

STANDARDS COMMITTEE

5 FEBRUARY 2025

REPORT OF THE MONITORING OFFICER

A.1 PLANNING PROBITY PROTOCOL – RESULTS OF CONSULTATION AND REVISED PLANNING PROBITY PROTOCOL

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

This report is submitted to the Committee to enable it to consider the Planning Probity Protocol following consultation with the members of the Planning Committee, the Portfolio Holder for Housing and Planning, Planning Officers and the Independent Persons. This report also sets out the outcome of the consultation and a revised Planning Probity Protocol for approval and recommendation to Full Council for its adoption.

EXECUTIVE SUMMARY

This report presents the updated revised version of the Planning Probity Protocol, as set out in Appendix A, following a consultation with the members of the Planning Committee, Portfolio Holder for Housing and Planning, Planning Officers and the Independent Persons.

Some themes from the consultation were:

- The concept of Bias needs to be stronger.
- stronger links to the Members' Code of Conduct, declarations of interest and the impact of participation at meetings.
- importance of seeking advice earlier.
- a determination should be made as to which Planning Applications submitted by Officers of the Council in their personal capacity should be submitted to the Planning Committee for determination i.e. Senior Officers above a certain grade and all Officers employed within Planning Services and Legal Services.
- the importance of Member Training needed to be stressed within the Planning Probity Protocol.
- stronger details needed around Planning Committee Members attending public meetings with applicants, developers and objectors, and
- site Visits section needed to be stronger relating to the exceptional circumstances.

The outcome of the consultation is set out in detail in Appendix B. In addition, it was considered necessary to include some text around the Protocol on Member and Officer Relations, as this had been omitted in the first review and is relevant.

RECOMMENDATION(S)

It is recommended that the Standards Committee:

- (a) notes the outcome of the consultation with members of Planning Committee, Portfolio Holder for Housing and Planning, Planning Officers and the Independent Persons;
- (b) endorses the revised Planning Probity Protocol (subject to tracked changes being accepted) and recommends to Full Council that it be adopted and incorporated into the Council's Constitution;
- (c) subject to (b) includes an additional recommendation to Full Council that the Planning Committee's Terms of Reference be amended to reflect the proposed seniority of officers and all officers within Planning and Legal Services applications to be referred to the Planning Committee; and
- (d) subject to Full Council's approval of the Planning Probity Protocol, that training on the Protocol, forms part of the Mandatory Training as required by Council Procedure Rule 33.3 for Members of the Planning Committee.

REASON(S) FOR THE RECOMMENDATION(S)

In order to enable the Planning Probity Protocol to be adopted by Full Council.

ALTERNATIVE OPTIONS CONSIDERED

Not to proceed further with the review. However, this would equate to a missed opportunity to refresh the Protocol and to produce a more user-friendly document following recognised best practice.

The outcome of any request for Devolution or Local Government Reorganisation should not have an impact on this review, so as to ensure the Council is continuing to demonstrate good governance.

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.

The Council has approved and adopted a Local Code of Corporate Governance, which is consistent with the principles of the **CIPFA / SOLACE *Delivering Good Governance in Local Government Framework (2016 Edition)***. The principles and standards set out in the 2016 Framework are aimed at helping local authorities to develop and maintain their own codes of governance and discharge their accountability for the proper conduct of business.

The first principle of the CIPFA/Solace Framework – Principle A expects local government to give on-going assurance (through its Annual Governance Statement) that it is “*Behaving with integrity, demonstrating strong commitment to ethical values and respecting the rule of law*”.

The Role of the Standards Committee within the governance environment is to:

- Promote and maintain high standards of conduct
- Develop culture of openness, transparency, trust and confidence
- Embed a culture of strong ethical and corporate governance

Corporate governance is about how we ensure that we are doing the **right** things, in the **right** way, for the **right** people in a timely, inclusive, honest and accountable manner.

Keeping under review and updating its protocols demonstrates the Council’s commitment to ensuring good governance sits at the core of its arrangements and culture.

LEGAL REQUIREMENTS (including legislation & constitutional powers)

- 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
- In making any determination under the Planning legal framework, Members of the Council sitting on the Planning Committee should ensure decisions 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). Members must do so by balancing the needs and interests of the whole community and of individual constituents, alongside the need to maintain an ethic of impartial decision making on what may be highly controversial proposals.
- Planning Probity Protocols aim to ensure that in the planning process there are no grounds for suggesting that a decision is biased, is not impartial or not well founded in any way.
- Planning legislation and guidance can be complex. The Local Government Association, the Committee for Standards on Public Life and the Royal Town Planning Institute all recommend Members who have to make planning decisions should be specifically trained and provided with general guidance for Planning in Probity.
- 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.

Challenges to Local Planning Authority decisions is via a Judicial Review which is defined in Part 54 of the Civil Procedure Rules as the process by which the court will review the lawfulness of an enactment, decision, action or failure to act in relation to the exercise of a public function. This often relates to planning decisions and actions by local planning authorities (LPAs) and the Secretary of State, which can be challenged in the courts by way of judicial review if the decision made was unlawful.

The focus of the judicial review is to consider the legality of how a decision was made or action was taken by a public body in the exercise of a public function. Judicial review cannot be used to review the merits of a decision.

In principle, judicial review can be used to challenge any act or omission by a public body, whereby the decision made is in the “public interest”. A judicial review claim will seek to demonstrate that the public body’s action falls within one or several of the below heads of claim:

- **Illegality** – where the decision-maker has failed to understand correctly the law that regulates its decision-making power and/or has failed to give effect to it.
- **Irrationality** – where a decision is so outrageous in its defiance of logic or of accepted moral standards that no sensible person giving due consideration to the matter in question could have arrived at such a result.
- **Procedural Impropriety** – (also referred to as a breach of natural justice), where, in making a decision, basic rules of natural justice were ignored, or where there was a failure to act with procedural fairness towards a person or to observe procedural rules that are expressly laid down by legislative instrument.

Common grounds for judicial review planning claims:

- Misinterpretation or misapplication of policy – A failure to correctly interpret and/or apply planning policy. This is usually formulated as an irrationality or illegality challenge. A decision-maker will open themselves up to challenge if they have failed to regard a policy in the development plan which is relevant to the application or have failed to properly interpret it.
- Material considerations – Failure by a decision-maker to have regard to a material planning consideration or the taking into account of a consideration which is not a material planning consideration. Such a ground is usually formulated as an illegality challenge, on the basis that it constitutes an error of law. A variant of this is the allegation that a decision-maker was misled by the planning officer about material considerations, often due to an unclear report or advice to the council which fails to understand the important issues that bear on the decision.
- Failure to give reasons/inadequate reasons – A failure to give reasons for a planning decision where required by statute or by the common law, and/or the inadequacy of reasons given for a decision. This is usually formulated as a procedural impropriety or illegality challenge.
- Failure to comply with EIA Regulations, SEA Regulations and/or Habitats Regulations – Where a decision has an environmental impact, it may be that the decision-maker failed

to comply with a particular aspect of the legislative regime requiring environmental impact assessment, strategic environmental assessment and/or habitats regulations assessment. A challenge of this nature usually falls under the irrationality standard.

Consequently, a Planning Probity Protocol is intended as guidance and a statement of good practice for all councillors and officers involved in the administration or operation of the planning process (including planning enforcement).

The Council's Constitution requires Members of the Planning Committee to have undertaken mandatory training with regards to the determination of the planning applications (Council Procedure Rule 33.3 – Part 4.29) and it is considered by the Monitoring Officer, that training on the Planning Probity Protocol would form part of this mandatory training.

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	Key messages from local government failures include the absence of the right culture and understanding of the Nolan Principles and the need for greater transparency in decision making. The proposed Planning Probity Protocol builds on the Council's existing culture of embedding the Nolan Principles within the way services are delivered, and decisions are made.
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

MILESTONES AND DELIVERY

Standards Committee 19 July 2023 – Agreed to undertake review.

Standards Committee 24 October 2024 – Considered the outcome of the review and make recommendations to Full Council.

Planning Probity Protocol discussion 22 January 2025 – Undertook consultation with Members of the Planning Committee, Portfolio Holder for Housing and Planning, Planning Officers and Independent Persons.

Standards Committee 5 February 2025 – Report outcome of consultation for consideration of recommendation onto Full Council.

Full Council 25 March 2025 – Council considers and adopts the proposed new Planning Probity Protocol.

ASSOCIATED RISKS AND MITIGATION

The Council must ensure that any Codes and Protocols which provide guidance for Councillor are up to date with current policy, legislation, case law, good practice and national guidance. The current Members' Planning Protocol was last reviewed in 2023, prior to this review, following the LGA's publication to minimise any risk that the Council's practices were not up to date. Up to date guidance and easy to follow, prevents confusion and legal challenges by way of judicial review to planning decisions based on failure to declare interests, predetermination or bias.

OUTCOME OF CONSULTATION AND ENGAGEMENT

The draft Planning Probity Protocol submitted to the Committee at its meeting of 24 October 2024 was subject to consultation with the Members of the Planning Committee, Portfolio Holder for Housing and Planning, Planning Officers and Independent Persons.

The outcome of the consultation is set out in Appendix B.

EQUALITIES

Part of the review of the Planning Probity Protocol has been 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, sex orientation.

SOCIAL VALUE CONSIDERATIONS

Not applicable to this report.

IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030

Not applicable to this report.

OTHER RELEVANT IMPLICATIONS

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

Crime and Disorder	None.
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Health Inequalities	None.
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Area or Ward affected	All.
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ANY OTHER RELEVANT INFORMATION

In undertaking the review, the LGA's Planning Advisory Service (PAS) guidance on Planning Committee Protocols has been considered, which outlines some of the best practice across the country. The LGA's Probity in Planning guidance suggests individual Planning Codes and Protocols are produced. Tendring District Council's current Members' Planning Code and Protocol followed the format of the Lawyers in Local Government (LLG) Members Planning Code of Good Practice, which has recently been reviewed but with little amendments. Looking to undertake thorough research over the suggested best practice of other Councils, a new document for Tendring District Council was produced and consulted on.

PART 3 – SUPPORTING INFORMATION**BACKGROUND**

In December 2019, the Local Government Association (LGA) issued its Probity in Planning Guidance – Advice for Councillors and Officers making planning decisions. 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.

At its meeting held on 19 July 2023, the Committee decided amongst other things that a review of the Council's Planning Code and Protocol be carried out to ensure it was adhering to best practice and easy to follow. The review conducted has researched the various examples suggested by Planning Advisory Service (PAS) as best practice and the outcome has resulted in a revised approach with the first step being to refer the document as the 'Planning Probity Protocol'. This also aligns with the Planning Probity Protocol adopted for the Tendring Borders Garden Community Joint Committee.

A report to the Standards Committee in October 2024 set out initial proposals following a

review by the Monitoring Officer and following consideration by the Committee it was agreed to consult with members of the Planning Committee, Portfolio Holder for Housing and Planning, Planning Officers and the Independent Persons on the draft revised Planning Probity Protocol.

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

Standards Committee 19 July 2023 – Minute 6

“RESOLVED that –

(a) the contents of the Monitoring Officer’s Report and the fact 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 of the Council, be noted;

(b) 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, be also noted; and

(c) a review of the Council’s Planning Protocol be carried out to ensure that it is adhering to best practice and easy to follow.”

Standards Committee 24 October 2024 – Minute 26

“RESOLVED that –

(a) the outcome of the review of the Planning Protocol carried out by the Monitoring Officer and her team be noted;

(b) approves that consultation be undertaken on the draft revised Planning Probity Protocol, as amended at the meeting; and

(c) the outcome of the consultation be submitted to the Standards Committee for its consideration prior to recommendation on to Full Council for adoption.”

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

[Report Template Part A](#)

[Minutes Template](#)

[Part 6 Codes and Protocols - Codes and Protocols](#) – Part 6.49 – 6.58

[A2 Appendix A - LGA Probity in Planning December 2019.pdf](#)

[Planning Committee Protocols | Local Government Association](#)

[LLG background paper.pdf](#)

[Standards Committee Report - 24 October 2024](#)

APPENDICES

Appendix A: New revised TDC Planning Probity Protocol – following consultation.

Appendix B: Consultation responses.

REPORT CONTACT OFFICER(S)

Include here the Name, Job Title and Email/Telephone details of the person(s) who wrote the report and who can answer questions on the content.

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CONSTITUTION OF THE DISTRICT OF TENDRING

Part 6 – Planning Probity Protocol

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1 INTRODUCTION

- 1.1 This Planning in Probity Protocol ("Protocol") has been prepared using the advice in the Local Government Association's revised guidance note on good planning practice for Members and Officers dealing with planning matters – Probity in Planning: the Role of Councillors and Officers (December 2019).
- 1.2 **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.
- 1.3 **The key purpose of planning:** *"the purpose of the planning system is to contribute to the achievement of sustainable development"* (para 7 of the National Planning Policy Framework (NPPF)). 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.
- 1.4 **Your role as a Member of the Planning Committee:** To make planning decisions openly, impartially, with sound judgement and for justifiable planning reasons.
- 1.5 **When the Protocol applies:** This Protocol applies to Members at all times they are involved in the planning process. This includes, where applicable, when part of decision-making meetings of the Council, 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, and

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preferably well before any action is taken, site visits undertaken or formal committee meeting takes place, from the Monitoring Officer.

- 1.6 In this Protocol when the term “Councillor” or “Member” is used it means that the advice is applicable to all Members of the Council. The term “Planning Committee Member” means a Member or a substitute Member of the Council’s Planning Committee.
- 1.7 **Relationship to the Members' Code of Conduct:** Members are reminded that the Planning Probity Protocol is designed primarily for Members of the Council’s Planning Committees and Members who, for whatever reason, find themselves involved in the planning process. Whilst the Protocol interprets the Members’ Code of Conduct with respect to planning matters, it is subordinate to the Members’ Code of Conduct and in the event of any inconsistencies arising between this Protocol and the Members’ Code of Conduct, the Members’ Code of Conduct shall prevail.

[NOTE: THE ABOVE IS UNDER REVIEW]

2 GENERAL ROLE AND CONDUCT OF MEMBERS AND OFFICERS

Introduction:

The Council has adopted a Protocol on Member and Officer Relations, which is contained within the Constitution in Part 6. The success of the Council is greatly dependent upon the positive nature of the working relationship between Members and Officers. Mutual trust and respect between both Members and Officers are essential to good local government.

The purpose of the **Protocol on Member and Officer Relations** is to provide a guide to good working relationships between Members and Officers, defining their respective roles and outlining the principles that underpin their relationship.

The protocol also builds on the respective Codes of Conduct for both Members and Officers and through this promotes the maintenance of integrity, both real and perceived, of the Council as well as very high standards of personal conduct.

The Underpinning Principles of working relationships are set out below and to be followed by both Members and Officers in fulfilling their duties:

- Mutual respect and courtesy between Officers and Members;
- An awareness of each other’s responsibilities and duties;
- No inappropriate criticism, intimidating behaviour, or the creation of a threatening work environment of any kind from either Members or Officers;
- Any appropriate challenges are to be conducted in a professional and respectful manner;
- Equal treatment, regardless of personal or political opinion (actual or perceived);
- An adherence to the law and the lawful instructions and advice of others;
and

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- An avoidance of close personal familiarity.

The above principles are designed to foster the good working relationships between Officers and Members that are essential to effective decision making and the delivery of services.

OFFICERS:

- 2.1 The function of Officers is to support and facilitate the Councillors in their work and to ensure that robust and lawful decisions are made. Planning decisions must be made in accordance with the Local Plan and other material planning considerations (section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004).
- 2.2 The Director of Planning & Communities makes decisions on the majority of planning applications under delegated powers and makes recommendations on more significant and contentious applications and other planning matters for decision by the Planning Committee.
- 2.3 Planning Officers will provide professional advice and must provide Planning Committee Members with an Officer's recommendation on whether or not planning permission should be granted, based on the Planning Officer's assessment.
- 2.4 In considering applications and in advising members of the public on planning policy, the determination of planning applications, enforcement and other planning matters, Officers must:-
 - act fairly and openly and avoid any actions that would give rise to an impression of bias;
 - avoid inappropriate social contact with applicants and their agents, objectors and other interested parties;
 - approach each planning application or issue with an open mind, avoiding preconceived ideas;
 - carefully weigh up all relevant planning issues before making a decision;
 - make decisions and recommendations purely on planning grounds having regard to the Local Plan and other material considerations;
 - give professional, objective and consistent advice; and,
 - carry out the decisions of the Committee insofar as they relate to the completion of any legal agreement, or instigation or defence of proceedings.

PLANNING COMMITTEE MEMBERS:

- 2.5 In return Planning Committee Members must adhere to paragraph 1.2 of the Members' Code of Conduct and treat local authority employees (officers) and representatives of partner organisations and those volunteering for the Council with respect and respect for the role they play.
- 2.6 The Code of Conduct states "*Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but*

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civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack".

- 2.7 The relationship between officers and members during the Planning Committee meeting should be based on mutual respect and courtesy, recognising that Officers are in attendance to assist Planning Committee Members answering questions, to enable them to make their decision. Officers are not in attendance to be cross examined or subject to inappropriate criticism.

3 RELATIONSHIPS TO MEMBERS' CODE OF CONDUCT

- 3.1 The rules contained in the Members' Code of Conduct must always be complied with first. These are both the rules on Disclosable Pecuniary Interests (DPIs) and any other interests identified by the Council, and the general rules and obligations giving effect to the Seven Principles of Public Life: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.

- 3.2 **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 Council at risk of proceedings on the legality of the related decisions or maladministration;
- undermine the integrity of such important decision making and reduce public trust and confidence; or
- 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.

3.3 DECLARATIONS OF INTERESTS & IMPACT ON PARTICIPATION

The Council's Members' Code of Conduct sets out requirements for Members on declaring Disclosable Pecuniary Interests, Other Registerable Interests and Non-Registerable Interests and the consequences on participation of having such an interest. These must be followed scrupulously, and Members should review their situation regularly and ensure they understand their requirements under the Code of Conduct with regards to the provisions on Interests. Not only should impropriety be avoided but also any appearance or grounds for suspicion of improper conduct.

A Planning Committee Member with a Disclosable Pecuniary Interest (as described in Appendix B to the Members' Code of Conduct), in respect of a particular planning matter must declare it and take no part in the discussion or the determination of the proposal. He or she should leave the room before the item is considered. Failure to do so could result in a criminal offence being committed.

The responsibility for this rests with each Planning Committee Member, who should understand if they have an Interest before the Planning Committee meeting takes place. Advice can be obtained in advance from the Monitoring

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Officer or their Deputy if required, in advance of a Planning Committee meeting. Ideally advice should be requested in good time, and not just before the start of the Committee meeting, as it may not be possible to provide a response immediately before the meeting is due to start. It is considered unsatisfactory if a Planning Committee Member asks for guidance in the course of a debate.

3.4 **Do** disclose the existence of the Interest providing a full explanation of its nature and impact; and

3.5 **Do take into account when approaching a decision that the principle of Integrity (one of the Nolan Principles in Public Life) is defined as**

*“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”.***

3.6 It is therefore advisable that Members:

- (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 and/or Planning Committee Member may place additional limitations on you in representing the proposal in which you have an interest.
- (ii) Notify the Monitoring Officer in writing where it is clear to you that you have a Disclosable Pecuniary Interest, Other Registerable Interest, Non-Registerable 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 Planning 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 Planning Committee.

4 APPLICATIONS SUBMITTED BY THE COUNCIL, MEMBERS OR OFFICERS

4.1 The Planning Committee Terms of Reference (as set out in Part 3 of the Constitution) requires that the following Planning Applications are referred to the Planning Committee for determination:

- a) the applicant is the Council or someone acting as applicant on the Council's behalf or in respect of Council owned land unless the application is recommended for refusal; and
- b) the applicant is a Member of the Council, or a member of permanent staff employed by TDC and there is an Officer recommendation for approval.

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- 4.2 In respect of Officers, it is suggested that this should apply to the Council's Senior Managers, as determined by the individual services, and all Officers within Planning and Legal Services.

5 MEMBER TRAINING

- 5.1 A Member (or designated named Substitute Member) cannot sit as a member of the Planning Committee unless they have received specific training with regard to the determination of planning applications (Part 4 of the Constitution - Council Procedure Rules). This training is essential for both exercising committee functions and also complying with this Protocol.
- 5.2 Being a member of the Planning Committee can be a difficult role to carry out. The Council provides training for Councillors on the determination of planning applications at least once a year, and this is a mandatory requirement to sit as a member of the Planning Committee (Council Procedure Rules). The Council also aims to provide more specialist training throughout the year to update knowledge, cover specific topics, appeal decisions, new legislation, guidance and policy, and to generally look at matters in greater depth. Current Planning Committee Members (which includes designated named Substitute Members, see paragraph 1.6) should attend all planning training events arranged by the Council. It is open to all other Councillors to attend these training sessions however, where places are limited, current Planning Committee Members and named Substitute Members of the Planning and/or Planning Policy and Local Plan Committees will take priority.
- 5.3 **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.
- 5.4 **Do** attend all planning training including specialised training sessions provided and arranged by the Council under a continuing programme either because the topic has been designated mandatory for Planning Committee Members (and designated named Substitute Members) or to assist you in the functions of the Planning Committee. This training is designed to extend your knowledge of planning policy, law, regulations, procedures, Codes of Practice and the Development Plans and thus assist you in carrying out your role properly and effectively.
- 5.5 Organised training provides opportunities to review a sample of planning decisions as to ensure that Planning Committee Members' judgements have been based on proper planning considerations.

6 FETTERING DISCRETION IN THE PLANNING PROCESS

PREDISPOSITION, PREDETERMINATION AND BIAS

- 6.1 In addition to declaring Disclosable Pecuniary interests, Other Registerable Interests and Non-Registerable Interests, members of a Planning Committee need to avoid any appearance of bias or of having predetermined their view at the time of making a decision on a planning application.
- 6.2 The law on **bias and predetermination** (which is a particular form of bias) is part of the general legal obligations on public authorities to act fairly and the existence of such can result in an unlawful decision being made and subject to

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judicial review. Decision makers are entitled to be **predisposed** to particular views.

PREDISPOSITION

- 6.3 A distinction is drawn by the Courts between a Councillor having clearly expressed an intention to vote in a particular way before a meeting (pre-determination) and a predisposition to an initial view. Where the Councillor is clear they have an open mind and are willing to listen to all the material considerations presented at the Planning Committee before deciding on how to exercise their vote, there is no predetermination.

BIAS

- 6.4 Councillors should not participate in the consideration of a planning application if to do so would give the appearance of bias (actual or perceived), and the decision may be challenged on the grounds of bias in the High Court. **The test for bias is: “*Would the fair-minded observer, knowing the background, consider that there was a real possibility of bias?*”**

It is not the Councillor’s view of whether they are biased that is relevant but the view of the independent observer. Perception is important and can lead a fair-minded observer to consider that there is a real possibility of bias, they should not participate in making the decision and should withdraw from the room (or virtual meeting where appropriate). Further, Councillors do not have to have a personal interest in order to come within the definition of bias. The Courts have held that it is primarily a matter for the Councillor to judge whether to withdraw but given the scope for challenge the Councillor should always err on the side of caution. Whilst not every application will raise the question of bias, there will be occasions when a member of the public in possession of all facts might consider that there is a real risk of bias. In these circumstances, the Councillor should seek advice from the Monitoring Officer, their Deputy or a legal adviser to the Planning Committee.

PREDETERMINATION

- 6.5 **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. Where there is predetermination, the Councillor should not participate in the consideration of a planning application.
- 6.6 The courts have sought to distinguish between situations which involve predetermination or bias on the one hand and predisposition on the other. The former is indicative of a “closed mind” and likely to leave the Planning Committee’s decision susceptible to challenge by Judicial Review. The latter is the perfectly normal process of someone making up their mind.
- 6.7 **EXAMPLE:** a Councillor who states, “Windfarms are blots on the landscape and I will oppose each and every windfarm application that comes before the

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committee” will be perceived very differently from a Councillor who states, “Many people find windfarms ugly and noisy, and I will need a lot of persuading that any more windfarms should be allowed in our area”. The former has a closed mind and is predetermined, whereas the latter is predisposed but is maintaining an open mind.

6.8 The following diagram is produced to help Councillors appreciate the range of circumstances (the following is guidance only; any specific questions should be raised with the Council’s Monitoring Officer):

Lawful	No view	
	Predisposition	<ul style="list-style-type: none"> • Manifesto pledges/commitments • Policy making and setting
Unlawful	Predetermination	<ul style="list-style-type: none"> • Clearly expressed intention to vote in a particular way on an individual application whatever the information provided
	Bias	<ul style="list-style-type: none"> • Membership of an organisation that supports or opposes particular developments or development types

PARTICIPATING IN DECISION MAKING

6.9 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 of the Localism Act 2011. The Section provides

- (1) Subsection (2 - below) applies if—
 - (a) as a result of an allegation of bias or predetermination, or otherwise, there is an issue about the validity of a decision of a relevant authority, and
 - (b) it is relevant to that issue whether the decision-maker, or any of the decision-makers, had or appeared to have had a closed mind (to any extent) when making the decision.

- (2) A decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because—
 - (a) 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
 - (b) 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.

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- 6.10 However, decision-makers must not fetter their discretion by approaching the decision to determine a planning application with a closed mind or exhibiting bias. 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).
- 6.11 When Planning Committee Members come to make the decision, they:
- should not take part if they are biased or to take part would give the appearance of bias (see paragraph 6.4 for an explanation of bias),
 - are entitled to have and to express their 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 Member, in giving fair consideration to points raised;
 - are only entitled to take account of material planning considerations and must disregard considerations irrelevant to the question and legal context at hand;
 - must be prepared to change their view right up to the point of making the decision; and
 - come to a decision after giving what they feel is the right weight to those material planning considerations.
- 6.12 Councillors can listen to applicants and objectors, and indicate their view, but must not give the perception that they are biased in their consideration of their issues. Councillors can support or oppose an application and represent the views of their residents in their role as a Ward Councillor. To do so as a Planning Committee Member MIGHT compromise their role on the Committee and Councillors must seek advice from the Monitoring Officer, their Deputy or the legal adviser to the Planning Committee.
- 6.13 A Planning Committee Member should take the opportunity to exercise their separate speaking rights as a Ward 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 (see paragraph 6.14 in respect of Interests). Where you do:
- advise the Committee Officer or the Chairman that you wish to speak in this capacity at the Declaration of Interests part of the agenda and before commencement of the item and in accordance with the Public Speaking Scheme;
 - remove yourself from the seating area for Members of the Planning Committee for the duration of that item;
 - take a seat in the public gallery and address the Members of the Planning Committee when invited to in accordance with the Public Speaking Scheme

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- you may remain in the public gallery for the duration of the item as you are representing the Ward; and
- ensure that your actions are recorded within the minutes.

6.14 If a Planning Committee Member has a Disclosable or other personal conflict of interest under the Members' Code of Conduct, they may exercise their speaking rights as a Ward Member only with a dispensation from the Council's Monitoring Officer. In these circumstances, all of the bullet points in paragraph 6.13 apply however, in respect of bullet point 4, they must withdraw from the meeting room once they have addressed the Planning Committee in accordance with the Public Speaking Scheme.

7 CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS

7.1 Planning Committee Members must refer those who approach them for planning, procedural or technical advice to Officers.

7.2 Planning Committee Members must only attend private meetings organised in accordance with this Protocol and must not attend private meetings with applicants, developers or groups of objectors. To do so could result in a finding of bringing the Council into disrepute and breaching paragraph 5 of the Members' Code of Conduct.

7.3 Where you feel that a formal (private) meeting would be useful in clarifying the issues, you should seek to arrange that meeting yourself through a request to the Director of Planning and Communities or Head of Planning and Building Control to organise it. The Officer(s) will ensure that those present at the meeting are advised from the start that the discussions will not bind the Authority to any particular course of action, that the meeting is properly recorded on the public file at the earliest convenience. 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.

7. **Do otherwise:**

- follow the Authority's rules on lobbying (see Section 8 of this Protocol);
- consider whether or not it would be prudent in the circumstances to make notes when contacted; and
- report to the Head of Planning and Building Control 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.

IN ADDITION, IN RESPECT OF PRESENTATIONS BY

APPLICANTS/DEVELOPERS 7.5 A public presentation arranged by the applicant/developer is not part of the formal process of debate and determination of the subsequent planning application. However, where an applicant has arranged a public presentation for a proposal (prior to or following the submission of an application), a Planning Committee Member may attend that public meeting if they consider that they would find this helpful to understand the proposal.

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In attending a public presentation, Planning Committee Members must be careful with behaviors and not place themselves in a situation which could be perceived as giving a view on the application (or proposed application).

If they wish to subsequently take part in the decision making of the application for the proposal, they must not enter into any discussions with the applicant, their agent or any member of the public present at the meeting to avoid being lobbied and to avoid allegations of pre-determination and/or bias. When attending, the Planning Committee Member must adhere to the general rules and obligations as set out in their Members' Code of Conduct, giving effect to the Seven Principles of Public Life (Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership), and the rules on lobbying set out in Section 8 of this protocol.

If you decided to attend a public presentation you must declare this at the meeting for openness and transparency, explain the purpose of your attendance and what action was taken, including if you were approached as this would be regarded as lobbying. This information will be recorded in the minutes and acts as a record.

7.5 **Don't** attend a planning presentation without requesting an Officer to be present.

7.6 **Do** otherwise:

- ask relevant questions for the purposes of clarifying your understanding of the proposals.
 - remember that the presentation is a form of lobbying and not part of the formal process of debate and determination of any subsequent application; this will be carried out by the Planning Committee of the Planning Authority.
 - be aware that as the presentation is a form of lobbying so avoid placing yourself in a situation which could be perceived as giving a view on the application, or enter into any discussions with the applicant, their agent or any member of the public present at the meeting to avoid being lobbied and to avoid allegations of pre-determination and/or bias.
 - follow the Authority's rules on lobbying.
-
- report to the Head of Planning and Building Control 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;
 - when the application is being considered under the Declaration of Interests item on the agenda and in the interest of openness make the necessary declarations at the Planning Committee that you have been lobbied on a particular matter by attending a presentation and state whether you are pre-determined or not

8 LOBBYING OF AND BY COUNCILLORS

8.1 Lobbying is a normal and perfectly proper part of the political process. Members of the public, applicants or local interest groups will often seek to influence a decision through an approach to their Ward Member. In the case of a Planning Committee

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Member, care needs to be taken to avoid the perception of bias or predetermination of any planning matter.

- 8.2 A Planning Committee Member should explain to those lobbying or attempting to lobby them that, whilst they can listen to what is said (or read what is put in writing and sent to them), it may subsequently prejudice their impartiality and ability to participate in the Committee's decision-making, if they are asked to express either an intention to vote one way or another or such a firm point of view that amounts to the same thing.
- 8.3 Planning Committee Members should ensure that it is made clear to any lobbyists that they will only be in a position to reach a final decision on any planning matter after they have heard all of the relevant arguments and looked at the relevant information during the sitting of the determining Committee.
- 8.4 Planning Committee Members should therefore:
- suggest to lobbyists that they write to the Director of Planning and Communities in order that their views can be included in the Officer reports prepared for determination under delegated powers or by Committee;
 - pass on any lobbying correspondence received (including plans, data, correspondence etc. in respect of an application) to the Director of Planning and Communities or email PlanningSupport&Development@tendringdc.gov.uk as soon as practicably possible so that it can be taken into account and included in the report on the application;
 - remember that their overriding duty is to the whole community not just to the residents and businesses within their ward and, taking account of the need and duty to make decisions impartially, and should not improperly favour, or appear to improperly favour, any person, company, group or locality;
 - not accept gifts or hospitality from any person involved in or affected by a planning proposal, but if a degree of hospitality is entirely unavoidable, ensure that they comply with the provisions in the Members' Code of Conduct on gifts and hospitality; and,
 - inform the Monitoring Officer where they feel that 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 where necessary.
- 8.5 Planning Committee Members should note that, subject to the requirements to ensure that Members comply with the Members' Code of Conduct and the rules regarding bias and pre-determination and ensure that they take appropriate action in relation to Disclosable Pecuniary Interests, Other Registerable Interests and Non-Registerable Interests, they are not precluded from:
- listening or receiving viewpoints from residents or other interested parties;
 - making comments to residents, interested parties, or other Members or appropriate Officers, provided they do not consist of or amount to predetermination or bias and they can make clear they are keeping an open mind when it comes to making the decision;
 - seeking information through appropriate channels; or,
 - being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided that under the Declaration of Interests item on the agenda they explain their actions and make it clear that, either (a) having expressed the opinion or ward/local view, they have not committed themselves to vote in accordance with those views and will make up their own mind having heard all the facts and listened to the debate (they are not pre-determined); or (b) state that they wish to exercise

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their separate speaking rights on the application as a Ward Member, following the procedure set out in paragraphs 6.13 or 6.14 as appropriate.

- 8.6 In the interest of openness, it is recommended that Planning Committee Members must make the necessary declarations that they have been lobbied on any particular matter at the Committee when the application is being considered under the Declaration of Interests item on the agenda.
- 8.7 Planning Committee Members should not become a member of, lead or represent a national or local organisation whose primary purpose is to lobby to promote or oppose planning proposals. If a Planning Committee Member does, he/she may appear to be biased
- 8.8 Whilst Planning Committee Members may be able to address the Committee as a Ward Member or an objector, they are not able to participate or vote on any matter in respect of which they have a disclosable pecuniary interest unless they have received a dispensation for this purpose (see paragraph 6.14).
- 8.9 Planning Committee Members can join general groups which reflect their areas of interest, and which concentrate on issues beyond particular planning proposals, but they should disclose a personal interest where that organisation has made representations on a particular proposal. A Planning Committee Member should make it clear to that organisation and the Planning Committee that they have reserved judgement and the independence to make up their own mind on each separate proposal.
- 8.10 Members should not excessively (*) lobby Planning Committee Members regarding their concerns or views on a planning application, 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.

(*) Members are entitled to lobby however, this should not be more than is necessary or normal to make the points/views known. Members should not use access to Council resources, including fellow Councillors to seek an advantage or to compromise the impartiality of the decision making.

- 8.11 Planning Committee Members must not decide or discuss how to vote on any application at any sort of political group meeting or lobby any other Member to do so.
- 8.12 Members should avoid any direct contact with consultees and instead work with Planning Officers to resolve any concerns or arrange contact (not least as some of the Consultees charge for time).

9 SITE VISITS/INSPECTIONS

CONDUCT AT THE SITE VISIT

- 9.1 Officers will arrange the site visit in advance with relevant parties. There is no right to enter on private land without permission of the landowner. Where appropriate, Officers will obtain permission from the landowner or his/her agent for those invited to attend the site visit to enter the land. If permission is not given for the Planning Committee Members and Officers and other interested parties to enter, or exceptional circumstances exist and advice has been given, the site will have to be viewed from the public highways/areas where this is possible.

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- 9.2 Prior to attending site visits Planning Committee Members must familiarise themselves with the Council's Health and Safety Risk Assessment document for site visits which they must adhere to. Failure to adhere to the guidance contained in the Risk Assessment during a site visit arranged for an application will result in the Planning Committee Member not being permitted to take part in the determination of that application at the Planning Committee.
- 9.3 The Chairman (or Vice-Chairman) will control proceedings throughout.
- 9.4 The Chairman (or Vice-Chairman) will explain to all those present that the purpose of the site visit is to obtain information relevant to the determination of the application and how the site visit will be conducted. The Chairman will make it clear to interested parties who are in attendance (including the applicant/agent, supporters, objectors, Ward Members and Parish or Town Councillors) that they are not permitted to question or lobby the Planning Committee Members. If attempts to question and/or lobby persist, the site visit will be stopped, and all Planning Committee Members and Officers will leave the site
- 9.5 The Chairman (or Vice Chairman) will introduce the Planning Officer who will describe the proposals to the Planning Committee Members with reference to matters of fact and features on the land and the submitted plans/drawings and summarise the relevant issues and material considerations. It is expected that the Planning Committee Members will already be familiar with the Planning Officer's report where one has been provided.
- 9.6 The Planning Committee Members may ask the Planning Officer for factual clarification of any planning matter relating to the proposal or surrounding land, for example, distances to adjoining or objectors' properties or the location of the planned development.
- 9.7 Other Officers may be present to provide other specialist/expert advice/information where relevant/required (e.g. Highways Engineers, Tree Officers or Environmental Health Officers etc.)
- 9.8 Planning Committee Members will then be invited through the Chairman (or Vice-Chairman) to ask any questions of fact or seeking clarification from the Officers present. Planning Committee Members must not direct these questions to the applicant or others present. Any matters not to hand will be reported at the Planning Committee meeting. Discussion on the merits of the application will not be permitted, and Planning Committee Members should refrain from making comments on the proposal.
- 9.9 Representatives of objectors and/or supporters may be invited/allowed to attend the site visit as interested parties. However, the right of a representative to address the Planning Committee does not arise until this item is reached on the agenda during the relevant meeting of the Planning Committee. Presentations from interested parties should on no account be made, interested parties will have the opportunity to address the Planning Committee through the Public Speakers Scheme. Occasionally it may be appropriate for interested parties to be asked, through the Chairman (or Vice-Chairman), to point out important or relevant site features. At no point during the site visit will debate or comment on the planning merits or otherwise of the proposal be permitted, as the proper time for such debate/comment is at the relevant meeting of the Planning Committee.

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- 9.10 A Ward Councillor(s) may attend the site visit; however, any Ward Councillor(s) must refrain from debating or commenting on the planning merits or otherwise of the proposal. Ward Councillors will be permitted to make representations at the relevant meeting of the Planning Committee.
- 9.11 During the site visit, no separate discussions regarding the application must take place with Officers or Planning Committee Members and either applicants, objectors or supporters. In order to assist in ensuring that Planning Committee Members receive the same information, they are required to keep together in one group at all times with the Chairman (or Vice-Chairman) and the Planning Officer during the entirety of the accompanied site visit. It is vital that Planning Committee Members do not break-off either as individuals or into smaller groups thereby leaving Planning Committee Members vulnerable to for example, lobbying, and physical or verbal threats, and to ensure that there are no discussions about the proposal separately with residents or the applicant
- 9.12 During the site visit, Officers and Planning Committee Members will not accept any representations (including verbal presentations, documents, letters or petitions) from applicants, objectors or supporters. Any representations should be sent to the Planning Department, and these will be reported to the relevant meeting of the Planning Committee.
- 9.13 No hospitality will be accepted by Officers and/or Planning Committee Members from the applicant or any other interested party present at the site visit.
- 9.14 The Planning Committee Members present at the site visit will sign an attendance sheet. Planning Committee Members failing to attend the site visit will not be considered to have sufficient knowledge of the site and the issues arising from the site visit to enable them to take part in determining the application when it is presented to the Planning Committee for consideration. As such, they will not be permitted to take part in the determination of the planning application at the Planning Committee.
- 9.15 The Chairman (or Vice-Chairman) will conclude the site visit. The Planning Committee Members will leave the site promptly, as a group, and refrain from talking to the applicant, objectors or other interested parties. No indication of the views of Planning Committee Members or the likely outcome of the Planning Committee's deliberations on the application will be given. To do so might imply that a Planning Committee Member's mind is already made up. If attempts are made to speak to the Planning Committee Members they should politely decline to engage in conversation, and bring this to the attention of the Chairman (or Vice-Chairman) and the Planning Officer before leaving the site so that it can be recorded. Should the Chairman (or Vice-Chairman) consider it appropriate to do so, following seeking Officers advice, reference to these events may be raised in the formal Planning Committee meeting for the public record.
- 9.16 If Planning Committee Members require further information or clarification of any aspect of the development, the Officer(s) attending the site visit will be asked to ensure that such information is available by the time the application is considered by Planning Committee Members at the relevant meeting of the Planning Committee.
- 9.17 The Practice of the Council is to visit application sites prior to their consideration at Planning Committee. The Head of Planning and Building Control will identify

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which sites will need to be visited. If the Planning Committee have visited a site recently then this site will not be visited again.

- 9.18 The purpose of the site visit is for Planning Committee Members to gain factual knowledge of a site and make a visual assessment of the proposal and its relationship with adjoining development.
- 9.19 The Planning Committee Members will be provided with a “Member Pack” which includes a selection of the PowerPoint slides that will be displayed at the Planning Committee. These describe the application proposal and summarise the main issues.
- 9.20 Officers will arrange with the developer/landowner, where possible, for the Planning Committee Members to gain access to the site.
- 9.21 Before the Planning Committee Members get on the bus, the Chairman (or Vice-Chairman), will ask the Planning Committee Members whether they need to declare an interest in an application. When the bus arrives at each site Planning Committee Members will be reminded again of their need to declare any interest they may have, as it may only become apparent to Planning Committee Members that they have an interest when they arrive at a site. The Head of Planning and Building Control will record any interests that are declared
- 9.22 If a Planning Committee Member declares a Disclosable Pecuniary Interest, an Other Registerable Interest or Non-Registerable Interest, then they should remain on the bus and not take part in the site visit. If a Planning Committee Member is in doubt as to whether they have an Interest in a particular matter they should take advice from the Council’s Monitoring Officer (or Deputy Monitoring Officer) before attending the arranged site visit (see paragraph 3.3). If a Planning Committee Member declares an Interest then they are not able to take part in the visit. It is incumbent upon the Planning Committee Member to ensure the impact of their interest before taking part in the site visit and that they do not seek to compromise the decision making process.
- 9.23 Planning Committee Members also need to consider whether they have an open mind or if there is bias or the perception of bias about the application before taking part in a site visit.
- 9.24 Where a Planning Committee Members does not take part in the site visit having declared an Interest or due to pre-determination or bias, they must not discuss the application with the other Planning Committee Members at any point prior to the determination of that application by the Planning Committee.

EXCEPTION TO THE COUNCIL’S LOCAL PRACTICE OF UNDERTAKING SITE VISITS

- 9.25 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.
- 9.26 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 Planning Committee, so long as the guidance issued by the Council is adhered to.

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9.27 Should circumstances prevail where the Council has had to determine if it is not possible to organise a site visit, Members of the Planning 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.

10 POST-SUBMISSION DISCUSSIONS

10.1 Members should not encourage appealing, JR or complaint against the Council without speaking to the Council Officer first.

10.2 Members should not pass on any known details of the case, including any individual names or details that may be known to them, and should instead direct to the Report and Council Officers for assistance as needed.

10.3 Members should not visit the site within a week of the decision to ensure no perception of bias, this would avoid heighten tension with applicant/neighbours not please by the decision.

11 PUBLIC SPEAKING AT MEETINGS

11.1 **Don't** allow members of the public to communicate with you before the opening, during the proceedings, during breaks or immediately after the close of the Planning Committee meeting (orally or in writing) other than through the scheme for Public Speaking or through the Chairman, as this may give the appearance of bias.

11.2 **Do** ensure that you comply with the Council's procedures in respect of public speaking.

11.3 Members of the public are not permitted to communicate with Planning or Legal Officers immediately before, during or after the Planning Committee meeting proceedings.

12 REPORTS & DECISION MAKING

12.1 In coming to a decision on a planning application, a Planning Committee Member must:

- come to the meeting with an open mind;
- Comply with section 38 of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Council's Local Plan and Development Plan Documents unless material considerations indicate otherwise;
- not communicate with anyone (except Officers and other Planning Committee Members) orally, electronically, in writing or by any other means during the proceedings of the Planning Committee (which includes before the opening of the meeting, during any breaks, and immediately after the close of the meeting);
- come to a decision only after due consideration of all the information reasonably required to base a decision upon;

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- refrain from expressing personal views, opinions or emotions and instead restrict themselves to matters of planning law, policy and all relevant material planning considerations when exercising your planning judgment;
 - not vote on a proposal unless they have been present to hear the whole debate including the Planning Officer's presentation and any public speaking (and where applicable, attended the site visit), where an application has been deferred they must also have been present at the original meeting when the application was first considered; and
 - ensure that if they are proposing, seconding or supporting a decision contrary to the Officer's recommendation or the Local Plan, that they can identify, understand and articulate the **planning reasons they wish to rely on**, leading to their conclusion. Any professional advice given by Officers present at the Planning Committee must be taken into account and considered. Reasons must be given before a Seconder to the proposal is sought and the vote is then taken and recorded. The Chairman (or Vice-Chairman) or Officers will remind the Planning Committee that this is legally required before a decision can be made, if necessary.
- 12.2 Reports to the Planning Committee will normally be available at least five working days to the meeting. Presentations to the Planning Committee and update sheets are uploaded onto the Council's website, as this is additional material taken into account through the decision-making process.
- 12.3 All applications submitted to the Planning Committee will have a full written report from Planning Officers including a reasoned assessment of the proposal, reference to relevant policies and a justified recommendation and analysis of available options. Reports will cover the substance of any objections and the views of people and bodies that have been consulted.
- 12.4 Any oral presentations raising new matters and updates by Planning Officers to the Planning Committee will be minuted.
- 12.5 Planning Committee Members must ensure that they are present for the whole presentation by Officers and subsequent debate on a particular matter and do not attend or leave part way through, this includes where an application is deferred. This is to ensure that they are able to hear all the relevant evidence and debate in relation to a proposal. In the event that a Planning Committee Member is not present for the whole of the debate and consideration of the application (including an arranged site visit) they will not be permitted to take part in the decision making. The Chairman and/or Officers will be able to offer advice on this point.
- 12.6 Where an application is recommended for refusal the reasons will be set out in full in the Planning Officer's report.

DECISIONS CONTRARY TO THE OFFICER RECOMMENDATION

- 12.7 Planning Committee Members must indicate the planning reasons at the Planning Committee meeting for approval or refusal of applications determined contrary to Officer advice, including identifying relevant policies. Pressure must never be put on Officers to "go away and sort out planning reasons".
- 12.8 Where an application is being considered at the Planning Committee for refusal contrary to Officer advice, the proposed reasons for refusal will be agreed at that Planning Committee meeting. The reasons will be recorded in the minutes and be based on material planning considerations and the relevant policies supporting the refusal. An opportunity will be given to the Officer to explain the implications of the

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contrary decision. If a successful planning appeal follows a refusal contrary to Officer advice, clear identification of good planning reasons for refusal will reduce the chance of a cost award.

FREE FROM POLITICAL INSTRUCTION

- 12.9 Members of the Planning Committee must make planning decisions on planning grounds. “Whipping” is inappropriate, and decisions must not be taken in party grounds on how to vote on particular applications prior to the Planning Committee meeting.

DECLARATIONS OF INTERESTS

- 12.10 The Council’s Code of Conduct sets out requirements for Members on declaring pecuniary and non-pecuniary interests and the consequences of having such an interest. These must be followed scrupulously, and Members should review their situation regularly. Not only should impropriety be avoided but also any appearance or grounds for suspicion of improper conduct.
- 12.11 A Planning Committee Member with a pecuniary interest in respect of a particular planning matter must declare it and take no part in the discussion or the determination of the proposal. He or she should leave the room before the item is considered. The responsibility for this rests with each Planning Committee Member. Advice can be obtained from the Council’s Monitoring Officer or where appropriate the Deputy Monitoring Officer if required, well in advance of a Planning Committee meeting. It is unsatisfactory if a Planning Committee Members asks for guidance in the course of a debate.

REQUESTS BY MEMBERS FOR INFORMATION

- 12.12 Wherever possible, Members should give advance notice of additional information they intend to request, or information they intend to contest, at the Planning Committee meeting so that Officers can be in a position to assist and avoid the unnecessary deferral of a decision.

PUBLIC PARTICIPATION

- 12.13 In order to give greater opportunity to applicants and objectors to express their respective points of view, the Planning Committee operates a scheme of public participation.

13 PLANNING APPEALS

- 13.1 Appeals into the planning decisions of the Council are heard by a Planning Inspector appointed by the Secretary of State. Any hearing or inquiry will be open to the public and Members are able to attend. Members are encouraged to attend such hearings, as they can be a good learning experience. This part of the code is concerned with Members who wish to actively participate in these appeals.
- 13.2 If a Member wishes to attend a public inquiry or informal hearing as a Ward Member or as a member of the public, they are free to do so. It is strongly recommended that they discuss their participation with the Director of Planning to ensure that they are aware of the process and that they do not act in a manner

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which compromises their position as a Member of the Council or brings the Council into disrepute or puts the decision made at risk of challenge.

- 13.3 A Member cannot attend an appeal on behalf of the Council's Planning Committee, even if they sat on that Committee, unless this is as part of the Council's case as decided by the Director of Planning. The decision of the Planning Committee will be documented in the minute and set out in the decision notice. The Planning Officer will present the Council's case of its planning merits, in accordance with the Planning Committee's decision. The inspector is required to determine the appeal on its planning merits and therefore all representations should be so directed.
- 13.4 Where the appealed decision was contrary to the Officer's recommendation, Officers are generally able to present the Council's case in a satisfactory manner. Where this may not be possible, the case will be presented by a planning consultant employed by the Council.

14 PLANNING ENFORCEMENT

- 14.1 Under the scheme of delegation, all planning and conservation matters are delegated except for the determination of certain planning applications that are specified in the constitution. As decisions on planning enforcement matters are not planning applications, they are delegated decisions to Officers and are therefore dealt with by Officers.
- 14.2 However, principles around such decisions apply as set out in Part 3.6 (paragraph 7) of the constitution. This provides that the delegation of powers to Officers is underpinned by the principle of culture of consultation and liaison with Members, as appropriate, and the ability of Officers to refer matters to the relevant decision-making body, where it is felt that this is appropriate due to the nature of an issue.
- 14.3 So Officer's may decide to refer a planning enforcement matter to the Planning Committee for determination where consultation with Members is deemed necessary given the nature of issues involved.
- 14.4 The Members' Referral Scheme only relates to planning applications and not decisions on planning enforcement cases, so cannot be used by Members to refer a planning enforcement matter to the Planning Committee.
- 14.5 There are a range of ways of tackling alleged breaches of planning control, and local planning authorities should act in a proportionate way. Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. This includes a local enforcement plan, where it is not part of the development plan.
- 14.6 In considering any enforcement action, the local planning authority should have regard to the National Planning Policy Framework, in particular paragraph 60 which provides; *'Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.'*

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- 14.7 The Council's current local enforcement plan for breaches of planning control is the 'Local Planning Enforcement Policy (v.2: September 2022), which will be updated from time to time.'

APPENDIX B

CONSULTATION RESPONSES:

PORTFOLIO HOLDER OF HOUSING AND PLANNING RESPONSE:

- 1) Paragraph 5 – Member Training: All training concerning planning should be mandatory for all members, and substitutes, the planning committee.
- 2) 5.2: Training should be more frequent than minimum of once a year, to take into account any appeal decisions etc
- 3) 5.4: take out ‘Do endeavour’ and insert ‘You must’ attend any other
- 4) 6.11: Agree with the highlighting of sub para 4.
- 5) 6.12: Take out the words ‘are advised to’ in the last sentence and insert the words ‘MUST’
- 6) 6.13: Should some wording be put in last sentence about leaving the room if necessary?
- 7) 7.1: Replace word ‘should’ with ‘must’.
- 8) 7.2.: Suggest putting something in here that going against this could be considered a breach of Code of Conduct (if it is).
- 9) 7.4: 1st sentence, is there a link to this, if so put it in here.
- 10) 7.8: Suggestion there is something added that a declaration at Committee about such attendance, and declare predetermined or not.
- 11) 8.5: Suggestion that the last bullet point be made clearer in wording
- 12) 8.6: Remove word ‘should’ and insert ‘must’.
- 13) 8.7: Make second sentence a separate paragraph.
- 14) 8.9: Expand on what might be/is considered excessive.
- 15) 8.10: Remove word ‘should’ and insert ‘must’.
- 16) 9.3: Insert wording around ‘Chairman will explain to all present purpose of site visit, how it will be conducted, warn others attending (public) of their limitations (speeches/questions) etc, and consequences if they do (site visit will be terminated)
- 17) 9.7: Second sentence remove word ‘should’ and insert word ‘must’.
- 18) 9.9: remove word ‘will’ and insert word ‘must’.
- 19) 9.10: after last sentence, and in reference to last sentence, insert wording similar to ‘if they do, then they could be seen to be pre-determined, and would therefore be unable to participate in any debate on that particular application’.
- 20) 9.14: after last sentence put in wording similar to ‘if continually spoken to/approached they should politely decline, bring it to the attention of Chair/Vice Chair and officer, before leaving the site, as well as declaring they did so at the subsequent Committee meeting.
- 21) 9.21: after last sentence, insert wording similar to ‘ and must not mention or discuss the application prior to, of after, the site visit, with other members of the Committee.....’
- 22) 12.1: third bullet point, should the words ‘and public speakers’ be removed completely, as it implies committee members can do so.
- 23) 12.1 final bullet point, extra emphasis on the words already underlined. Put them in BOLD. Maybe put something in that Chairman will not accept a proposal made with no relevant reasons give, after taking advice of legal/planning officers.
- 24) 12.5: First sentence remove word ‘should’ and insert ‘must’. Second sentence should read that they cannot propose/vote etc: Personal view is that if committee members have not heard all the ‘evidence and debate’ they must not be allowed to, similar to not being on site visit.
- 25) 12.7: Second sentence remove word ‘ should’ and insert word ‘must’.
- 26) 12.9: Second sentence remove word ‘should’ and insert word ‘must’.
- 27) 14.5: First sentence, remove word ‘is’ insert word ‘are’.
- 28) 14.6: Check that NPPF paragraph number has not changed due to recent changes within NPPF 2024 version.

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Wording similar to “Members of the Committee MUST adhere to the Risk Assessment document, and its guidance, during all site visits. Failure to do so will mean that you will not be able to sit on any planning application listed”.

STANDARDS COMMITTEE RESPONSE:

- (1) to highlight the vital necessity of the Committee membership staying together as one group whilst attending a site visit and not to allow itself to be split up into smaller groups thereby leaving Members vulnerable to acts of lobbying, physical or verbal intimidation et cetera;
- (2) to highlight that Planning Committee members should refrain from expressing their personal views, opinions, emotions at meetings but should instead restrict themselves to matters of planning policy (whether national or local);
- (3) to acknowledge that being a member of the Planning Committee can be a difficult role to carry out; and
- (4) to reflect within paragraph 9.21 that if Members are in doubt as to whether they have an Interest in a particular matter then they should discuss it with Officers and to also cross-reference that paragraph to the information provided by the Monitoring Officer to Members in respect of the Declaration of Interests.

PLANNING COMMITTEE MEMBERS, PLANNING OFFICERS AND INDEPENDENT PERSONS RESPONSES:

3. Relationship to Members’ Code of Conduct:

- Emphasis that Committee members understand their declarations of interests ideally not just before the committee meeting starts – MO or DMO may not be able to answer immediately before the meeting has started.

4. Applications submitted by the Council, Members or Officers:

- “Officers” – over a certain level, all Members of Planning Service and Legal Services to go to Planning Committee if application sent in.

5. Member Training:

- STRESS how important the training is for Members both for exercising committee functions and complying with the Probity Protocol.

6. Predisposition, predetermination and bias:

- Bias needs to be emphasised more.

7. Contact with Applicants, Developers and Objectors/8. Lobbying of and by Councillors:

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- 7.2 – There is no problem for Members of the Planning Committee to attend public meetings, but to be careful with behaviours and not to place themselves in a situation which could be perceived as giving a view on the application, advice would be not to say anything to anyone in case of getting lobbied.
- Should say Planning Officer throughout the Protocol – not ‘Officer’.

9. Site Visits:

- 9.13 – make stronger.
- Exceptional circumstances – make stronger
- Developers/applicants, Objectors and Parish/Town Councillors should be made aware that they should be pally with Planning Committee members.
(Guidance around not shaking hands etc from Councillors to developers/applicants, Objectors and/or Parish/Town Councillors – at the meeting. This also includes Planning Officers.
- Public and speakers should not approach members of the Committee. Reference Public Speakers Scheme.

10. Post-Submission Discussions:

- Gary Guiver & John Pateman-Gee to have input.