be reconvened and the Decision will be announced in public. It is expected that this will usually be on the same day.

The Standards Committee or Sub-Committee, with the benefit of any comments or advice from one of the Independent Persons, may conclude that the Member did not fail to comply with the Code of Conduct, and dismiss the complaint. If the decision is contrary to a recommendation from the Investigating Officer and/or Monitoring Officer, detailed reasons will be required to be published in the Decision Notice. The Decision of the Standards Committee or Sub-Committee will also be reported to the next meeting of Full Council.

If the Standards Committee or Sub-Committee concludes that the Member did fail to comply with the Code of Conduct, the Chairman will inform the Member of this finding and the Committee or Sub-Committee will then consider what action, if any, the Committee or Sub-Committee should take as a result of the Member's failure to comply with the Code of Conduct. In doing this, the Committee or Sub-Committee will give the Member an opportunity to make representations and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

8. What action might the Standards Committee or Sub-Committee take where a member has failed to comply with the Code of Conduct?

8.1 The Standards Committee or Sub-Committee has the power to take action in respect of individual Members as may be relevant and proportionate, and necessary to promote and maintain high standards of conduct. Accordingly the Standards Committee or Sub-Committee may:-

8.1.1 Publish its findings in respect of the Member's conduct on the Council's website;

8.1.2 Report its findings to Council (*or to the Town or Parish Council*) for information;

- 8.1.3 Recommend to the Member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) that he/she be removed from any or all Committees or Sub-Committees of the Council;
 - 8.1.4 Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - 8.1.5 Instruct the Monitoring Officer to *(or recommend that the Town or Parish Council)* arrange training for the member;
 - 8.1.6 Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) that the Member be removed *(or recommend to the Town or Parish Council that the Member be removed)* from all outside appointments to which he/she has been appointed or nominated by the authority *(or by the Town or Parish Council)*;
 - 8.1.7 Recommend to relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) the withdrawal of *(or recommend to the Town or Parish Council that it withdraws)* facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or
 - 8.1.8 Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) the exclusion of *(or recommend that the Town or Parish Council exclude)* the Member from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- 8.2 In each circumstance, where the Member subject of the complaint is the Group Leader, appropriate alternative arrangements will be required, this will be dependent upon whether the Group has allocated a Deputy to undertake this role, involve the Group Leader directly or an independent individual or suitable alternative, depending upon the circumstances.
- 8.3 In each circumstance, where the Standards Committee or Sub-Committee recommend the Group Leaders take action, it is expected that the Group Leader will within 6 weeks of the referral to them, or as soon as reasonably practicable thereafter, submit a report back to the Standards Committee or Sub-Committee giving details of the action taken or proposed to comply with the Committee's direction.
- 8.4 The Standards Committee or Sub-Committee has no power to suspend or disqualify the Member or to withdraw Members' special responsibility allowances.

9. What happens at the end of the hearing?

- 9.1 At the end of the hearing, the Chairman will state the decision of the Standards Committee or Sub-Committee as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Committee or Sub-Committee resolves to take.
- 9.2 Within 5 days, the Monitoring Officer shall prepare a formal Decision Notice in consultation with the relevant Chairman of the Standards Committee or Sub-Committee, and send a copy to you and to the Member *(and to the Town or Parish*

Council if appropriate), make that Decision Notice available for public inspection and, report the decision to the next convenient meeting of the Council for information.

- 9.3 Should a police investigation result in a Member being convicted of a criminal offence the Monitoring Officer in consultation with an Independent will determine whether it is in the public interest for the matter to be reported to Council for information. In such circumstances the Group Leader will also be consulted and notified of the decision accordingly.

10. Who forms the Standards Committee or Sub-Committee?

- 10.1 The Standards Committee will comprise of 7 District Councillors;
- 10.2 The Standards Town and Parish Sub-Committee will compromise of 3 District Councillors and 3 Town and Parish Councillors (nominated by the Association of Local Councils);
- 10.3 At least one of the three Independent Persons must have been consulted on their views and taken into consideration before the Standards Committee or Sub-Committee takes any decision on whether the member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

11. Who are the Independent Persons?

- 11.1 The Council has appointed two Independent Persons to support the Standards Committee and Sub-Committee.
- 11.2 An Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.
- 11.3 Section 28 (8) of the Localism Act 2011 provides the definition and restriction of the Independent Person. The Council has adopted an Independent Person Protocol which sets out some general principles.

12. Revision of these arrangements

The Council may by resolution agree to amend these arrangements, upon the advice of the Monitoring Officer where it is necessary, fair, proportionate and expedient to do so.

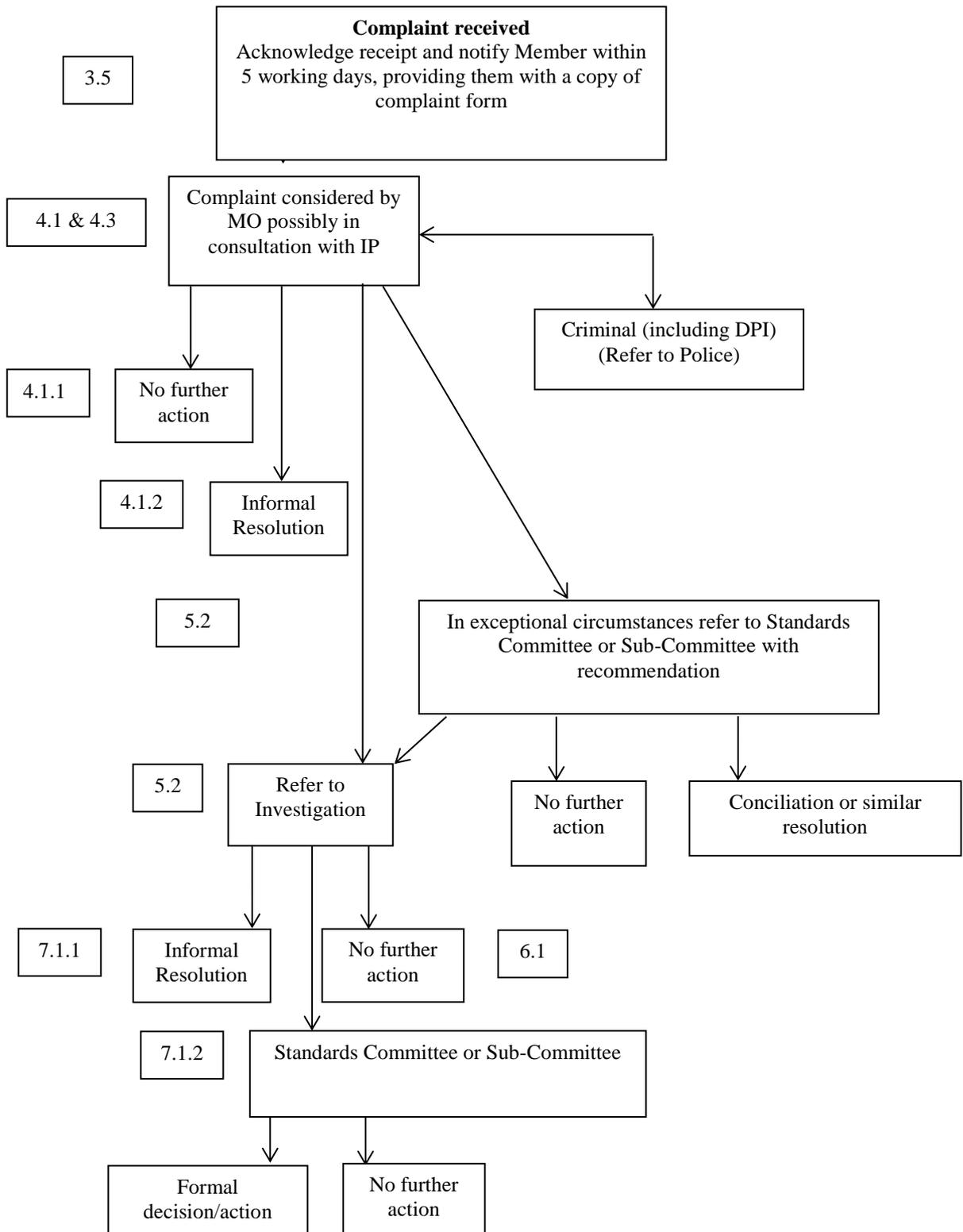
13. Appeals

- 13.1 There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Standards Committee.
- 13.2 If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

ANNEX B

This Flowchart is to be read in conjunction with the Tendring District Council's Complaints Procedure

(Reference is made to the relevant paragraphs of the Procedure in the boxes on the left hand side)



ANNEX D

CONDUCT COMPLAINTS ASSESSMENT CRITERIA

Complaints which would not normally be referred for investigation or to the Standards Committee or Sub-Committee

1. The complaint is not considered sufficiently serious to warrant investigation;
2. The complaint appears to be simply motivated by malice or is “tit-for-tat”;
3. The complaint appears to be politically motivated;
4. It appears that there can be no breach of the Code of Conduct; for example that it relates to the Councillor’s private life or is about dissatisfaction with a Council decision;
5. It is about someone who is no longer a Councillor
6. There is insufficient information available;
7. The complaint has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances, e.g. an allegation of bullying, harassment etc.
8. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out;
9. The same, or similar, complaint has already been investigated and there is nothing further to be gained by seeking the sanctions available to the Standards Committee;
10. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct; or
11. Where the member complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction.

Complaints which may be referred for investigation and/or to the Standards Committee or Sub-Committee

1. It is serious enough, if proven, to justifying the range of sanctions available to the Standards Committee or Sub-Committee; or
2. There are individual acts of minor misconduct which appear to be a part of a continuing pattern of behaviour that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation; or
3. When the complaint comes from a senior officer of the Council, such as the Chief Executive or the Monitoring Officer and it would be difficult for the Monitoring Officer to consider; or
4. The complaint is about a high profile Member such as the Leader of the Council and it would be difficult for the Monitoring Officer to consider; or
5. Such other complaints as the Monitoring Officer considers it would not be appropriate for him/her to consider.

Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint or to take further action will cost both public money and officers’ and Members’ time. This is an important consideration where the complaint is relatively minor.

ANNEX E

STANDARDS COMPLAINTS INVESTIGATION PROCEDURE

Members are reminded that they are required to co-operate with the investigation process as part of their compliance with the Code of conduct and to ensure that the procedure is undertaken in an efficient and resourceful manner.

1. Planning Stage:

Upon receipt of an instruction to carry out an investigation the Investigator should :-

- Acknowledge receipt of the instruction to conduct the investigation.
- Maintain a written record throughout the investigation.
- Assess whether any additional information is required from the complainant.
- Identify the paragraph(s) of the Member Code of Conduct that are alleged to have been breached.
- Identify the facts which will need to be determined to establish if the Member has breached the Member Code of Conduct.
- Identify the evidence that is needed to determine the issues.
- Consider how to undertake the evidence gathering.
- Identify how long it is likely to take to conduct the investigation.
- Tendring District Council has imposed a 3 month deadline for an investigation to be completed; this may be reduced by the Monitoring Officer in each individual case. The Investigating Officer must confirm that the deadline is achievable and regularly update the Monitoring Officer, subject member of the complainant and the complaint as to progress.

2. Evidence Gathering Stage:

- Contact the complainant to request any supporting or documentary evidence relating to the complaint.
- Contact the subject member with details of the complaint and seek an explanation.
- If new evidence is obtained through the investigation that the subject member has not been made aware of, this should be provided to the Councillor to respond to either orally or in writing.

3. Interview Stage:

- Identify witnesses.
- Arrange interview dates.
- Conduct interviews (preferably in the order of: the complainant, witnesses and subject member and any of their witnesses).
- The investigating Officer when interviewing the subject member; must ask them to respond to each point of the complaint and alleged breach of the Code of Conduct.
- The Investigating Officer should make every effort to gather evidence from the Complainant and subject member by way of a face to face interview.

4. Report Stage:

- Review evidence from interviews and any documentary evidence provided.
- Draft the report to contain:-
 - Details of who was interviewed, who supplied information and whether through written documentation or verbally;
 - Agreed facts;
 - Facts not agreed and corresponding conflicting evidence;
 - An assessment of all of the alleged breaches of the Code of Conduct forming the complaint and those identified by the Monitoring Officer or Investigator;
 - Conclusions as to whether a breach has occurred.
 - Where a draft report is issued this will be supplied to both the complainant and subject member for comment, in addition to the Monitoring Officer.

In all cases the Investigator will issue a final report and the Monitoring Officer will then determine appropriate action to be taken in line with the report conclusion

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