

APPENDIX A

PROTOCOL FOR PLANNING AND DEVELOPMENT CONTROL

A General principles

The Council's own Members' Code of Conduct contains provisions which are very relevant to planning and related applications and this Planning and Development Control Protocol is intended to supplement that. In addition, guidance on good practice has been published by the Local Government Association, the Local Government Ombudsman and the Standards Board for England. This document is intended to expand on the principles contained in those documents but with particular reference to determination of planning applications and related matters, normally by the Planning Committee, and other site specific proposals including Unitary Development Plan proposals or under the Local Development Framework. The Protocol relates to voting members of the Planning Committee, other Members and, where appropriate, officers.

- A1 Voting Members must vote in the public interest, their overriding duty being to the whole community and not just the public living or working in their ward.
- A2 Voting Members or substitutes who intend to vote must not take or declare a view on the merits of an application or proposal or organise support or opposition in advance of the meeting which makes the decision, and must keep an open mind until after they have considered the Committee report and heard all evidence and arguments presented. This does not prevent such Members from reading material on the application which is in the public domain.
- A3 Voting Members should not form or show bias against or in favour of any particular person, company or group or any particular site or locality or give the impression that they have done so.
- A4 Members who have been clearly involved in the formulation of a proposed development should withdraw from any meeting at which a planning application for such development is to be determined.
- A5 Decisions on issues determined by the Planning Committee must follow from the considered judgement of individual voting Members based on all relevant material considerations and must not be taken in accordance with a political party direction given at a previous party group meeting or otherwise.
- A6 Members are reminded that they should always be aware of the effect of any actual or apparent bias on any planning decisions in which they may be involved. In case of doubt, they should consult senior planning, democratic services or legal officers or the Monitoring Officer for advice on this issue.

B Members' interests and planning applications

Personal and Prejudicial Interests

'Personal Interest' and 'Personal and Prejudicial Interest' have been re-defined in the revised Members' Code of Conduct 2007, paragraphs 8 to 12. The Code permits both speaking and voting when a personal interest has been declared. Members should refer to paragraphs 8 and 9 of the Members' Code of Conduct which deal with personal interests. Where a member has a personal interest which is also prejudicial, the Member may only attend the meeting for the purpose of making representations, answering questions or giving evidence (and then only provided that the public are also allowed to attend the meeting for the same purpose). The Member must then leave the room immediately after speaking. If a Member with a personal and prejudicial interest does not have such an intention, the Code stipulates that they should not attend for that item at all.

- B1 Members must always declare the existence and nature of personal, or personal and prejudicial, interests in accordance with the Members' Code of Conduct, and this should include interests where the Member has some doubt whether or not it is declarable.
- B2 The declaration of an interest should be made at the beginning of the relevant item. The nature of the interest (i.e. the reason for it and whether it is personal, or personal and prejudicial) should be identified and in the case of a prejudicial interest the Member must withdraw from the meeting (unless they wish to speak as set out in paragraph G1 (iii)) until after the Committee's deliberations on the item have been concluded.
- B3 Members contemplating making a planning application for development contrary to approved planning policies or who feel unable to support a particular approved planning policy or policies generally should consider whether or not it is appropriate that they should serve on the Planning Committee.
- B4 A Member who has a personal interest (as defined in paragraph 8 of the Members' Code of Conduct) in a planning matter will normally also have a prejudicial interest and have to withdraw, if the interest is one which a member of the public with knowledge of the facts would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest. (The exemptions to this provided in paragraph 9(2) of the Code are not applicable to development control matters.)
- B5 A Member should not speak or vote on a planning application if that Member has been closely associated with the formulation of a Council development for which planning permission is sought, in particular as the relevant Cabinet Member (or as Chair of the relevant Council Committee). (This does not apply to decisions made in the preparation of Council policy which is then applied in the determination of planning applications.)
- B6 Where an application is made by a body such as a charitable trust, voluntary organisation or a school governing body, a Member who is a Member of that body should not vote or normally be present at the determination of that application if this may be a prejudicial interest under the Members' Code of

Conduct and should not attend to speak other than as set out in paragraph G1 (iii).

- B7 Other than in instances to which reference is made in B6 above, whilst a Member is not barred from voting on a planning application by reason of an interest in the land through being a charitable trustee, school governor or some other voluntary capacity, if a Member has been closely associated with the matter, or has the appearance of being so as chairman of the body concerned or otherwise, the Member should withdraw from the meeting whilst the item is being discussed. Each case must be considered individually. The essential tests are those set out in B4 above, the common law of natural justice, avoiding a real likelihood of bias or any pre-judgement of a matter.

C Lobbying

Lobbying is a normal part of the political process and seeks to influence a Councillor's view in order to achieve a particular decision. However, where Councillors are making statutory decisions such as the determination of planning applications which require impartial and objective judgement, it can result in a decision being made improperly. All planning decisions should be made strictly on the basis of the facts and relevant planning policies and other material considerations relating to each case.

- C1 Voting Members who are lobbied by persons with an interest in the outcome of a planning application or other proposal, either as proponent or objector, should inform such persons that they are unable to receive any representations from them or hold any private meetings, and that the proper course of action is for representations to be directed to the Development Control Manager. Any written representations received on the matter should be passed to the Development Control Manager for inclusion on the application file and placing in the public domain. Any such approach should also be reported to the Committee meeting at which the application is determined. (This requirement applies to Members who will vote on the application and not to other Members who address the Committee to advocate a particular ward or other interest.)
- C2 Other Members of the Council must not lobby voting Members, directly or indirectly, in writing or otherwise, in respect of items to be decided by the Planning Committee with a view to influencing their decision. Any representations should be sent to the Development Control Manager for inclusion on the application file and placing in the public domain.
- C3 Whereas individual Members of the Planning Committee may be able to give useful procedural advice with regard to planning applications, it is preferable that any enquirers are referred to the Planning Division for advice and information. If not, applicants or objectors may quote Members' views which may misrepresent the Member and, in any event, may give a poor perception of the impartiality of the planning process.
- C4 Non-voting Members are less restricted. However they should also be careful about giving the impression that they have been subject to improper or undue influence through lobbying (particularly when this may occur as a result of having private meetings). Such meetings with applicants should be avoided altogether when contrary to the criteria set out in H1 of the Protocol, and any

private meetings with either applicants or interested third parties should be declared by the Member in their written or oral representations. Non-voting Members should remember that to be effective in representing the views of interested parties, and not mislead them about the planning decision process, they should be fair in their representations and not just act as an advocate for one point of view without considering the broader planning context. When lobbied, they should, (and advise others to), consider all aspects of the development which includes the relevant planning policies and the wider interests of the community as a whole. They should further advise that local opposition to, or support for, a planning proposal is not in itself a ground for refusing or granting permission unless founded upon valid planning reasons which can be substantiated. Where opposition to/support for a scheme is not founded upon real planning argument they should avoid giving the impression that such representations can be given weight and be careful about promoting that opposition/support both before and at the Planning Committee. To do so may raise false expectations of a decision which cannot be justified when it comes to objective formal consideration, potentially resulting in disillusionment and confusion over both the decision process and the role of that Member.

D Site Visits

- D1 Site visits can be helpful and informative for Members. For voting Members some care is needed in order to maintain the principles of objectivity and impartiality. If a voting Member wishes to visit a planning application site before determination of the application, this should be unaccompanied by the applicant or objectors. If this proves impossible, voting Members should be non-committal as to their impressions and likely decision.
- D2 If a voting Member has visited a site, this fact should be disclosed to the Committee.
- D3 If the Committee needs to consider whether to defer consideration of an application or other planning matter in order that Members can visit the site before making a decision, this should only be acceded to if this would add substantial benefit to the decision making process. It is only likely to be necessary if:
- (i) the impact of the proposed development is difficult to visualise from the drawings and any supporting material, including photographs taken by officers; or
 - (ii) there is a good reason why the comments of the interested parties cannot be expressed adequately.

The judgement regarding whether special justification exists for such a deferral should also take into account in general terms the delay, inconvenience and expense of carrying out a visit to all involved including the applicant. In the unusual event of an application being deferred for such a visit the particular reason(s) for this should be minuted and the following procedures observed:

- (i) The visit should be undertaken as a group visit attended by all the Committee Members who will be voting on the item and its purpose

should be confined to that indicated in the minuted reason(s) for the visit.

- (ii) The applicant and third parties who have submitted representations should be notified of the visit and the reason(s) for it.
- (iii) The visit should be attended by an officer who may be asked factual questions by the Members.
- (iv) No indication of the likely outcome of the application should be given on the visit.
- (v) No representations from the applicant side or from third parties shall be heard or accepted on the visit and the Committee Members should keep together as a group and not engage individually with interested parties.
- (vi) Details of those attending the visit, questions asked, and answers given should be recorded.

E Members and Officers

Members must not attempt to use their position as Councillors to pressurise officers into taking a particular course of action or making a particular recommendation.

F Conduct at Relevant Meetings

- F1 During consideration of an application or proposal, voting Members should not speak or communicate with applicants, agents, objectors or other interested parties other than publicly through the Chair.
- F2 Councillors who are not voting Members should sit separately from other Committee members and not communicate with them, officers, or other speakers other than in the following ways:
 - (i) To make oral representations of no longer than three minutes to the Planning Committee.
 - (ii) To ask questions of other speakers and officers at the same time that voting members are doing this but only in accordance with the principles of questioning set out in F4 below.
 - (iii) To be asked questions after speaking by the voting members but, again, only in accordance with the principles set out in F4 below.
 - (iv) To raise or put forward only planning points and avoid emotive language.
- F3 Members should not take part or vote on an item if they have not familiarised themselves with the Committee report and have not been present throughout the consideration of such item unless the matter has been deferred from a previous meeting after being partially considered.
- F4 Voting Members' questioning of speakers is to clarify arguments and views and care should be taken not to express a view at that stage, nor to intimidate speakers.
- F5 Any material considered by a Committee and which does not comprise part of the officer's report must originate only from the applicant, an officer, an

objector or a supporter (including a Ward Councillor for the ward in which the development is to be located acting as such) and be tabled through the Chair. The nature of any such material must be clear to all present at the meeting and available for inspection. Unofficial papers relating to a Committee item should not be before Members, and in particular they should not pass private notes to one another.

- F6 If a decision is taken contrary to the officer's recommendation, a full, clear and convincing statement of the reasons for that decision should be formulated by the Members, with officers' assistance, and minuted.

G Development Proposals submitted by Members, and Council Developments

- G1 Proposals to their own authority by serving and former Members or officers and their close associates or family can give rise to suspicions of impropriety, as can proposals for a Council's own development. These proposals can take the form of planning applications, or development plan proposals. It is entirely legitimate for such proposals to be submitted but the following principles should be observed in regard to such proposals and also to enforcement issues:
- (i) Serving Councillors who act as agents for people pursuing planning matters with the authority should play no part in the decision-making process for these proposals.
 - (ii) If a Member has a personal Interest (as defined in the Members' Code of Conduct) in a matter, but this is not a prejudicial Interest, the provisions of paragraph 9 of the Code of Conduct must be followed and the Council's Development Control Manager informed in writing by the Councillor involved of the existence and nature of their interest.
 - (iii) If however a Member has a personal and prejudicial Interest, as set out in paragraphs 10 and 12 of the Code of Conduct, then (in addition to (ii) above) the Member may not be a voting Member for that item nor remain in the room during the deliberations of the Committee. However the Member may register to speak and then make representations, give evidence or answer questions in exactly the same way as a member of the public may, but must leave the meeting immediately afterwards.
In addition, whilst this is a matter for the Member, it is suggested that a Member with a personal and prejudicial interest may wish to consider whether or not their involvement could be such as to make it unwise for them to participate because of an adverse potential impact on the reputation of themselves or of the Council.
 - (iv) Alternatively a Member who has a personal and prejudicial interest may:
 - (a) make written representations in a private capacity, to the Development Control Manager, disclosing the nature of the interest and not seeking any preferential treatment
 - (b) use a professional representative, or arrange for a partner, close associate or family member, to make the application or representations; or

- (c) arrange for another Member to represent the views of the Member's constituents on matters where the Member has a prejudicial Interest.
- (v) Proposals submitted in the above circumstances should be reported to, and decided by, the Planning Committee and not by officers under delegated powers.
- (vi) Proposals for the Council's own development or in respect of sites where the Council has a land holding interest should be dealt with in the same way as those for private developers in accordance with DoE circular 19/92, particularly in relation to officers' advice.

H Council Advice at Pre- application and Pre-decision Stage

H1 Advice from Council officers to potential and actual applicants can clearly be of considerable benefit to both parties. Most of the guidelines on this are for officers. However, the following guideline should be observed so far as any Member involvement in this is concerned:-

- (i) It should be made clear from the outset that the discussions will not bind the Council to making a particular decision and that any views expressed are personal and provisional.
- (ii) Advice should be consistent with and based upon the up to date development plan policies and other material considerations and there should be no significant difference of interpretation of these matters by different officers.
- (iii) Officers should make it clear whether or not they are to be the decision-maker on the proposal in question.
- (iv) Meetings for the purpose of giving advice should not involve Councillors, particularly in view of the issues arising in relation to lobbying and voting members forming a view referred to elsewhere in the Protocol.

[There are appended to this Protocol two tables which are intended to be a straightforward indicative guide to Members on the subject of interests, but in the event of any difference the text of the Members' Code of Conduct, that Code, and then of this Protocol, take precedence over the content of these tables.]

TABLES TO APPENDIX A

A. Tables for dealing with Planning Applications affecting Councillors

1. Applications by the Councillor, a member of his/her family or a close associate

Action	Councillor in person	Close associate or family member	Agent	Other Councillor
Completing application form and submitting it	Yes	Yes	Yes	
Raising enquiries as to how the application is proceeding	Yes. In writing (or by e-mail) only	Yes. In writing (or by e-mail) only	Yes	
Dealing with queries raised by planning officers.	Yes. In writing (or by e-mail) only	Yes. In writing (or by e-mail) only	Yes	
Making amendments to plans	Yes	Yes	Yes	
Lobbying members of the Committee	No	No	No	No
Lobbying other members	No	No	No	
Attending the Planning Committee as an observer	No	Yes	Yes	
Appearing at the Planning Committee and making oral representations	Yes, if a member of the public could do the same, then leave	Yes	Yes	Yes
Appearing at the Committee and answering questions	Yes, as above and then leave	Yes	Yes	
Speaking as a "Ward Member" if the application is within that Councillor's ward	Not on own application or property. Otherwise: Yes, as above and then leave			Yes
If a member of the Planning Committee, speaking and voting	Speaking: Yes, as above and then leave. Voting: No, leave after making representation			Not if a position has been taken

2. Applications by others upon land affecting a Councillor's property

Action	Councillor in person	Close associate or family member	Agent	Other Councillor
Being notified	Yes	Yes		
Objecting	Yes, in writing, (or by e-mail) as a private individual, addressed to the Development Control Manager	Yes, in writing (or by e-mail) addressed to the Development Control Manager	No	
Organising public campaigns of objection	No	No	No	Yes, providing it is done otherwise than on behalf of the Member and with a public interest
Raising enquiries as to how the application is proceeding	Yes. In writing (or by e-mail) only	Yes. In writing (or by e-mail) only	Yes. In writing (or by e-mail) only	
Allowing officers to inspect and view from affected property	Yes	Yes	Yes	
Lobbying members of the Committee	No	No	No	No
Lobbying other Members	No	No	No	
Attending the Planning Committee as an observer	No	Yes	Yes	
Appearing at Planning Committee and making oral representations	Yes, if member of public could do the same if their property was affected, and then leave	Yes. Providing that they do not make any representation that they are speaking on behalf of the Member	Yes	Yes
Speaking as a "Ward Member" if the application is within that Councillor's ward	No			Yes.
If a member of the Planning Committee, speaking and voting	Speaking: Yes, as above; voting: No. Leave after speaking			Not if a position has been taken.

Notes:

1. It is recognised that Members have no control over the actions of people who are members of their family or who are close associates, and that they have the same rights as any other members of the public. However, Members may in some circumstances be censured, judicial review might result, and the Council may be held in maladministration, if it is concluded by an Ombudsman that such a third party is acting for a Member so as effectively to circumvent the rules which, in the interests of the public, place certain restrictions on the access of Members to the planning process where their personal interests are concerned.
2. These tables are indicative only, and Members are reminded that their primary duty is to ensure that there is no prospect of their powers as local Councillors being used to further their own interests.