



## STANDARDS COMMITTEE

<b>DATE:</b>	<b>Wednesday, 19 July 2023</b>
<b>TIME:</b>	<b>10.00 am</b>
<b>VENUE:</b>	<b>Committee Room - Town Hall, Station Road, Clacton-on-Sea, CO15 1SE</b>

**MEMBERSHIP:**

**Councillor Talbot (Chairman)**  
**Councillor Wiggins (Vice-Chairman)**  
**Councillor Ferguson**  
**Councillor J Henderson**

**Councillor Land**  
**Councillor Newton**  
**Councillor Oxley**

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DATE OF PUBLICATION: Tuesday, 11 July 2023

## 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 - 6)**

To confirm and sign as a correct record, the minutes of the meeting of the Standards Committee, held on Wednesday 15 March 2023.

### **3 Declarations of Interest**

Councillors are invited to declare any Disclosable Pecuniary Interests, Other Registerable Interests of Non-Registerable Interests, 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 Report of the Monitoring Officer - A.1 - Introduction to the Standards Framework and Terms of Reference of the Standards Committee & Update on Member Induction and Code of Conduct Training (Pages 7 - 22)**

To enable the new membership of the Standards Committee to familiarise themselves with the Council's Standards Framework and to be introduced to the Committee's work plan for the 2023/24 Municipal Year.

### **6 Report of the Monitoring Officer - A.2 - Members' Planning Code & Protocol (Pages 23 - 88)**

To consider whether a wider review of the Council's Members' Planning Code & Protocol adopted in 2015 and updated in 2021, should be undertaken following the request by Cabinet and Council to give further guidance to site visit procedures, reflecting upon whether a revised approach should be taken to produce an easier to understand document.

### **7 Report of Head of Democratic Services & Elections - A.3 - Town & Parish Councils' Standards Sub-Committee - Appointment of Tendring District Council Members (Pages 89 - 90)**

To enable the Committee to appoint Tendring District Council's members to serve on the Town and Parish Councils' Standards Sub-Committee for the 2023/2024 Municipal Year.

### **8 Quarterly Complaints Update and other general matters (Pages 91 - 92)**

The Committee will receive the Monitoring Officer's quarterly update regarding standards complaints together with an update on other pertinent matters.

### **Date of the Next Scheduled Meeting**

*The next scheduled meeting of the Standards Committee is to be held in the Committee Room - Town Hall, Station Road, Clacton-on-Sea, CO15 1SE at 10.00 am on Wednesday, 11 October 2023.*

## **Information for Visitors**

### **FIRE EVACUATION PROCEDURE**

There is no alarm test scheduled for this meeting. In the event of an alarm sounding, please calmly make your way out of any of the fire exits in the hall and follow the exit signs out of the building.

Please heed the instructions given by any member of staff and they will assist you in leaving the building and direct you to the assembly point.

Please do not re-enter the building until you are advised it is safe to do so by the relevant member of staff.

Your calmness and assistance is greatly appreciated.

**MINUTES OF THE MEETING OF THE STANDARDS COMMITTEE,  
HELD ON WEDNESDAY, 15TH MARCH, 2023 AT 10.00 AM  
IN THE COMMITTEE ROOM, AT THE TOWN HALL, STATION ROAD, CLACTON-  
ON-SEA, CO15 1SE**

<b>Present:</b>	Councillors Land (Chairman), Steady (Vice-Chairman), Casey, V E Guglielmi and J Henderson
<b>Also Present:</b>	Councillor I J Henderson
<b>In Attendance:</b>	Keith Simmons (Head of Democratic Services and Elections), Ian Ford (Committee Services Manager), Karen Townshend (Executive Projects Manager (Governance)) and Keith Durran (Committee Services Officer)

**24. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

Apologies for absence were submitted on behalf of Councillors Gina Placey and Mick Skeels and Sue Gallone (one of the Council's Independent Persons).

**25. MINUTES OF THE LAST MEETING**

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

**RESOLVED** that the Minutes of the meeting of the Committee held on Wednesday 8 February 2023 be approved as a correct record and be signed by the Chairman.

**26. DECLARATIONS OF INTEREST**

There were no Declarations of Interest made by Members at this time.

**27. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 38**

No Questions on Notice had been submitted by Members pursuant to Council Procedure Rule 38 on this occasion.

**28. DRAFT COMMITTEE WORK PLAN FOR 2023/2024**

The Committee considered the following draft Work Plan for 2023/2024:-

19<sup>th</sup> July 2023 (provisional date)

- Introduction to the Standards Framework and Terms of Reference of the Standards Committee
- Update on Member Induction and Code of Conduct training
- Review of the Planning Probity Protocol
- Regular Complaints update by Monitoring Officer

11<sup>th</sup> October 2023 (provisional date)

- Update on Mandatory Training for Members
- Review of the Independent Person joint working arrangements and recruitment preparations for 2024
- Town and Parish Councils Code of Conduct and Interests review
- Regular Complaints update by Monitoring Officer

7<sup>th</sup> February 2024 (provisional date)

- Case review and guidance update for the Committee on decisions and actions taken nationally
- Regular Complaints update by Monitoring Officer

24<sup>th</sup> April 2024 (provisional date)

- Update on Mandatory Training for Members
- Annual Report on declarations of interest (meetings, gifts and hospitality)
- Regular Complaints update by Monitoring Officer

Members were made aware that the above meeting dates were provisional pending ratification at the Annual Meeting of the Council on 23 May 2023 and that, in addition, individual matters might be referred to those 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.

The Executive Projects Manager (Governance) was pleased to inform the Committee that, further to decisions made by Full Council at their meetings held in November 2022 and March 2023, all four Independent Persons (IPs) had now confirmed to the Monitoring Officer their willingness to continue in their joint roles as IPs and also as members of the Independent Remuneration Panel.

Having duly considered and discussed the contents of the draft work plan:-

It was moved by Councillor V E Guglielmi, seconded by Councillor J Henderson and:-

**RESOLVED** that the Work Plan for the Standards Committee for 2023/2024 be approved and adopted.

**29. NEW MEMBER INDUCTION PROGRAMME 2023/24**

The Committee received from the Council's Head of Democratic Services & Elections (Keith Simmons) a presentation on the new Member Induction Programme for the Councillors who would be duly elected at the District Council elections to be held on Thursday 4 May 2023.

That presentation covered the following matters:-

- (a) The elements of Induction;
- (b) Envisaged Meetings –
- (i) Annual Council on 23 May 2023;
  - (ii) Planning Committee on 6 June 2023;
  - (iii) Licensing and Registration Committee (to be confirmed);
  - (iv) Cabinet on 23 June 2023; and
  - (v) Audit Committee on 29 June 2023.
- (c) What have we got already in place:
- (i) Signpost Booklet – A Guide for Elected Members of Tendring District Council;
  - (ii) Initial Letter to successful candidates at the Count (4/5 May);
  - (iii) Date for first ‘new’ Councillors event (11 May);
  - (iv) General Welcome Event for all Councillors (15 May);
  - (v) Dates for two Tours of the District (26 May and 8 June);
  - (vi) Date for Planning Mandatory Training (to be confirmed);
  - (vii) Date for Licensing Mandatory Training (8 June – evening);
  - (viii) Date of Audit Mandatory Training (to be confirmed);
  - (ix) Councillor Consultative Event on the Corporate Plan 2024 – 2028 (30 May);
  - (x) Cabinet Away Day (9 June);
  - (xi) Councillor Development Session throughout the year (21 June – first one);
  - (xii) Evaluation Sheets on Training Delivered; and
  - (xiii) LGA Online Training Resource.
- (d) What we are also planning:
- (i) Initial Training Needs Analysis for Members; and
  - (ii) Service based video resources.
- (e) Induction Plan Word Cloud.

The Committee noted the foregoing.

### 30. **QUARTERLY COMPLAINTS UPDATE AND OTHER GENERAL MATTERS**

The Committee had before it the Monitoring Officer’s quarterly schedule, which updated it on existing and new conduct complaint cases, along with other general matters.

<b>TENDRING DISTRICT COUNCIL MONITORING OFFICER UPDATE MARCH 2023</b>				
<b>Council</b>	<b>Complainant</b>	<b>Current status</b>	<b>Final outcome</b>	<b>Comments</b>
<b>Existing Cases from last update:</b>				
<b>Council</b>	<b>Complainant</b>	<b>Current status</b>	<b>Final outcome</b>	<b>Comments</b>
PARISH	PARISH COUNCILLOR	ONGOING	Informal resolution recommended	Complaint and response received and reviewed by

				Independent Person. No response received so far to suggestion of informal resolution.
PARISH	PARISH COUNCILLOR	ONGOING	Informal resolution recommended	Complaint and response reviewed by Independent Person. Matter received relating to the aforementioned Parish Council complaint. To run in parallel with the initial complaint. Currently informal resolution not accepted by both parties.
PARISH	PARISH COUNCILLOR	CLOSED	No further action – other than recommended to reflect upon actions. MO offered to attend meetings to observe.	Matter related to behaviour within Parish Council meetings and electronic correspondence. Complaint resulted from a series of actions, by both parties and could have been dealt with differently.
<b>New Cases since last update</b>				
DISTRICT	PUBLIC	ONGOING		Matter related to alleged conduct whilst acting in an official capacity.
DISTRICT	DISTRICT COUNCILLOR	ONGOING		Matter related to not disclosing a pecuniary interest.
DISTRICT	DISTRICT COUNCILLOR	ONGOING		Matter related to alleged disclosure of

				confidential information.
<b><u>General Notes – 2022/23 Summary:</u></b>				
<p>Overall, 10 cases had been received in 2022/23. The Monitoring Officer would be delivering training to one Parish Councillor on the DPI requirements and a date for that had now been confirmed.</p> <p>During the last month it had become evident that there was a need for refresher training of the impacts of declaring Personal Interests at meetings of the District Council. Guidance had been offered in emails however, if there was a longer period and more formal meetings before the District Elections, training would be organised.</p> <p>A case of non-declaration and registration of a Disclosable Pecuniary Interest was being explored in the appropriate manner.</p>				
<b><u>Requests for dispensations:</u></b>				
There had not been any requests for dispensation.				

The Committee noted the foregoing.

The meeting was declared closed at 10.29 am

**Chairman**

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## STANDARDS COMMITTEE

19 JULY 2023

### REPORT OF THE MONITORING OFFICER

#### **A.1 INTRODUCTION TO THE STANDARDS FRAMEWORK AND TERMS OF REFERENCE OF THE STANDARDS COMMITTEE & UPDATE ON MEMBER INDUCTION AND CODE OF CONDUCT TRAINING**

#### **PART 1 – KEY INFORMATION**

##### **PURPOSE OF THE REPORT**

To enable the new membership of the Standards Committee to familiarise themselves with the Council's Standards Framework and to be introduced to the Committee's work plan for the 2023/24 Municipal Year.

##### **EXECUTIVE SUMMARY**

This report reiterates the Council's legal requirement to have a published Standards Framework applicable to elected Members, in accordance with the Localism Act 2011 and relevant guidance.

##### **RECOMMENDATION(S)**

**It is recommended that the Standards Committee:**

- a) notes the contents of this report and Appendices A and B;**
- b) welcomes the one hundred percent achievement of elected Councillors attending the mandatory Code of Conduct training following the elections in May 2023; and**
- c) give consideration to the communication to the Town and Parish Councils who have adopted the LGA Model Code of Conduct, which states at Paragraph 8 that all Councillors must attend Code of Conduct training provided.**

##### **REASON(S) FOR THE RECOMMENDATION(S)**

To familiarise the new membership of the Standards Committee with the Council's Standards Framework and work plan for the 2023/24 Municipal Year.

##### **ALTERNATIVE OPTIONS CONSIDERED**

The alternative option would be no to produce a report to inform Members of the Standards Committee; however this was discounted as it is important to ensure new and previously elected Members of the District Council are fully aware of the Terms of Reference of the Committee on which they sit.

## PART 2 – IMPLICATIONS OF THE DECISION

### DELIVERING PRIORITIES

One of the themes of the Council's Corporate Plan 2020-24 is strong finances and governance, which includes effective and positive governance. The Corporate Plan is also underpinned by 'our values', being that Councillors and staff uphold personal integrity, honesty and respect to others.

### LEGAL REQUIREMENTS (including legislation & constitutional powers)

Full Council, at its meeting in November 2022, adopted the Local Government Association's Model Members' Code of Conduct, for the purposes of Sections 27 and 28 of the Localism Act 2011. This was to commence from the Annual Council meeting in May 2023.

Section 28 of the Localism Act 2011 also requires the District Council to have in place arrangements under which allegations can be investigated and in November 2013 Full Council approved, and adopted, the Standards Committee's Terms of Reference and a package of procedures and protocols. These collectively form the District Council's Standards Framework.

Council Procedure Rule 33.3 Training Members of the Audit, Licensing and Registration, Planning and Standards Committees;

- In addition to specific training required as and when necessary, training shall be provided to all Members appointed to the Audit, Licensing and Registration, Planning and Standards Committees on an annual basis at an appropriate date and time after each annual meeting of the Council and such training shall be mandatory. The Monitoring Officer shall define what is meant by the word "mandatory" and they will also decide whether the training offered/provided is/was sufficient and "fit for purpose".
- A Member cannot sit as a member of the Standards Committee unless they have received specific training with regard to the Hearings Procedure and participation in Hearings

Members of the Standards Committee will receive the relevant hearing procedure training prior to any hearings if scheduled.

### FINANCE AND OTHER RESOURCE IMPLICATIONS

#### Finance

The cost of internal training is met within existing resources. Ideally, additional training will not be offered to Members who fail to attend an organised session, unless or until, a further session is available.

### USE OF RESOURCES AND VALUE FOR MONEY

The following are submitted in respect of the indicated use of resources and value for money indicators:

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;

B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	
<b>MILESTONES AND DELIVERY</b>	
This report is presented to the Committee in accordance with the work programme.	
<b>ASSOCIATED RISKS AND MITIGATION</b>	
The integrity of Members, their decision making and that of the Council and its committees, are part of good governance.	
<b>OUTCOME OF CONSULTATION AND ENGAGEMENT</b>	
There is no requirement to seek consultation on this report. This is a public document to be presented to the Standards Committee.	
<b>EQUALITIES</b>	
The Standards Committee and its associated work programme aims to deliver fairness, transparency and consistency to all customers and stakeholders.	
<b>SOCIAL VALUE CONSIDERATIONS</b>	
Social value considerations are taken into account for each decision made.	
<b>IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030</b>	
This is taken into account for each decision made.	
<b>OTHER RELEVANT IMPLICATIONS</b>	
<b>Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.</b>	
<b>Crime and Disorder</b>	Not applicable
<b>Health Inequalities</b>	Not applicable
<b>Area or Ward affected</b>	All Wards could be affected
<b>ANY OTHER RELEVANT INFORMATION</b>	
None	

## PART 3 – SUPPORTING INFORMATION

### BACKGROUND

The seven elements of the Council's Standards Framework are as follows:

- i. The Members' Code of Conduct
- ii. The Terms of Reference and Delegated Powers for the Standards Committee and the Town and Parish Council's Sub-Committee
- iii. The annual work programme adopted by the Committee
- iv. The Monitoring Officer Protocol
- v. The Independent Person's Protocol
- vi. Member and Officer Relations Protocol
- vii. The Complaints Procedure

With the exception of (iii) above, the Code, Protocols and Complaints Procedure are all contained within Part 6 of the Council's Constitution. The Terms of Reference and the annual work programme are included as Appendix A and B respectively.

The overall approach of the arrangements was to seek:

- Information and training for Members and Officers to increase awareness and support good standards of behaviour
- Proportionality – responses to complaints which were proportionate to their seriousness
- Timeliness – with clear timescales for the various stages of complaints to be progressed
- Checks, balances, reporting requirements and delegation to the Monitoring Officer of key elements of the process to maximise independence from the political process
- Early and informal intervention to resolve complaints wherever possible (including an expectation that Group Leaders will play a key role)

The Standards Committee and Town and Parish Councils' Standards Sub Committee Terms of Reference can be found at **Appendix A**.

In order to enable the Committee to focus on promoting high standards of conduct as well as reacting to complaints, Members may reference the annual work programme for the Committee for the 2023/24 Municipal Year submitted at **Appendix B**. The Committee will note that throughout the year Members receive various reports reflecting on good practice in maintaining and upholding high standards of conduct to assist Members in being proactive in the exercise of its statutory duty. Members of the Committee may also make a request to the Chairman and/or the Monitoring Officer for items to go on the agenda throughout the year, so long as it is within the Committee's terms of reference.

The Committee's attention is further drawn to **Appendix C**, an update by the Monitoring Officer to inform the Committee of details of those Members who had attended the new Members' Code of Conduct training; of which various sessions have been held following the election in May 23. Those District Councillors who are also Town and Parish Councillors can be recorded as attending the mandatory training for both roles as the content was applicable to the dual role. Invitations were sent to all 27 Town and Parish Councils, offering two training dates, of which 12 had a selection of Councillors who attended the training. It is recommended to the Standards Committee that consideration is given to the communication

to the Town and Parish Councils who have adopted the LGA Model Code of Conduct, which states at Paragraph 8 that all Councillors must attend Code of Conduct training provided.

A further report will be presented to the Committee at its next meeting providing an update on the Members' induction programme, as training sessions are still ongoing.

#### **PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.**

Full Council, at its meeting in November 2022, adopted the Local Government Association's Model Members' Code of Conduct, for the purposes of Sections 27 and 28 of the Localism Act 2011. This was to commence from the Annual Council meeting in May 2023 and that all duly elected TDC Members attend mandatory training sessions on the new Code of Conduct.

#### **BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL**

There are no background papers associated with this report.

#### **APPENDICES**

**Appendix A – The Standards Committee and Town and Parish Councils' Standards Sub Committee Terms of Reference**

**Appendix B – Standards Committee 2023/24 Municipal Year work programme**

**Appendix C – 2023 Members' Code of Conduct training record**

#### **REPORT CONTACT OFFICER(S)**

<b>Name</b>	Lisa Hastings
<b>Job Title</b>	Deputy Chief Executive and Monitoring Officer
<b>Email/Telephone</b>	lhastings@tendringdc.gov.uk
<b>Name</b>	Karen Townshend
<b>Job Title</b>	Executive Projects Manager - Governance
<b>Email/Telephone</b>	ktownshend@tendringdc.gov.uk

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**ARTICLE 9 – STANDARDS COMMITTEE & TOWN AND PARISH COUNCILS' STANDARDS SUB-COMMITTEE**

**9.01 Composition:**

- The Standards Committee (“the Committee”) shall consist of seven Members of Tendring District Council;
- No more than one Member shall be a Member of its Cabinet;
- No Leaders of Political Groups will be members of the Committee;
- The only Members permitted to be substitutes on the Committee will be those named at the beginning of the Municipal Year by the Political Group Leaders;
- No Member will be permitted to participate in meetings of the Standards Committee or its Sub-Committee unless they have undertaken specific Standards Committee training;
- No substitute Members will be permitted, unless they have undertaken specific Standards Committee training;
- The Committee is politically balanced in accordance with Section 15 of the Housing and Local Government Act 1989;
- The Committee will have a standing Chairman and Vice Chairman appointed by the Full Council. However, when the Committee is convened to conduct a hearing the meeting will be chaired by one of the Members of the Committee who is not from the same Political Group as the Member who is the subject of the complaint (nor of the same Group as the Complainant if a Member of the Council); and
- A member of the Standards Committee will not be permitted to sit in that capacity for a hearing if that Member is the subject of the complaint or the complainant. A substitute will be permitted, if they have undertaken specific Standards Committee training.

**9.02 Quorum**

- At least 3 voting Members of the Committee.

**9.03 Meetings**

- At least quarterly.

**9.04 Terms of Reference**

- The Standards Committee will exercise the functions in accordance with the terms of reference set out in Part 3 of this Constitution.

**9.05 TOWN AND PARISH COUNCILS' STANDARDS SUB-COMMITTEE**

**(1) Terms of Reference:**

- To advise and assist Town and Parish Councils and Councillors to maintain high standards of conduct and to make recommendations to Parish and Town Councils on improving standards or actions following a finding of a failure by a Parish Councillor to comply with its Code of Conduct.

**(2) Composition:**

- Three Members of the Standards Committee and three non-voting co-opted Town and Parish Council members to be nominated by the Tendring District Association of Local Councils;
- The nominated Town and Parish Council members will be of independent standing and will not have served as District or County Councillors for a period of four years prior to their nomination; and
- A member (or non-voting co-opted member) of the Town and Parish Councils' Standards Sub-Committee will not be permitted to sit in that capacity for a hearing if that Member is the subject of the complaint or the complainant. A substitute will be permitted, if they have undertaken specific Standards Committee training.

**(3) Meetings:**

- The Sub-Committee will meet as and when required.

**(4) Quorum:**

- The Quorum for meetings of the Standards Sub-Committee is three voting Members. All three Tendring District Councillor Members, or substitutes for them, therefore, have to be present at the Sub-Committee.

**(5) Voting:**

- Only the three District Council Members (or their substitutes, if applicable) on the sub-Committee can vote.
- The views and recommendations of the three Town and Parish Council representatives will be recorded in the minutes of the meeting.

**(6) Chairmanship:**

- The Sub-Committee will appoint a Chairman from the District Councillor membership.
- However, when the Committee is convened to conduct a hearing the meeting will be chaired by one of the Members of the Sub-Committee who is not from the same political Group as the Member who is the subject of the Complaint (nor of the same Group as the complainant if a Member of the Council).

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## **A.1 APPENDIX B - COMMITTEE WORK PLAN – STANDARDS COMMITTEE**

### **19<sup>th</sup> July 2023**

- Introduction to the Standards Framework and Terms of Reference of the Standards Committee
- Update on Member Induction and Code of Conduct training
- Review of the Planning Probity Protocol
- Regular Complaints update by Monitoring Officer

### **11<sup>th</sup> October 2023**

- Update on Mandatory Training for Members
- Review of the Independent Person joint working arrangements and recruitment preparations for 2024
- Town and Parish Councils Code of Conduct and Interests review
- Regular Complaints update by Monitoring Officer

### **7<sup>th</sup> February 2024**

- Case review and guidance update for the Committee on decisions and actions taken nationally
- Regular Complaints update by Monitoring Officer

### **24<sup>th</sup> April 2024**

- Update on Mandatory Training for Members
- Annual Report on declarations of interest (meetings, gifts and hospitality)
- Regular Complaints update by Monitoring Officer

*Individual matters may be referred to these meetings by the Monitoring Officer in accordance with the Committee's Terms of Reference as necessary, for example, an appeal against dispensation decision or a Code of Conduct hearing.*

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A.1 APPENDIX C  COUNCILLOR	Tending District Council	Standards Committee Members	2023/24 CODE OF CONDUCT TRAINING – MEMBER ATTENDANCE							TOTAL
			Lisa Hastings							
			21 Jun 23 26 Jun 23 03 Jul 23 04 Jul 23 06 Jul 23							
Alexander, M	✓		✓							
Amos, C	✓		✓							
Baker, A	✓		✓							
Barrett, T	✓		✓							
Barry, M	✓		✓							
Bensilum, M	✓		✓							
Bray, J	✓		✓							
Bush, M	✓		✓							
Calver, G	✓		✓							
Casey, D	✓		✓							
Chapman, J	✓		✓							
Codling, J	✓		✓							
Cossens, A	✓		✓							
Cossens, M	✓		✓							
Davidson, B	✓		✓							
Doyle, C	✓		✓							
Everett, R	✓		✓							
Fairley, Z	✓		✓							
Ferguson, T	✓	✓	✓							
Fowler, M	✓		✓							
Griffiths, C	✓		✓							
Guglielmi, C	✓		✓							
Henderson, I	✓		✓							
Henderson, J	✓	✓	✓							
Honeywood, P	✓		✓							
Honeywood, S	✓		✓							
Kotz, P	✓		✓							



**2023/24 CODE OF CONDUCT TRAINING – MEMBER ATTENDANCE**

COUNCILLOR	Town and Parish Councillors and Clerks	Tendring District Councillors (dual role)	2023/24 CODE OF CONDUCT TRAINING – MEMBER ATTENDANCE							TOTAL
			Lisa Hastings							
			26 Jun 23 03 Jul 23							
Alresford PC		2								2
Ardleigh PC	5									5
Beaumont PC										
Bradfield PC										
Brightlingsea TC	1	3								4
Elmstead PC	3									3
Frating PC										
Frinton & Walton TC	2	7								9
Great Bentley PC	3									3
Great Bromley PC										
Great Oakley PC	2	1								3
Harwich TC	7	7								14
Lawford PC		2								2
Little Bentley PC										
Little Bromley PC										
Little Clacton PC										
Little Oakley PC	2									2
Manningtree TC										
Mistley PC										
Ramsey & Parkeston PC	7									7
St Osyth PC	4	2								6
Tendring PC	4	1								5
Thorpe-le- Soken PC		1								1

Thorrington PC										
Weeley PC										
Wix PC	5									5
Wrabness PC										
<b>Total</b>	<b>45</b>	<b>26</b>								<b>71</b>

## STANDARDS COMMITTEE

19 JULY 2023

### REPORT OF MONITORING OFFICER

#### A.2 MEMBERS' PLANNING CODE & PROTOCOL

##### PART 1 – KEY INFORMATION

###### **PURPOSE OF THE REPORT**

To consider whether a wider review of the Council's Members' Planning Code & Protocol adopted in 2015 and updated in 2021, should be undertaken following the request by Cabinet and Council to give further guidance to site visit procedures, reflecting upon whether a revised approach should be taken to produce an easier to understand document.

###### **EXECUTIVE SUMMARY**

In December 2019, the Local Government Association (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 Code & Protocol following the LGA publication.

Following the 2020/21 review no further changes were suggested as a result of the LGA's guidance however, additional wording was recommended 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 Council's current version of the Council's Planning Code and Protocol is attached as Appendix B.

Following the work of the Constitution Review Working Party (CRWP) in late 2022 and 2023, and recommendations from Cabinet, Full Council resolved at its meeting on 2nd March 2023 (minute no. 106):

- (d) *the Monitoring Officer be requested to amend the Council's procedure for Planning Committee Site visits, as set out in the Members' Planning Code and Protocol (in Part 6 of the Constitution) to appropriately reflect the matters raised by the Review of the Constitution Portfolio Holder Working Party; and*
- (e) *the Monitoring Officer be further requested to submit the Site Visit Procedure, as amended, to Full Council for its approval and adoption, following consultation, as appropriate and necessary, with the Planning Committee and the Standards Committee.*

The matters raised by the CRWP are contained within the body of this Report, in the Background Section, related to lobbying, site visits, training and links to the Code of Conduct. A definition of lobbying could easily be included and additional wording provided for site visits. The recent training of the Planning Committee Members, their substitutes and offered to all Members, was delivered in May 2023, and covered site visits. However, it is proposed that a wider review of the Council's Protocol is undertaken, not to alter the principles but to produce a more user friendly document.

Through the production of the Planning Probity Protocol for the Tendring Colchester Borders Garden Community Joint Committee in 2022, Appendix C, a different format was adopted, which was considered easier to follow. The Planning Advisory Service (PAS) through their website outlines some of the best practice they have found to assist Councils in reviewing their own codes of practice. Various examples are suggested for different elements, such as councillor involvement in pre-application advice, interests, lobbying, dealing with petitions, officer member relationships, ward councillor involvement, site visits, referral of delegated applications to Planning Committee, public speaking, training etc.

It is recommended that at this stage, rather than simply add wording to an existing Protocol, a fresh review is undertaken of the document.

### **RECOMMENDATION(S)**

**It is recommended that:**

- (a) Notes the contents of the Report and that the Site Visit procedure was included within the recent mandatory training to Planning Committee Members, their substitutes and that this was available to all Members;**
- (b) gives consideration to the different approach adopted for the Planning Probity Protocol for the Tendring Colchester Borders Garden Community Joint Committee, and that the Planning Advisory Service suggests some best practice for Planning Committee Protocols following the LGA's Probity in Planning Guidance; and**
- (c) agrees to a review of the Council's Planning Protocol to ensure that it is adhering to best practice and easy to follow.**

### **REASON(S) FOR THE RECOMMENDATION(S)**

In order to enable a review to be undertaken to ensure that, ultimately, the Council's Planning Protocol is easy to follow and makes use of current best practices.

### **ALTERNATIVE OPTIONS CONSIDERED**

Not to undertake a review. However, this would equate to a missed opportunity to refresh the Protocol and to produce a more user friendly document.

## **PART 2 – IMPLICATIONS OF THE DECISION**

### **DELIVERING PRIORITIES**

The Members' Planning Code and Protocol forms part of the Council's Constitution in Part 6 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.

### **LEGAL REQUIREMENTS (including legislation & constitutional powers)**

This Protocol follows sound principles 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 Code and Protocol is integrated within the Constitution at Part 6.

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 Planning Protocol was last reviewed in 2021 following, the LGA Probity in Planning Decision Guidance issued in 2019 and in a response to the procedures adopted during the COVID-19 Pandemic.

The Standards Committee have reviewed the Planning Code & Protocol as part of the Council's high standards and probity arrangements, it's important for councillors to be involved in planning discussions and plan making and on applications, on behalf of their communities in a fair, impartial and transparent way.

**FINANCE AND OTHER RESOURCE IMPLICATIONS**

None associated with the content of this report.

**USE OF RESOURCES AND VALUE FOR MONEY**

*External Audit expect the following matters to be demonstrated in the Council's decision making:*

- A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;*
- B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and*
- C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.*

*As such, set out in this section the relevant facts for the proposal set out in this report.*

The following are submitted in respect of the indicated use of resources and value for money indicators:

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	N/A
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	This is set out elsewhere within this report.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	N/A

<b>MILESTONES AND DELIVERY</b>	
Standards Committee 19 July 2023 – Agree to undertake review.	
Standards Committee 11 October 2023 – Consider the outcome of the review and make recommendations to Full Council.	
Full Council 28 November 2023 – Council considers and adopts the proposed new Planning Protocol.	
<b>ASSOCIATED RISKS AND MITIGATION</b>	
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 2021 following the LGA’s publication to minimise any risk that the Council’s practices were not up to date. Up to date guidance prevents confusion and legal challenges by way of judicial review to planning decisions based on failure to declare interests, predetermination or bias. Through the Site Visit survey undertaken with Members in 2022/23, a number of questions were received and comments made, which could lead to the view the current version of the Code and Protocol could be revised to be easier to follow and a range of best practice nationally can be drawn up. The principles of the current version are sound.	
<b>OUTCOME OF CONSULTATION AND ENGAGEMENT</b>	
Possible consultees include:-	
The Independent Persons; Members of the Planning Committee; and Our Planning Service.	
<b>EQUALITIES</b>	
Part of the review of the Planning Protocol will be to ensure that it meets the requirements of the Public Sector Equality Duty in that the Council must, in the exercise of its functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.	
The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race religion or belief, sex, sexual orientation.	
<b>SOCIAL VALUE CONSIDERATIONS</b>	
Not applicable to this report.	
<b>IMPLICATIONS FOR THE COUNCIL’S AIM TO BE NET ZERO BY 2030</b>	
Not applicable to this report.	
<b>OTHER RELEVANT IMPLICATIONS</b>	
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	None

Health Inequalities	None
Area or Ward affected	All

**ANY OTHER RELEVANT INFORMATION**

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.

**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 High Court 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 attended the sites without the officers in attendance, advice is given 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.

The CRWP, Cabinet and subsequently, Full Council requested the Monitoring Officer to provide a definition of Lobbying.

### **What is lobbying?**

Lobbying is when an individual or a group tries to persuade someone to support a particular policy or campaign. Lobbying can be done in person, by sending letters and emails or via social media.

Lobbying means, in a professional capacity, **attempting to influence**, or advising those who wish to influence, the UK Government, Parliament, the devolved legislatures or administrations, regional or local government or other public bodies on any matter within their competence.

The LGA's Probity in Planning states:

"Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, a site allocation in a development plan or an emerging policy, will often seek to influence it through an approach to their ward member or to a member of the planning committee. As the Nolan Committee's 1997 report 13 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."

As stated above, 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".

### **PART 3 – SUPPORTING INFORMATION**

#### **BACKGROUND**

In 2015, the Council adopted the Members' Planning Code & Protocol which was subsequently reviewed in 2018. The format of the Council's Code and 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 Code and Protocol forms Part 6 of the Constitution, relating to Codes and Protocols and is attached to the report as Appendix B.

Through the last review, of the content and principles of the Council's Members' Planning Protocol in 2021 it was considered that the District Council's document followed the Local Government Association (LGA) Probity in Planning guidance issued in 2019 therefore, only minor changes were made in the Site Visit provisions as a consequence of the COVID-19 pandemic.

Following a very difficult situation with members of the public at a site visit ahead of the meeting of the Planning Committee held on Thursday 22 September 2022 and at the request of the Monitoring Officer, the Constitution Review Working Party (CRWP), at its meeting held on 14 November 2022, had an initial discussion on the procedure for committee site visits as set out in section 7 of the Members' Planning Code and Protocol (February 2021). At that particular site visit the local Parish Council had encouraged public attendance to lobby the

Planning Committee members. During that initial discussion by the CRWP the following matters had been raised:-

- (1) What was the purpose of a site visit?
- (2) Whether every planning application going before the Planning Committee did, in fact, merit a pre-meeting Member site visit;
- (3) What was the definition of “lobbying”?
- (4) Whether the attendance of parish councils and/or the public at Planning Committee site visits should be allowed to continue;
- (5) The role of the Chairman in leading the Planning Committee’s site visits and whether such site visits should instead be led by a senior Planning Officer; and
- (6) Whether the Officer(s) in attendance should keep a record of the interaction between the Committee members and the public etc. at the site visits.

The CRWP subsequently, at its meeting held on 21 November 2022, was informed that a survey had been emailed to all Members of the Council to ascertain their views on this matter with a deadline for responses of 25 November 2022. In addition, Officers discussed the matter informally with members of the Planning Committee on 24 November 2022. The results of the survey were reported to the All Member Briefing in January 2023 and thence to the meeting of the CRWP held on 23 January 2023. At the invitation of former Chairman of the CRWP, Councillor White (former Chairman of the Planning Committee) attended that meeting and participated in the discussions on this matter. The CRWP AGREED that:

- (a) *“the CRWP supports that the Planning Committee continues its current practice of undertaking a site visit in respect of all planning applications that are submitted to it for its consideration;*
- (b) *the CRWP requests the Corporate Finance & Governance Portfolio Holder to recommend to Cabinet that the Monitoring Officer be requested to amend the Planning Committee’s Site Visit Procedure to appropriately reflect the following points:-*
  - (1) *including a definition of “lobbying”;*
  - (2) *strengthening the wording as to how the Chairman and Committee should proceed if faced at a site visit with (regardless of origin) persistent attempts at lobbying and/or persistent harassment and/or physical or verbal abuse;*
  - (3) *reflecting Members’ expectations that a Drone will be regularly available for the Planning Committee’s site visits and that such Drone will be employed, particularly in respect of the larger planning application sites;*
  - (4) *stating that the mandatory training for the members of the Planning Committee and its designated substitute members will include training in relation to undertaking site visits and acknowledging that this training will be offered to all members of the Council; and*
  - (5) *highlighting as a reminder to Members that Section 3.8 of the Members’ Code of Conduct states that Members are required to comply with the Council’s adopted rules and policies such as the Planning Code and Protocol for Member (which contains the Planning Committee’s procedure for Site Visits);*
- (c) *that the CRWP further requests Cabinet (via the Portfolio Holder) to request the Monitoring Officer to submit the Site Visit Procedure, as amended, to Full Council for its approval and adoption, following consultation, as appropriate and necessary, with the Planning Committee and the Standards Committee.”*

Cabinet, at its meeting held on 17 February 2023 decided, inter alia, that it:-

- (a) supports the proposal that the Planning Committee continues its current practice of undertaking a site visit in respect of all planning applications that are submitted to it for its consideration and requests Full Council to do likewise;
- (b) requests the Monitoring Officer to amend the Council's procedure for Planning Committee Site Visits, as set out in the Members' Planning Code and Protocol (in Part 6 of the Constitution) to appropriately reflect the matters raised by the Review of the Constitution Portfolio Holder Working Party; and
- (c) further requests the Monitoring Officer to submit the Site Visit Procedure, as amended, to Full Council for its approval and adoption, following consultation, as appropriate and necessary, with the Planning Committee and the Standards Committee.

#### **PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.**

These are set out and referred to within the body of the report.

#### **BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL**

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 – TDC's Members' Planning Code/Protocol**

**Appendix C – Planning Probity Protocol for the TCBGC Joint Committee**

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# Probity in planning

Advice for councillors  
and officers making  
planning decisions

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

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# 1. Introduction

## Background

Probity in planning is about ensuring that decisions on plan making and planning applications are undertaken, on behalf of communities, in a fair, impartial and transparent way. This guide has been written for officers and councillors involved in making planning decisions in their local authority. It is informed by contributions from councillors and officers and includes:

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

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

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

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

**Councillor Sue Vincent, Camden**

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

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

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

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

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

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

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

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

years to come.”

**Councillor Adele Morris, Southwark**

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

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

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

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

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

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

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

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

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

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

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

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

# 3. Councillor and officer conduct

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

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

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

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

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

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

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

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

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

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

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

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

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

Officers and serving councillors must not act as agents for people pursuing planning matters within their authority, even if they are not involved in the decision making on them.

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

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

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

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

# 4. Registration and disclosure of interests

## Pecuniary interests

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

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

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

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

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

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

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

## Personal Interests

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

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

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

## Dispensation and handling relevant interests

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

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

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

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

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

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

# 5. Predisposition, predetermination or bias

## Predetermination

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

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

## Predisposition

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

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

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

## Impartiality and avoiding bias

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

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

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

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

# 6. Development proposals

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

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

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

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

# 7. Lobbying of and by councillors

## Reporting on local concerns

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

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

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

## Expressing opinions

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

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

## Conduct at committee

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

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

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

## Local codes

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

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

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

## Gifts and hospitality

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

# 8. Discussions before a decision is taken

## Early engagement and pre-application discussions

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

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

## Avoiding predetermination

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

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

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

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

## Meetings and discussions before a decision

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

Discussions before a decision is taken should ensure:

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

Officers should arrange any meetings, attend these with councillors and make a written record of the meeting placing this note on the case file. A note should also be taken of any phone conversations, and relevant emails recorded for the file. Notes should record issues raised and advice given. If there is a legitimate reason for confidentiality regarding a proposal, a note of the non-confidential issues raised or advice given can still normally be placed on the file to reassure others not party to the discussion.

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

## Other approaches to early engagement

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

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

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

# 9. Officer reports

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

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

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

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

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

# 10. Public speaking at planning committees

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

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

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

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

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

# 11. Decisions which differ from a recommendation

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

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

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

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

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

<sup>14</sup> [www.legislation.gov.uk/ukpga/1990/8/contents](http://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).<sup>15</sup> If the officers' report recommends approval of such a departure, the justification for this should be included, in full, in that report.

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

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

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

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

# 12. Committee site visits

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

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

A site visit is only likely to be necessary if:

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

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

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

# 13. Reviewing past planning decisions and the outcomes

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

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

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

# 14. Complaints and record keeping

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

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

# List of references

## **The Localism Act 2011**

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

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

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

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

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

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

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

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

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

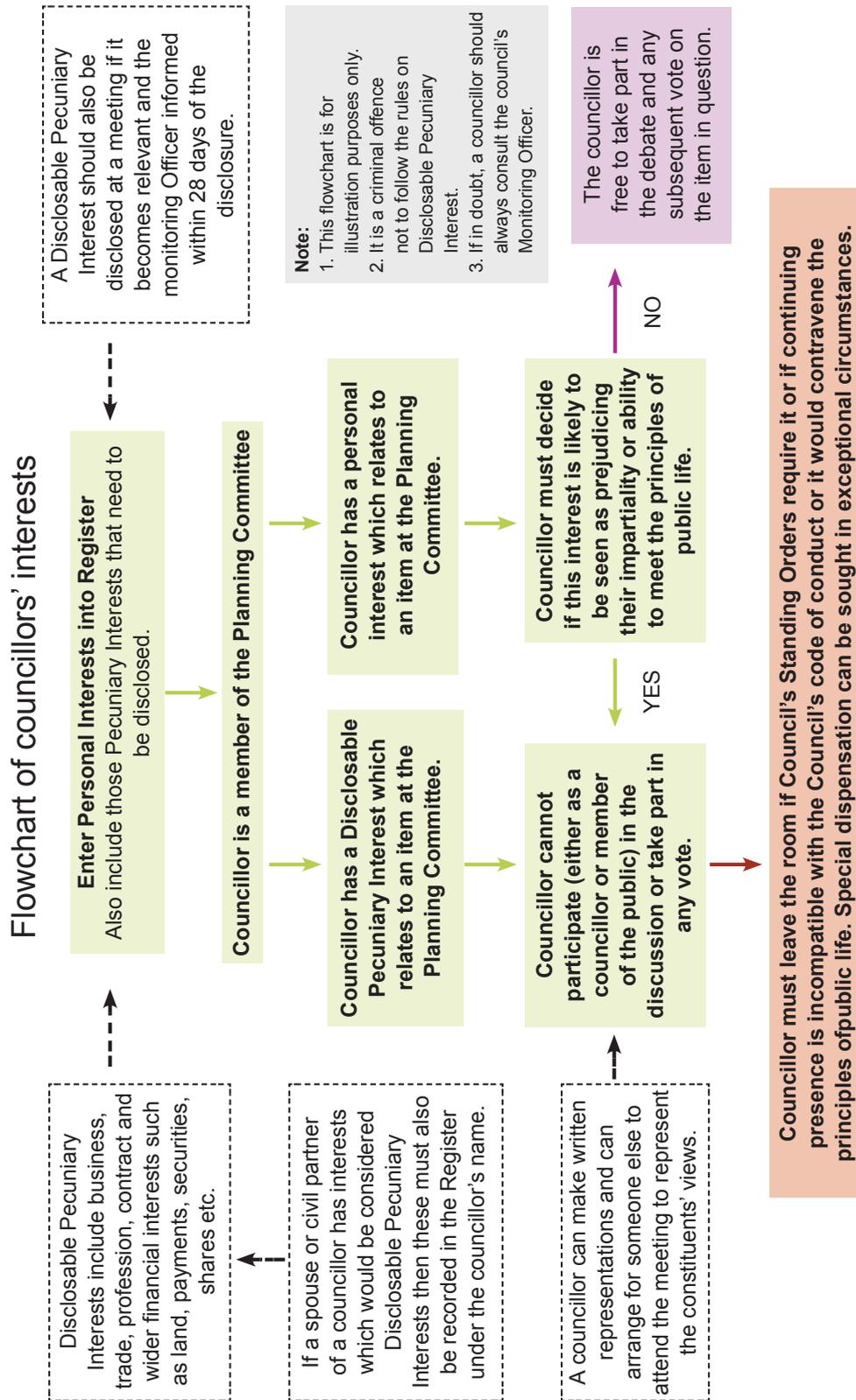
## **RTPI Guidance on Probity for Professional Planners**

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

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

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

# Appendix 1 Flowchart of councillors' interests









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# Tendring District Council



## MEMBERS' PLANNING CODE & PROTOCOL Updated February 2021

### 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.

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**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

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- 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

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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

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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 Assistant Director (Planning) 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 Assistant Director (Planning) at the earliest opportunity.
- **Do** promptly refer to the Assistant Director (Planning) any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.

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- **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.

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- **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 Assistant Director (Planning) 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.

#### **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.

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- 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."

#### 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 Assistant Director (Planning), 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 Assistant Director (Planning) or those officers who are authorised by their Corporate Director or Assistant Director (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.

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## 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 officer's 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.

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- **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).**



# TENDRING COLCHESTER BORDERS GARDEN COMMUNITY JOINT COMMITTEE

18 JULY 2022

## A.4 JOINT COMMITTEE PLANNING PROBITY PROTOCOL

Report prepared by Lisa Hastings (Tendring District Council), Andrew Weavers (Colchester Borough Council)

### PART 1 – KEY INFORMATION

#### PURPOSE OF THE REPORT

To consider the attached **Planning Probity Protocol** (Appendix A) related to the functions of the Tendring Colchester Borders Garden Community Joint committee. The Protocol describes how the Councils will deal with planning applications and other planning practices within the TCBGC area.

**Members of the Committee are requested to agree to the content of the Planning Probity Protocol and act in accordance with it going forward.**

#### EXECUTIVE SUMMARY

##### Key Points

- The Protocol applies and focuses on the functions and responsibilities of the Joint Committee for determining planning applications within the TCBGC area. Executive functions, not connected with the DPD process or otherwise delegated to the Joint Committee, but nonetheless relate to the TCBGC remain with each Council to exercise.
- Members of the Joint Committee are expected to observe the requirements and principles as set out in the Protocol at all times when involving themselves in the planning process.
- The planning system relies on Councillors and Officers acting in a way which is fair and is clearly seen to be fair. This includes acting in accordance with planning law in all instances, and paying due regard to national and local policies, in addition to all other “material planning considerations”.
- Each of the Councils forming the Joint Committee has their own locally adopted Members’ Code of Conduct which must always be complied with first. These are very similar and based upon the national Nolan Principles. Each Member of the Joint Committee must observe the requirements of their own Council’s Code, giving particular attention to declarations of interest.
- Decision-makers must not fetter their discretion by approaching the decision to determine a planning application with a closed mind. It is a legal requirement to approach the determination

of a planning application with an open mind to prevent a legal challenge for pre-determination or bias.

- Officers are responsible for carrying out their duties in compliance with the Royal Town Planning Institute Code of Conduct, in particular that Officers must not make or subscribe to any statements which go against their own professional standards.
- Care will be needed where there is contact with applicants, developers and objectors. Certain structured meetings can occur where there is transparency, consistency and fairness to all. Members 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.
- Councillors should explain to those lobbying or attempting to lobby them that, whilst they can listen to what is said, it may subsequently prejudice their impartiality, and therefore their ability to participate in the Joint 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.
- The overriding duty is to the whole of the Garden Community area and not just to the people in the Ward/Division and, taking account of the need to make decisions impartially, you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- Members of the Joint Committee should come to meetings with an open mind and demonstrate that they are open-minded. Decisions should be taken in accordance with the Section 1 of the Local Plan and the Development Plan Document unless material considerations indicate otherwise. Members should come to a decision only after due consideration of all of the information reasonably required upon which to base a decision.
- Planning applications may be brought forward as the DPD is progressing through examination and could be reported to the Joint Committee for consideration. Such applications would need to be considered on their overall planning merits, which would include the wider policy framework set by the adopted Section 1, the status of the DPD in terms of its advancement through the plan making process, any emerging findings from its consideration via an examination in public, and any other material planning considerations.
- All Councillors attending pre-application discussions must have first attended a training session on conduct at pre-application discussions. These training sessions will be organised by the respective Councils' Planning Service on a regular basis in order to ensure that the integrity of the Councillor's decision-making role is maintained.

#### **RECOMMENDATION**

**That the Tendring Colchester Borders Garden Community Joint Committee Planning Probity Protocol (attached at Appendix A) be agreed and applied by Members and Officers.**

**A.4 APPENDIX A**  
**TENDRING COLCHESTER BORDERS GARDEN COMMUNITY**  
**JOINT COMMITTEE PLANNING PROBITY PROTOCOL**

**1. BACKGROUND:**

- (a) A Joint Committee has been established by Tendring District Council, Colchester Borough Council and Essex County Council in relation to the Tendring Colchester Borders Garden Community (TCBGC).
- (b) The Joint Committee's remit is to jointly discharge those specific executive and non-executive functions related to TCBGC, delegated pursuant to Sections 101(5), 102(1)(b) and 102(2) of the Local Government Act 1972 on the Terms of Reference attached at Appendix A.
- (c) The functions delegated are set out in 4.2 (a) to (h) (in Appendix A) however, in summary there are two themes:
  - (i) To exercise the Council's functions relating to overseeing the preparation of the joint TCBGC Development Plan Document and ensuring it:
    - is in accordance with the Local Development Schemes;
    - includes policies designed to secure that the development and the use of land in the garden community area contribute to the mitigation of, and adaption, to climate change;
    - meets the "tests of soundness" as set out in legislation, national and planning policy and advice contained within guidance issued by the Secretary of State;
    - has regard to the adopted Section 1 of Colchester Borough Council and Tendring District Council's Local Plan;
    - has regard to the resources likely to be available for implementing the proposals in the document;
    - other such matters the Secretary of State prescribes; and
    - complies with the Council's Statement of Community Involvement
  - (ii) Act as Local Planning Authority to determine planning applications by virtue of the Town and Country Planning (Development Management Procedure) (England) Order 2015, within the TCBGC area.

**2. INTRODUCTION:**

- (a) This Planning Probity Protocol (this Protocol) applies and focuses on the functions and responsibilities of the Joint Committee for determining planning applications within the TCBGC area (as referred to in 1(c) (ii) above).

- (b) Planning matters have a significant impact on our lives and the area where we live, work or play. Consequently, planning attracts a great deal of public and media interest. It is important that the system operates, and is seen to be operated, in an honest, open and transparent manner.
- (c) This Protocol describes how the Councils will deal with planning applications and other planning practices within the TCBGC area. It applies to all Councillors and Officers who are involved in the Development Management processes. It recognises the separate roles of Councillors and Officers.
- (d) Members of the Joint Committee are expected to observe the requirements and principles as set out in this Protocol at all times when involving themselves in the planning process. This includes when taking part in the decision making meetings of the Joint Committee in exercising the functions of the Planning Authorities or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings.
- (e) The purpose of the Development Management is to consider how development proposals (applications for planning permission) will be considered and determined. To be successful, the planning system relies on Councillors and Officers acting in a way which is fair and is clearly seen to be fair. This includes acting in accordance with planning law in all instances, and paying due regard to national and local policies, in addition to all other “material planning considerations”.
- (f) Each of the Councils forming the Joint Committee has their own locally adopted Members’ Code of Conduct, which although will be very similar and based upon the national Nolan Principles, are slightly different and therefore, each Member of the Joint Committee must observe the requirements of their own Council’s Code, giving particular attention to declarations of interest.
- (g) If a Councillor has any doubts about the application of this Protocol to their own circumstances they should seek advice early and prior to meetings from the relevant Monitoring Officer or one of their colleagues. Further guidance on the relationship between this Protocol and the Members’ Code of Conduct is set out in Section 4 below.
- (h) Executive functions, not connected with the DPD process or otherwise delegated to the Joint Committee, but nonetheless relate to the TCBGC remain with each Council to exercise, although the Councils continue to work in partnership. Each Council’s Cabinet is therefore represented on a separate TCBGC Member Group, which remains in place. However, its terms of reference provide separation between the executive strategic decisions and direction retained by each Council. Advice will be provided separately to Members of the TCBGC.

### 3. DEVELOPMENT PLAN:

- (a) To the extent that development plan policies are material to an application for planning permission the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (see [section 70\(2\) of the Town and Country Planning Act 1990](#) and [section 38\(6\) of the Planning and Compulsory Purchase Act 2004](#) – these provisions also apply to appeals).
- (b) The National Planning Policy Framework represents up-to-date government planning policy and is a material consideration that must be taken into account where it is relevant to a planning application or appeal. This includes the presumption in favour of development found at [paragraph 14 of the Framework](#). If decision takers choose not to follow the National Planning Policy Framework, where it is a material consideration, clear and convincing reasons for doing so are needed.
- (c) Both Tendring and Colchester Councils have now adopted a common Section 1 of their Local Plan, which has the shared vision of sustainable development and allocation of TCBGC , which will be further defined through a joint Development Plan Document (DPD) providing detailed parameters and policies (as required within Section 1 – Policies SP8 & 9).
- (d) SP 8 for the Development & Delivery of a New Garden Community in North Essex, which states:

*“Tendring/Colchester Borders, a new garden community which will deliver between 2,200 and 2,500 homes, 7 hectares of employment land and provision for Gypsies and Travellers within the Plan period (as part of an expected overall total of between 7,000 and 9,000 homes and 25 hectares of employment land to be delivered beyond 2033).*

*The garden community will be holistically and comprehensively planned with a distinct identity that responds directly to its context and is of sufficient scale to incorporate a range of homes, employment, education & community facilities, green space and other uses to enable residents to meet the majority of their day-to-day needs, reducing the need for outward commuting. It will be comprehensively planned from the outset, with delivery phased to achieve the whole development, and will be underpinned by a comprehensive package of infrastructure. A Development Plan Document (DPD) will be prepared for the garden community, containing policies setting out how the new community will be designed, developed and delivered in phases, in accordance with the principles in paragraphs i-xiv below. **No planning consent for development forming part of the garden community will be granted until the DPD has been adopted”.***

- (e) Requirements of the Tendring/Colchester Borders Garden Community Development Plan Document (DPD) are set out in Policy SP 9 of the adopted Section 1 of the Local Plan and states:

*“The adoption of the DPD will be contingent on the completion of a Heritage Impact Assessment carried out in accordance with Historic England guidance. The Heritage Impact Assessment will assess the impact of proposed allocations upon the historic environment, inform the appropriate extent and capacity of the development and establish any mitigation measures necessary. The DPD will be produced in consultation with the local community and stakeholders and will include a concept plan showing the disposition and quantity of future land-uses, and give a three dimensional indication of the urban design and landscape parameters which will be incorporated into any future planning applications; together with a phasing and implementation strategy which sets out how the rate of development will be linked to the provision of the necessary social, physical and environmental infrastructure to ensure that the respective phases of the development do not come forward until the necessary infrastructure has been secured. The DPD and any application for planning permission for development forming part of the garden community must be consistent with the requirements set out in this policy. For the Plan period up to 2033, housing delivery from the garden community, irrespective of its actual location, will be distributed equally between Colchester Borough Council and Tendring District Council. If, after taking into account its share of delivery from the garden community, either of those authorities has a shortfall in delivery against the housing requirement for its area, it will need to make up the shortfall within its own area. It may not use the other authority’s share of delivery from the garden community to make up the shortfall.”*

- (f) Policy SP8 also states that “No planning consent for development forming part of the garden community will be granted until the DPD has been adopted.” It is likely that planning applications will be brought forward as the DPD is progressing through examination and could be reported to the Joint Committee for consideration. Such applications would need to be considered on their overall planning merits, which would include the wider policy framework set by the adopted Section 1, the status of the DPD in terms of its advancement through the plan making process, any emerging findings from its consideration via an examination in public, and any other material planning considerations.
- (g) Upon receipt of a planning application for any part(s) of TCBGC, Tendring District Council and Colchester Borough Council shall agree which Authority shall be the planning authority in respect of that application and it shall be processed in accordance with the relevant Authority’s procedures prior to determination by the Joint Committee.

#### 4. RELATIONSHIP TO THE MEMBERS' CODE OF CONDUCT

- (a) The rules contained in the Members' Code of Conduct must always be complied with first. This is both the rules on Disclosable Pecuniary Interests (DPs) 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.
- (b) Do then apply the rules in this 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 Protocol, you may:
- put the Councils at risk of proceedings on the legality of the related decision or maladministration;
  - undermine the integrity of such important decision making and reduce public trust and confidence;
  - put 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.

(c) **INTEGRITY – One of the Nolan Principle in Public Life**

*“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**”.*

- (d) It is therefore advisable that Councillors:
- (i) 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.
- (ii) Notify the relevant 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 Joint 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 the Joint Committee.

## 5. FETTERING DISCRETION IN THE PLANNING PROCESS

### **Bias, predetermination and predisposition:**

- (a) The law on **bias and predetermination** (which is a particular form of bias) is part of the general legal obligation on public authorities to act fairly. Decision makers are entitled to be **predisposed** to particular views.
- (b) However, **predetermination occurs where someone closes their mind to any other possibility beyond that predisposition**, with the effect that they are unable to apply their judgement fully and properly to an issue requiring a decision. The leading case on local authority bias and predetermination acknowledges the difference between Judges sitting judicially and Councillors making decisions in a democratic environment. Given the role of Councillors, there must be 'clear pointers' before predetermination is established.
- (c) Councillors are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under Section 25(2) of the Localism Act 2011. The Section provides that a decision maker is not to be taken to have had, or to have appeared to have had, a closed mind when making a decision just because:
- the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take in relation to a matter, and
  - the matter was relevant to the decision.

The section makes it clear that if a Councillor has given a view on an issue, this, considered in isolation, does not show that the Councillor has a closed mind on that issue. So, the mere fact that a Councillor has campaigned on an issue or made public statements about their approach to an item of council business does not prevent that Councillor from being able to participate in discussion of that issue and to vote on it.

- (d) Decision-makers must not fetter their discretion by approaching the decision to determine a planning application with a closed mind. It is a legal requirement to approach the determination of a planning application with an open mind to prevent a legal challenge for pre-determination or bias (both being judicial review grounds in administrative law).

- (e) However, when Councillors come to make the decision, they
- are entitled to have and to express your own views on the matter, provided they are prepared to reconsider their position in the light of all the evidence and arguments;
  - must keep an open mind and hear all of the evidence before them, 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 held when seeking election or otherwise acting as a Councillor, in giving fair consideration to points raised;
  - are only entitled to take account material considerations and must disregard considerations irrelevant to the question and legal context at hand; and
  - come to a decision after giving what they feel is the right weight to those material considerations.
- (f) If a Member of the Joint Committee is also a Parish Councillor affected by the TCBGC area and the application is considered at the Parish Council, as part of a consultation exercise, they are advised to remove themselves from the debate and vote at a local level to avoid allegations of pre-determination or bias at the Joint Committee stage.
- (g) Members wishing to take part in debate through a consultee body must:
- (i) consider if the proposal substantially affects the well-being or financial standing of the consultee body;
  - (ii) 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 Joint 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 Joint Committee.
- (h) Members should take the opportunity to exercise their separate speaking rights as a Ward/Parish/Division Member where they have represented their views or those of local electors and fettered their discretion, but do not have a Disclosable Pecuniary Interest or other personal conflict of interest. Where you do:

- a. advise the Committee Officer or the Chair that you wish to speak in this capacity before commencement of the item and in accordance with the Public Speaking Rights;
- b. remove yourself from the seating area for Members of the Joint Committee for the duration of that item; and
- c. ensure that your actions are recorded within the minutes.

## **6. CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS**

- (a) Councillors should refer those who approach them for planning, procedural or technical advice to officers.
- (b) Councillors should only attend those meetings organised in accordance with this Protocol and must not attend private meetings with developers. The meeting will be conducted during office hours except in exceptional circumstances. It shall be arranged by Officers who shall accommodate, as far as reasonably practical, the availability of Councillors. However, availability shall not be a reason to delay the pre-application -discussion phase.
- (c) In the interests of transparency, consistency and fairness to all, the meetings shall follow a firm structure, as follows:
  - The Planning Officer will act as Chair for the meeting, introducing participants and setting out the purpose of the meeting to advise how it will be conducted;
  - The developer will present their proposal;
  - Councillors will then have the opportunity to ask questions and seek clarification. They may alert the developer to what they perceive as the likely views of their constituents, but care will need to be taken that their own personal views are not expressed;
  - The Chair will then thank the developer for attending and the developer shall leave the meeting;
  - Once the developer has left the meeting Councillors may advise Officers of any other matters they wish to be explored further and any elements which they feel would benefit from negotiation;
  - Officers will then offer a professional opinion to guide Councillors as to what negotiations would be reasonable and how the proposals align with policy; and
  - The Chair will then conclude the meeting.
- (d) The Chair will make it clear to the developer that the role of a Councillor is to listen to the discussion, identify issues that the developer will need to consider and to represent community interests but that it will not be possible for any Councillor to enter into negotiations or express a view on the proposal.

- (e) The Chair will record the meeting and take a note of all present, plus any issues identified. Officers will take appropriate follow up action. The note of the meeting will be placed on the public file at the earliest opportunity. In all cases, the involvement of Councillors will be recorded in any subsequent planning application, whether in any delegated report or in any Committee report.
- (f) Negotiations will take place after the meeting and will only be undertaken by Council Officers.
- (g) In the case of potentially contentious meetings, two or more Officers will attend. For certain major, complex proposals it may be necessary to have more than one Councillor meeting and, to this end, a schedule of involvement will be agreed with the developers by Officers.
- (h) Councillors should 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.
- (i) Councillors who are members of the Joint Committee and also a member of the TCBGC Member Group (whose purpose is provide political oversight of the delivery of the TCBGC) must ensure that their respective roles do not lead to a potential conflict of interest and in the case of a potential conflict of interest the Councillor must seek advice from their respective Monitoring Officer.

## **7. LOBBYING OF COUNCILLORS**

- (a) Councillors should explain to those lobbying or attempting to lobby them that, whilst they can listen to what is said, it may subsequently prejudice their impartiality, and therefore their ability to participate in the Joint 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.
- (b) The overriding duty is to the whole of the Garden Community area and not just to the people in the Ward/Division and, taking account of the need to make decisions impartially, you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- (c) Councillors and Officers must not accept any gifts or hospitality from any person involved in or affected by a planning proposal.
- (d) Any lobbying correspondence received can be read but should also be passed to the Planning Officer at the earliest opportunity.

- (e) The relevant Monitoring Officer should be informed where Councillors or Officers feel they 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.
- (f) Councillors should make the necessary declarations that they have been lobbied on any particular matter at the Joint Committee when the application is being considered under the Declaration of Interests item of the agenda.
- (g) Unless Councillors have a Disclosable Pecuniary Interest or other interests, they will not have fettered their discretion or breached this Protocol through:
  - (i) Listening or receiving viewpoints from residents or other interested parties;
  - (ii) Making comments to residents, interested parties, other Councillors or appropriate officers (making clear that you must keep an open mind when it comes to making the decision)
  - (iii) Seeking information through appropriate channels; or
  - (iv) Being a vehicle for the expression of opinion of others in their role as a Ward/Division Councillor.

## **8. LOBBYING BY COUNCILLORS**

- (a) Councillors should not 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 Joint Committee when it comes to make its decision.
- (b) Councillors should not 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.
- (c) Councillors should not decide or discuss how to vote on any application at any political group meeting, or lobby any other Councillor to do so. Political Group Meetings should never indicate how Councillors should vote on a planning issue.

## **9. SITE VISITS/INSPECTIONS**

- (a) Members of the Joint Committee must attend site visits organised by the Councils, otherwise they will NOT be permitted to sit on the Joint Committee for those items.
- (b) The only people invited to the site visit are Councillors of the Joint Committee and Officers of the Councils. Whilst other parties may be

present, no one other than the Chair, Councillors of the Joint Committee and Officers may address the Committee on a site visit.

- (c) The applicant and any other parties who are present at the site visit as a result of publicity (e.g. Ward/Division Councillors, neighbours or objectors) will not be permitted to participate in the site visit, discussions or speak directly to Councillors of the Joint Committee
- (d) On assembling at the site, the Chair will advise those present of the purpose of the site visit and the procedure to be followed, so that all are aware that it is a fact finding exercise only and that no decision will be taken until the Joint Committee meeting.
- (e) Members of the Joint Committee must ensure that they treat the site visit only as an opportunity to seek information, to observe the site and ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- (f) Members of the Joint Committee must not express opinions or views.
- (g) The Joint 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.
- (h) If access to private land is needed, Officers will get the agreement of the landowner before the visit.

## **10. PUBLIC SPEAKING AT MEETINGS**

- (a) The Joint committee has a Public Speaking Rights scheme, which forms part of its Standing Orders which should be followed and observed by all parties.
- (b) Councillors should not allow members of the public to communicate with you during the Joint Committee's proceedings (orally or in writing) other than through the Public Speaking Rights Scheme or through the Chairman, as this may give the appearance of bias.

## **11. OFFICERS**

- (a) For the purposes of the Joint Committee's consideration of the planning application, Officers will:
  - (i) give clear professional and impartial advice;
  - (ii) make sure that all the information needed for a decision to be made is provided;

- (iii) put the application in context, in terms of the Development Plan and all other relevant material planning considerations;
  - (iv) give a balanced, clear and accurate written analysis of the issues, acknowledging the relative merits of alternative opinions or options that may exist;
  - (v) wherever possible, distinguish matters of fact or law from their own professional opinions and/or judgements; and
  - (vi) give a clear recommendation, with reasons.
- (b) The exception to simply providing recommendations is if they have been given further powers under the appropriate Council's Scheme of Delegation to Officers, or when the Joint Committee gives specific delegated authority.
- (c) Officers are responsible for carrying out their duties in compliance with the Royal Town Planning Institute Code of Conduct, in particular that Officers must not make or subscribe to any statements which go against their own professional standards. 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 Joint Committee or its Members.
- (d) Members of the Joint Committee must not put pressure on officers to put forward a particular recommendation. However, this does not prevent Members from asking questions or submitting views to the Planning Officer, which may be incorporated into any committee report.

## **12. REPORTS & DECISION MAKING**

### **Members of the Joint Committee should:**

- (a) Come to meetings with an open mind and demonstrate that they are open-minded.
- (b) Comply with section 38 of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Section 1 of the Local Plan and the Development Plan Document unless material considerations indicate otherwise.
- (c) Come to a decision only after due consideration of all of the information reasonably required upon which to base a decision. If it is felt there is insufficient time to digest new information or that there is simply insufficient information before them, request that further information. If necessary, defer or refuse.
- (d) Should not vote or take part in the meeting's discussion on a proposal unless they have been present at the entire debate, including the Officer's introduction to the matter.

- (e) Ensure the reasons for the Joint Committee's decision to defer any proposal are fully provided and recorded e.g. seeking further information, what and why?
- (f) Make sure that if proposing, seconding or supporting a decision contrary to officer recommendations or the Development Plan, the planning reasons leading to this conclusion/decision are clearly identified. These reasons must be given prior to the vote and be recorded. Be aware the Joint Committee may have to justify the resulting decision by giving evidence in the event of any challenge.

### **13. TRAINING**

- (a) All Councillors attending pre-application discussions must have first attended a training session on conduct at pre-application discussions. These training sessions will be organised by the respective Councils' Planning Service on a regular basis in order to ensure that the integrity of the Councillor's decision making role is maintained. No Councillor engaging in pre-application discussions should go more than 24 months without at least attending a "refreshment training session".
- (b) All Councillors must receive training in planning procedures. The subjects covered by the training will be decided by Officers in consultation with Councillors. A Councillor who does not undertake the training for Councillors on ***Development Control (Determining Planning Applications)*** will be disqualified from the Joint Committee and from being a substitute for Councillors of the Committee who are unable to attend. They will also be unable to participate in any pre-application or planning application meetings that include the developer, applicant(s) or their agent(s).
- (c) A programme of training will be available each year, covering issues of current importance as well as updating knowledge. From time to time, specialist training will be provided to cover particular topics or to look at matters in greater depth.

### **14. REVIEW OF THIS PROTOCOL**

This Protocol will be reviewed annually by the Joint Committee.

*To be considered and approved by the  
Tendring Colchester Garden Communities Joint Committee  
18 July 2022*

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## STANDARDS COMMITTEE

19 JULY 2023

### REPORT OF HEAD OF DEMOCRATIC SERVICES & ELECTIONS

#### **A.3 TOWN & PARISH COUNCILS' STANDARDS SUB-COMMITTEE – APPOINTMENT OF TENDRING DISTRICT COUNCIL MEMBERS**

(Report prepared by Ian Ford, Committee Services Manager)

#### **PART 1 – KEY INFORMATION**

##### **PURPOSE OF THE REPORT**

To enable the Committee to appoint Tendring District Council's members to serve on the Town and Parish Councils' Standards Sub-Committee for the 2023/2024 Municipal Year.

##### **BACKGROUND**

Article 9 (Standards Committee and Town & Parish Councils' Standards Sub-Committee) of the Council's Constitution states that the Council will have, in place, a Town & Parish Councils' Standards Sub-Committee with the following terms of reference:-

*“To advise and assist Town and Parish Councils and Councillors to maintain high standards of conduct and to make recommendations to Parish and Town Councils on improving standards or actions following a finding of a failure by a Parish Councillor to comply with its Code of Conduct.” [Article 9.05]*

Article 9.05 also requires the Sub-Committee to consist of three members of the Standards Committee and three non-voting co-opted Town & Parish Council members nominated by the Tendring District Association of Local Councils (TDALC). In addition, the nominated Town & Parish Council members will be of an independent standing and they will not have served as a District Councillor or as a County Councillor for a period of four years prior to their nomination.

The Standards Committee, at its meeting held on 3 August 2022 (Minute 7 refers), appointed Councillors Dan Casey, Gina Placey and Graham Steady to serve on the Town and Parish Councils' Standards Sub-Committee.

Since that time, Councillors Casey, Placey and Steady were not re-appointed as members of the Standards Committee, at the Annual Meeting of the Council held on 23 May 2023.

Frank Belgrove, Alresford Parish Councillor and the Chairman of TDALC, emailed the Committee Services Manager on 25 May 2023 as follows:-

*“Yesterday, Wednesday 24th May 2023, we held our AGM. I was elected as the new Chairman as Linda had stood down, and Cllr Danny Botterell is the new Vice Chairman.*

*To confirm the Tendring District Association of Local Councils (TDALC) has approved three appointments to the Standards Committee / Sub Committee as listed below.*

- 1. Cllr Frank Belgrove (Chairman TDALC) Alresford PC;*
- 2. Cllr Danny Botterell (Vice Chairman TDALC) Little Clacton PC; and*
- 3. Cllr Linda Belgrove (Member TDALC) - Alresford PC.”*

#### **RECOMMENDATIONS**

**It is recommended that the Standards Committee:-**

- (a) appoints three of its members to serve on the Town & Parish Councils' Standards Sub-Committee for the 2022/2023 Municipal Year; and**
- (b) notes, welcomes and endorses that the Tendring District Association of Local Councils (TDALC) has appointed Parish Councillors Frank Belgrove, Linda Belgrove and Danny Botterell as their three non-voting, co-opted members of that Sub-Committee.**

# Agenda Item 8

<b>TENDRING DISTRICT COUNCIL MONITORING OFFICER UPDATE JULY 2023</b>				
<b>Council</b>	<b>Complainant</b>	<b>Current status</b>	<b>Final outcome</b>	<b>Comments</b>
<b>Existing Cases from last update:</b>				
<b>Council</b>	<b>Complainant</b>	<b>Current status</b>	<b>Final outcome</b>	<b>Comments</b>
DISTRICT	PUBLIC	CLOSED	No further action	Matter related to alleged conduct whilst acting in an official capacity
DISTRICT	DISTRICT COUNCILLOR	CLOSED	No further action	Matter related to not disclosing a pecuniary interest
DISTRICT	DISTRICT COUNCILLOR	CLOSED	No further action	Matter related to alleged disclosure of confidential information
<b>New Cases since last update</b>				
PARISH	PUBLIC	ONGOING		Matter relates to alleged non-declaration of interest
<b><u>General Notes – 2023/24 Summary:</u></b>				
<p>Overall 3 cases have been received in 2023/24. Two of the cases merited no further action, one due to the Member not being re-elected at the May 2023 elections, the other due to the Member resigning from their position after the election.</p> <p>The Monitoring Officer has delivered Code of Conduct training to all District Members and two sessions have been held for Town and Parish Members and their Clerks.</p>				
<b>Requests for dispensations:</b>				
There has been one request for dispensation which was granted.				

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