

STANDARDS COMMITTEE

3 December 2007

PLANNING PROTOCOL - REVISION

REPORT OF CORPORATE DIRECTOR (GOVERNANCE)

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RECENT REFERENCES:

ST 41 - Planning Protocol – Review Following Further Standards Board Guidance – 18 April 2005

EXECUTIVE SUMMARY:

The Council adopted the revised Code of Conduct on 27 June 2007.

To support the Code and provide more specific guidance in particular areas of activity, the Council has in place a number of local protocols. To ensure consistency with the revised Code, it is necessary to review the content of these protocols and amend where necessary.

This report deals with the revision of the Planning Protocol, and the changes proposed cover both the revised Code of Conduct, and also include amendments which are suggested in the light of operation of the Protocol.

The principal changes are to reflect modifications in the Code to allow (limited) participation where a prejudicial interest is declared, updated advice on lobby groups, further provisions referring to bias and pre-determination, and guidance to deal with wider Member involvement in pre-application meetings and discussions.

Tracked changes show where amendments to the wording are proposed. The Committee is requested to consider the Appendix and comment as appropriate. The protocol will then be submitted to Council for final decision.

RECOMMENDATION (to Council):

- 1 That, subject to any amendments the Committee may wish to make, the attached local protocol, as set out with track changes in Appendix A, be approved.

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DETAIL:

1 Introduction

- 1.1 An amended Planning Protocol was introduced in April 2002, prior to adoption of the Model Code of Conduct. The Protocol was further reviewed in June 2002, in the light of revised guidance on planning probity matters which was issued by the Local Government Association.
- 1.2 The Planning Protocol forms part of the Council's Constitution, and gives guidance and advice to Members on planning matters, with particular reference to the Model Code of Conduct.
- 1.3 This report proposes changes to the Planning Protocol to reflect the revised Code of Conduct (which was adopted in June 2007) and changes which are proposed in the light of experience in operating the Protocol.

2 Review of Planning Protocol

- 2.1 Standards Committee considered possible changes to the Protocol in 2005 (Report ST41 refers) following revised Guidance issued by the Standards Board for England. An informal Planning Development Control Committee meeting considered the revised Protocol, and agreed to defer consideration of the revisions until the effects of procedural changes then being introduced could be incorporated. Subsequently, the Government announced that it was consulting on revisions to the Model Code, and therefore work on the Protocol was suspended pending receipt of the new Code.
- 2.2 Following a Council question, an informal meeting of the Planning Development Control Committee was arranged in February 2007 for Members to consider the draft revised Protocol (with some further changes which officers had made in the light of circumstances and experience). It was agreed at that meeting that consideration should be deferred pending the introduction of the revised Code of Conduct.
- 2.3 Following the adoption of the revised Code of Conduct in June 2007, a further informal meeting of the Planning Development Control Committee was held on 15 November 2007. The attached document takes into account suggestions and comments which were made at that meeting, and representative Members of the Planning Development Control Committee will be attending the Standards Committee meeting.
- 2.4 Following consideration by the Standards Committee, the revised Protocol will be referred to full Council in January 2008 for adoption.

3 Proposed Changes to Protocol

- 3.1 A copy of the proposed revised Protocol is attached as Appendix A to this report. The changes which were accepted by Standards Committee in 2005 and informally agreed by the Planning Development Control Committee in February 2007 have been accepted, but further changes (to take into account the revised Code of Conduct, and suggestions made at the informal meetings of PDC, are shown as tracked changes. Footnotes give explanations to changes where appropriate.
- 3.2 It shows in tracked changes the revisions to the adopted Protocol. Some of these changes were considered and accepted by Standards Committee (subject to comment by PDC), but others have been suggested by officers to take account of experience, new procedures and guidance, and changes in circumstances.
- 3.3 The main changes relate to the relaxation in the new Code to speaking and participating where a Member has a prejudicial interest. Linked to this are further provisions which cover bias and predetermination, and changes have also been made to provisions dealing with lobby groups. Finally, the Protocol recognises current thinking on Member involvement in planning matters at the pre-application stage.

OTHER CONSIDERATIONS:

CORPORATE STRATEGY (RELEVANCE TO): An Efficient and Effective Council.

RESOURCE IMPLICATIONS: None

BACKGROUND DOCUMENTS: None.

APPENDICES:

Appendix A – draft revised Planning Protocol

PROTOCOL ON PLANNING MATTERS

1. GENERAL ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS

- 1.1 The public are entitled to expect the highest standards of conduct and probity from all persons holding public office. There are statutory provisions and codes setting those standards, which must be followed if the public perception of the integrity of local government is to be maintained and improved. Dealing with planning matters places upon Members a particular need for probity and they must ensure that only material planning considerations are taken into account.
- 1.2 This Protocol deals primarily with planning applications, but the principles apply with equal vigour to consideration of Regional Spatial Strategies, [the South East Plan](#), ¹Local Development Documents, Supplementary Planning Documents and other Development Plan Documents, Development Briefs, enforcement cases and all other planning matters.
~~Where Regional Spatial Strategies, Local Development Documents and other Development Plan Documents are concerned, this Protocol does not preclude Members from taking part in any discussions relating to the general principles of land allocation policies outside the Council's formal meetings arrangements, providing such discussions do not include reference to individual site allocations.~~
- 1.3 Members are reminded that they are required to comply with the City Council's adopted Code of Conduct (included within Part 5 of the Constitution).
- 1.4 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires all planning applications to be determined by reference to the Development Plan, if material to the application, and any other material consideration. The emphasis in determining applications is upon a plan led system.
- 1.5 Officers involved in the processing and determination of Planning matters must also act in accordance with the Employees Code of Conduct (included within Part 5 of the Constitution) and with the relevant sections of the Royal Town Planning Institute's Code of Professional Conduct.
- 1.6 Members and Officers are reminded that the Council has adopted a number of codes relating to different aspects of conduct in public life and copies are included in the Constitution. The overriding principle of this Protocol is that Members should not favour any individuals or groups and must represent their constituents as a body and vote in the interests of the District as a whole. Whilst Members should take account of all views expressed, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.
- 1.7 Members and Officers should not accept gifts or hospitality. They should comply strictly with the City Council's adopted Code of Conduct and [the Council's approved Guidance on Gifts and Hospitality](#) contained in Part 5 of

¹ [Feb 07 - Reference to South East Plan added](#)

the Constitution. If, however, a degree of hospitality is unavoidable, it should be ensured that this is minimal and its receipt is declared as soon as possible. Members should send written notice to the Corporate Director (Governance) City Secretary and Solicitor. Officers should notify their Chief Officer/Director. In all cases details must be entered in the Gifts and Hospitality ~~record—book~~ Register, kept by the Corporate Director (Governance).

- 1.8 Probity and ethics training is held after the Council elections to give guidance to all Members on the declaration of interests and other issues in the City Council's adopted Code of Conduct.² Members (including deputies) of the Planning Development Control Committee will also receive specialised training in relation to planning regulations and procedures, and the practical operation of this Protocol and the Development Plan (i.e. the Regional Spatial Strategy and Local Development Documents). Regular training courses will be provided for Members on planning issues, and Members are strongly encouraged to attend these courses, and ~~Members~~ are reminded that attendance will be monitored by reports to Standards Committee.³

2. DECLARATION AND REGISTRATION OF INTERESTS

- 2.1 Members should observe the guidance on declaring personal and prejudicial interests, and not participating (save where permitted under the Code) in matters involving a prejudicial interest, as set out in:

(i) the City Council's adopted Code of Conduct

(ii) "The Code of Conduct" Guide for Members May 2007 "Lobby Groups, Dual-Hatted Members, and the Code of Conduct" published by the Standards Board for England

"The Guidance for Good Practice on Members' Interests", published by the Commission for Local Administration (the Ombudsman)⁴

~~copies~~ copies of which are in the Members Library.

- 2.2 The Register of Members' Interests maintained under the City Council's adopted Code of Conduct will be updated at least every twelve months. Where any changes occur to Member's interests, whether by way of addition or deletion, they should be notified, in writing, to the Corporate Director (Governance) City Secretary and Solicitor as soon as they occur, by the Member concerned. Matters to be included in the Register include:-

(i) membership of bodies to which you have been appointed by the Council;

(ii) public, charitable, or bodies aiming to influencing public opinion of which you are a member (such as parish and county councils, charities, political parties and interest or lobby groups);

(iii) your employer or employment;

² Nov 07 - Moved from 2.7

³ Nov 07 – "strongly encouraged" retained to retain flexibility whilst giving strong signal as to training which should be undertaken.

⁴ Feb 07 - Reference to Ombudsman Guidance deleted, given that this was published several years ago, prior to new Code of Conduct, and Standards Board Guidance has increased in meantime.

(iv) the name of a person from whom you have received a gift or hospitality exceeding £25;

(v) land which you own or occupy in the Council's area

(NB this is a summary only, and Members should check Paragraph 8(1)(a) of the Code to ensure that they register all relevant interests)

- 2.3 Members who have substantial property interests, or other interests which would prevent them from voting on a regular basis, should avoid serving on the Planning Development Control Committee.

Personal Interests

- 2.4 Guidance on what constitutes a personal interest or a prejudicial interest is contained in the City Council's adopted Code of Conduct and in the Guidance issued by the Standards Board for England. *The guiding rule is that a Member should not use his/her position improperly to confer on or secure, for himself or for any other person, an advantage or disadvantage.*

- 2.5 Paragraph 8 of the City Council's adopted Code of Conduct defines a "Personal Interest" in business of the Council. –There are two types of interest:-

a) where the business relates to or affects an interest which has been recorded on the Register of Interests;

b) where the interest is not on the Register, but the business relates to or is likely to affect the well-being or financial position of yourself, your family, or close associates, more than it would affect the majority of residents in your Ward.

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Reference should be made in all cases to the City Council's adopted Code of Conduct to ascertain whether or not an interest is a personal interest.

In general, pPersonal interests must always be declared, at the commencement of the meeting, or (if later) when the interest becomes apparent, and Members should give details of the interest when making the declaration. As well as declaring the interest publicly, Members should also use the forms provided by the Head of Democratic Services at the beginning of the meeting to record their interest.

Where the personal interest relates to bodies specified in paragraph 8(1)(a)(i) or (ii) of the Code (bodies to which a Member has been appointed by the Council, and public bodies (such as parish or county councils)), Members only need to disclose the interest where they speak on the item. This is because the membership of such bodies is already registered. Having said that, Members may feel more comfortable in declaring an interest in such matters at all times, even though the declaration might not be necessary.

Prejudicial Interests

The City Council's adopted Code of Conduct makes further provisions where a personal interest is also a prejudicial interest (paragraph 10). Prejudicial

interests are those interests which “a member of the public with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.”

Prejudicial interests only exist in relation to the financial position of a person or the determining of an application (such as a planning application) in relation to the Member concerned or their family, close associates, or bodies of which they are a member. Subject to some exceptions (which will rarely apply in the planning context)In such cases, then not only must the interest be disclosed, but (subject to certain exceptions specified in paragraph 10(2) of the Code) the Member should withdraw from the meeting room. Where (as in the case of Planning Development Control Committee) public participation is permitted, the Member can remain and speak to make representations or answer questions at the meeting, but should leave the meeting room after they have spoken. Where Members wish to exercise these rights, they should notify the Public Participation Co-ordinator in accordance with the published timetable, on the same basis as if they were a member of the public (note that however that Members cannot remain in the room as a member of the public once they have made their representations, etc) and take no further part in the relevant proceedings. If there are members of the public who have also registered to speak to the same effect as the Member, the time allowed will need to be apportioned accordingly, unless agreement can be reached on having one spokesperson only.

-The responsibility for declaring an interest lies with the individual -Member.

2.6 The Standards Board has issued informal advice⁵ on the application of the prejudicial interest test to lobby groups and single-issue campaigns, which is considered in paragraph 4.12 below. In summary, where a Member belongs to a lobby group which has commented on an application, that interest will not constitute a prejudicial interest, and the Member will be able to speak and vote (provided he or she declares a personal interest) on the application. Members in this position should however remember that as a separate issue, the question of bias and predetermination should also be considered, which (depending on the extent of the Member's involvement in the group and his or her previous actions and statements) may mean that they should stand down from the Committee for the relevant item, in order to avoid possible challenge (see Section 4 of this Protocol). As always, however, advice should be sought if a Member is unsure of their position.

2.62.7 As advised in the Standards Board for England Guidance “Lobby Groups, Dual-Hatted Members, and the Code of Conduct”, a AA District Councillor who is also a Parish/Town Councillor ~~should declare~~ will not have any ~~declarable~~ a personal interest in a planning application made by a private individual, ~~where~~, ~~simply as a result of~~ the Parish/Town Council has ~~ving~~ submitted observations to the District Council on that application, ~~if that Member intends to speak on the item~~, ~~or as a result of his/her vote on the Parish or Town Council~~. Such Councillors ~~Members~~ will not necessarily have a prejudicial interest in such an application, but they⁶ should, however, still consider whether it is appropriate to participate in the District Council decision, in the light of the facts of the case and their own particular circumstances. Further advice is contained in paragraph 4.1063 below on

⁵ Bulletin 35, September 2007

⁶ Amended in light of new Standards Board Guidance

whether participation in Parish/Town Council decisions prevents participation at District Council level.

~~2.6~~

~~2.7 Seminars are held after the Council elections to give guidance to all Members on the declaration of interests and other issues in the City Council's adopted Code of Conduct. Members of the Planning Development Control Committee will also receive specialised training in relation to planning regulations and procedures, and the practical operation of this Protocol and the Development Plan (i.e. the Regional Spatial Strategy and Local Development Documents).~~

3. ~~7~~ **DEVELOPMENT PROPOSALS SUBMITTED BY OR INVOLVING COUNCILLORS MEMBERS AND OFFICERS: PROPOSALS FOR COUNCIL DEVELOPMENT**

3.1 ~~If~~ Where Members or relevant Officers (namely Directors, Heads of Division, staff in the Planning Control Division and other staff who advise on planning matters)⁸:-

(a) own or occupy⁹ land which is the subject of, or is affected by, a planning application (whether that application is submitted by the Member, another member of his or her family, or a third party); or

(b) submit their own development proposals to the Council (either themselves or via an agent); or

(c) support or¹⁰ object to applications where such a ~~an objection representation~~ would constitute a personal **and** prejudicial interest (e.g. objecting to an application on a neighbour's land)

they should immediately notify the Corporate Director (Governance) City Secretary and Solicitor (as the Council's Monitoring Officer) and the Head of Planning Control ~~Director of Development Services~~, giving details of the application and their involvement/interest. Notification should be in writing, preferably by email or fax. Members should treat this as a personal obligation, and not leave such notification to their agent. Members should take no part in the processing of their own applications, or applications in which they have a personal and prejudicial interest. ¹¹

3.2 Proposals falling under Paragraph 3.1 above (~~applications submitted by Members and Officers, or where the Member/Officer has objected in situations where this would constitute a personal and prejudicial interest~~) should be reported to the Planning Development Control Committee as main items and not dealt with by Officers under delegated powers. As part of the report, the Director of Development Head of Planning Control should confirm that the application has been processed normally and the Minutes of the meeting should record this.¹² Under the adopted Codes of Conduct, neither

⁷ Nov 07 – reference to this procedure extending to situations where a Member is supporting and application, as well as where relevant officers are involved. Requirement to notify where personal and prejudicial interest retained.

⁸ Nov 07-Requirement on officers to notify limited to specific appropriate staff only

⁹ Feb 07 – “or occupy” added to cover leased/licensed land which might be affected

¹⁰ Feb 07 - support now included, as well as objections.

¹² Feb 07 - requirement to minute normal processing added

Members nor officers should seek to improperly influence a decision about their own planning applications, or about other applications in which they have a personal and prejudicial interest. ~~This does not mean that a Member has fewer rights than the general public to explain and justify the proposal or their objection to an officer, before the application is considered by the Planning Development Control Committee. Contact with officers should be through the Head of Planning Control or senior management, to avoid an suggestion of undue influence being put on staff. A Member wishing to exercise their rights to address the Planning Development Control Committee under paragraph 12(2) of the Code should ensure that they contact the Public Speaking Co-Ordinator in the Planning Control Division in the same way as a member of the public is required to do.~~¹³ In certain circumstances, it may be more appropriate to request a friend, or engage a professional consultant, to act on their behalf. ~~Contact with officers should be with the relevant Director or a senior manager, to avoid any suggestion of undue influence being put on staff.~~

- 3.3 Proposals for the Council's own development (or a development involving the Council and another party) should be treated in the same way as those by private developers and in accordance with guidance given in Circular 19/92. This Circular outlines that the same administrative process, including consultation, should be carried out in relation to the Council's own planning applications, and that they should be determined against the same policy background (i.e. the Development Plan and any other material planning considerations). This paragraph also applies to private applications in respect of Council owned land (e.g. prior to a land sale being agreed or negotiated). Decisions must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Council if the development is permitted. It is important that the Council is seen to be treating such applications on an equal footing with all other applications as well as actually doing so.
- 3.4 Members who are also members of other authorities or public bodies, or who have been appointed as the Council's representative on a body (such as a youth club or village hall association) will have a personal interest in a planning application submitted by that body. Such applications will usually have a direct impact on the body, and will therefore tend to be prejudicial. Members may in such situations exercise their rights under paragraph 12 of the Code to make statements or answer questions, but should then should always consider whether such an interest is prejudicial, and should normally withdraw from the room during consideration of such applications. ~~applications (rather than make use of Paragraph 102(2) of the Code), in order to ensure public confidence in the decision-making process.~~^{14, 15}
- 3.5 Members are reminded that Personal Interests are widely defined in Paragraph 8 of the Code of Conduct, and are likely to include planning decisions which are likely to affect extend to include interests of family and friends close associates of Councillors, and their employers. ~~Where they become aware of applications or objections by any such persons, Members~~

¹³ Nov 07 - Added in light of new Code provisions on speaking where prejudicial interest applies.

¹⁴ Nov 07 – amended to reflect code change re participation with prejudicial interest.

~~should carefully consider whether they have a personal and prejudicial interest in the application (either as applicant or objector), and not take part in the decision-making process. **Careful consideration will need to be given as to whether an applicant or objector comes within this definition, in which case a personal and prejudicial interest needs to be declared and the Member will have limited rights to cannot take part in the public participation process and should not be a decision-maker or be present for the debated decision-making process. If it is merely someone who the Member knows in the wider community and with whom they have no close personal links, such a declaration is not necessary.**~~

- 3.6 Members who do have a personal and prejudicial interest in an application should ensure that any written representations they wish to make are sent to officers, and not to Members. This will avoid Members breaching the Code requirement prohibiting Members from improperly influencing the decision on the matter.
- 3.7 Serving Members and Officers should never act as agents for individuals (including a company, group or body) pursuing a planning matter.

4. LOBBYING OF AND BY MEMBERS AND ATTENDANCE AT PUBLIC MEETINGS

4.1 Section 3 of this Protocol deals with Members' Interests and the actions which must be taken. As a separate issue (although sometimes overlapping), Members must also be aware of the common law issue of bias and predetermination, which can result in a decision being challenged and quashed. Bias (or "predetermination") can often arise in the planning context, and Members need to take care to ensure that bias and predetermination (actual or perceived) does not arise when making planning decisions.

4.2 If Members are to undertake their ward roles fully, it is very likely that they will be subject to lobbying on planning matters and specific planning applications. Great care is essential in these circumstances to maintain the Council's and indeed the Member's own integrity and the public perception of the planning process.

4.24.3 It is clear that all Members of Planning Development Control Committee have a particular responsibility in this respect. However, where local plan issues are concerned, Members of ~~either both the any a~~ scrutiny committee considering Development Plan Documents ~~or~~ Cabinet will also be affected. On those rare occasions when a planning matter is referred to full Council, that responsibility will extend to all Members.

4.34.4 Taking account of the need to make decisions impartially, Members who wish to participate in the decision-making process¹⁶ should not favour or appear to favour any person, company, group or locality. Members should not openly and finally declare which way they intend to vote in advance of the meeting. To do so without all relevant information and views would amount to predetermining the application, which would be unfair and could give rise to the decision being challenged, prejudicial and may amount to maladministration. If Members are in a position with regard to any matter where they consider it necessary to express an opinion, they should make it

¹⁶ Nov 07 – added to clarify that non decision-making Members can actively support a particular cause.

clear that this is a preliminary view and that they will only be in a position to take a final decision after hearing all the relevant evidence and arguments at Committee (this is sometimes referred to as “pre-disposition” which is acceptable, unlike “predetermination” (i.e. bias) which is not). If the Member feels that the public would believe he/she had come to a conclusive view on the planning matter or application before the meeting, then he/she should not take part in the debate as a Member of the Committee, nor vote on the issue.

4.44.5 Where the Monitoring Officer believes that a Member has prejudiced his/her position by expressing a conclusive view on an application before its determination by the Committee, the Monitoring Officer will advise the Member that it would be inappropriate for him/her to take part in the debate, or vote on the application. The final decision, however, rests with the Member.

4.54.6 It is very likely that, from time to time, Planning Development Control Committee Members will be approached by an applicant prior to a meeting at which his/her application will be considered. The Member should have regard to the advice in paragraph 4.1 - 4.43 above and restrict discussion to issues of fact, without expressing either support for or opposition to the proposal. Members may indicate to applicants (or objectors) the process by which an application will be determined, and what opportunities for public participation exist, but Where applicants require planning or detailed procedural advice they should always be referred to the Officers.

4.64.7 While Members involved in making decisions on planning matters will begin to form a view as more information and options become available, a decision can only be taken by the relevant Committee when all available information is to hand and has been duly considered. Individual Members should reach their own conclusions on an application or other planning matter rather than follow the lead of another Member. In this regard, political group meetings prior to Planning Development Control Committee meetings are-would not be appropriate and should not be held. Votes on planning matters should not be taken at political group meetings. The view of the Ombudsman is that the use of political “whips” at group meetings in this way is maladministration. Decisions can only be taken after full consideration of the officer’s report and information and discussion at the Committee.

4.74.8 The Chairman and Vice-Chairman of the Planning Development Control Committee should attend a briefing with officers prior to Committee, to help them give an effective lead at the meeting. ~~Such a briefing with officers is also available to other Group Representatives on the Committee.~~¹⁷

4.84.9 The Ward Member role in respect of planning applications can present a dilemma between maintaining an open mind and still providing effective representation of the concerns of local people. Ward Members involved in decision making on planning matters should not organise local support or opposition to a proposal, lobby other Members, or act as an advocate. However, other Ward Members (who are not part of the decision making process) can make representations and address the relevant Committee. In the case of a one Member ward where the Member serves on the Planning Development Control Committee, an adjoining Ward Member should be requested to assist. If that is not possible, or ~~in exceptional cases~~ where the

¹⁷ Informal PDC suggested deletion of this sentence.

Member ~~has found it necessary~~wishes¹⁸ to campaign for a particular point of view, the Member can step down from the Committee for that item, so that he/she can fully represent local views by addressing the Committee as a Ward Member.

Lobby Groups (General and Single Interest)¹⁹

4.94.10 Where a Member belongs to a lobby group (whether of a general nature (e.g. a conservation society) or specific (e.g. one campaigning against a specific development on a specific site), which is involved in a matter which comes before the Committee (e.g. by commenting on an application, or campaigning in respect of it), they should consider:-

(i) what interests (Personal and/or Prejudicial) they have under the Code of Conduct, and what declarations/action they need to take in respect of such interests; and

(ii) whether their membership of the group will give rise to the appearance of bias or predetermination of the matter, and what action they should take as a consequence.

4.11 ~~Members who are also members of lobby and campaign groups should carefully consider whether they have an interest in a matter where their group has commented or is otherwise involved.~~ Membership of such groups will usually be an interest which must be registered in the Register of Interests under paragraph ~~45(e8(a)(ii)(cc))~~ of the Code of Conduct (body whose principal purposes include the influence of public opinion or policy). "Membership" should be widely interpreted, and will include acting and participating as a member of a group, as well as being formally signed up.

4.12 ~~Where a lobby or campaign group has made representations on an application under discussion, Members who are members of the group should declare a personal interest in the matter. They should carefully consider whether the interest is also a prejudicial interest (in which case they should leave the room). The Standards Board has issued advice²⁰ making it clear that the Code is aimed at the actions of individuals rather than groups, and therefore unless the group has a financial interest in the matter, their objecting to an application will not in itself constitute a prejudicial interest for the Member. The nature of the Member's involvement in the group and its decision on the issue, and what the Member has publicly stated in respect of the application, will be factors which should be taken into account. Members who are members of a single issue lobby group which makes representations on a particular application, and Members who publicly and actively participate in lobby group campaigns against particular applications, will usually have a prejudicial interest in the application and would have to leave the room during the discussion.²¹~~

4.12

~~4.11As explained above, Members who are, or might be seen to be, members of a campaign or lobby group, may have a prejudicial interest in an application~~

¹⁸ Nov 07- Amended in light of new code and predetermination guidance

¹⁹ Nov 07- New paragraph inserted to emphasise the two issues which lobby groups raise – interests and bias

²⁰ Bulletin 35 September 2007

²¹ Nov 07 – updated in the light of new code and latest SBE advice.

~~about which the group is campaigning, and therefore may not be able to remain in the room and speak at the appropriate time. If Members are invited to join a particular campaign group, they may wish to point out the implications of this, and instead continue to remain outside the group, whilst receiving information and views from the group together with any representations they receive from others. They may thereby be able to speak at the Planning Development Control Committee meeting where the application is considered.²²~~

4.13 ~~Members involved in lobby groups or campaigns, or who have been elected on a particular policy stance, should also consider whether their involvement and statements or actions are such that they may be seen as having predetermined the matter (bias). The Courts have accepted that having preliminary views on a subject ("pre-disposition") will not in itself mean that a Member will be biased when the issue comes before the Committee for determination, provided the Member has not indicated that their mind is closed to other relevant factors.~~ If a Member involved in determining planning matters has responded to lobbying by campaigning for a particular course of action prior to a Committee meeting ~~(thereby appearing to indicate indicating his or her views about the application in advance), but does not have a prejudicial interest (see 4.120 above), that Member should leave the meeting stand down from the Committee~~ for that item.

4.14 ~~Where a Portfolio Holder is also a member of the Planning Development Control Committee, they~~ ~~A Portfolio Holder~~ should also consider whether they might be perceived as having pre-determined the issue and whether they can still participate in a decision. In such instances they can still address the Committee as a Ward Member or Portfolio Holder (see 4.9 above), after which they should sit apart from the Committee and not participate in the decision making process for that item.

4.104.15 ~~Members who are also on their Parish Council will need to carefully balance their right to participate in discussions on applications at Parish level, with the need to approach planning matters at District level with an open mind. In itself, Expressing a view or voting on the information available to the Parish Council of itself should not disqualify a District Councillor from participating in later decisions at District level. In such cases, at the Parish Council the District Councillor should indicate that he/she can only come to a final view having heard the latest information available at the relevant District Council meeting. The District Councillor should also not be involved in active campaigning for a particular cause or organising local support or opposition to the proposal. At the District Council meeting, the Member should declare a personal interest in the matter if they intend to speak on the item, and have regard to the need to balance the circumstances of the particular case with the latest information, plan policies and other material considerations. Some Members who are both parish and district councillors avoid the potential conflicts mentioned above by not serving on parish council planning committees (where appointed) or (where planning applications are discussed by the whole parish council)²³ leaving before planning matters are discussed.~~

4.16 ~~Councillors~~ Members who are also members of a parish council which submits a planning application ~~will normally have a personal and prejudicial interest in the application, and should leave the room during consideration of such~~

²² Nov 07- Deleted in light of new code and 12(2) power to make statements.

²³ Nov 07 - Added in following Feb 07 Informal PDC meeting

applications. They should not seek to improperly influence the decision, and (for example) they should not write to the other Members on the Committee about the application. They may exercise their rights under Paragraph 12(2) of the Code to make statements or answer questions (in the same way as a member of the public can), but after that they should leave the room.²⁴

4.154.17 A Member of the Council should not put pressure on officers for a particular recommendation.

4.124.18 Members involved in determining planning matters will almost certainly be invited by applicants from time to time to informally visit application sites, prior to a committee meeting. Whilst such invitations may be accepted, Members must be careful about what they say and recall the guidance given in paragraph 4.4 above. As a reminder, they should explain that whilst they can listen to what is said, it prejudices their impartiality to express a firm point of view or an intention to vote one way or another will exclude them from the final decision making process.

4.154.19 The Statement of Community Involvement envisages more public involvement in pre-application matters, such as meetings being organised by developers. In certain cases, it may be appropriate for officers to attend such meetings, although such attendance should always be with the agreement of a senior manager. Officers who do attend such meetings should ~~Officers involved in the processing or determination of planning matters should not attend public meetings in connection with development proposals (i.e. pre-application) or submitted planning applications, unless those meetings have been arranged by or with the express agreement of the Council. To do so could lead to allegations of bias or prejudice in relation to a particular point of view. If put in such a position of attending meetings arranged by, or with the consent of the Council, or by accident, officers should take great care to maintain impartiality (to avoid allegations of bias or prejudice in relation to a particular point of view), and concentrate on providing factual information, listen to comments and avoid giving views on the merits or otherwise of the proposal.~~

4.164.20 Similarly, Members involved in the determination of planning applications should take great care to maintain impartiality when attending public meetings in relation to planning matters. Guidance is given in paragraph 5.5 for such situations~~At such meetings it is preferable for no view on the merits or otherwise of a proposal to be given. But if a view is expressed, it should be made clear that the view is based on the information available at that time and a conclusive decision can only be made when all relevant information is available, at the meeting at which the matter is to be determined.~~

4.21 Members who wish to retain their ability to take part in the decision-making process should also guard against any other action which might be seen as amounting to bias or pre-determination and thereby compromising their impartiality. Particular care should be taken in respect of public statements (e.g. when writing letters to the press or being interviewed by the media).²⁵

²⁴ This new provision makes clear the position where a parish council submits its own application.

²⁵ Feb 07 - inserted to cover Members' dealings with the press.

4.22 If Members consider that they have been exposed to undue or excessive lobbying or approaches, these should be reported to the Monitoring Officer, who will in turn advise the appropriate officers (usually the Chief Executive and/or the Corporate Director (Operations) of Development Services).

5. PRE-APPLICATION DISCUSSIONS WITH APPLICANTS

5.1 Pre-application discussions with applicants will generally be handled by officers. In any discussions on planning issues, it will always be made clear at the outset (and the conclusion), that such discussions will not bind the Council to make a particular decision, and that any views expressed are based on the officers provisional professional judgement but do not commit the Council to any particular decision. A leaflet to this effect will be handed to applicants.

5.2 Advice given will be consistent and based upon the Development Plan (i.e. Structure and Local Plans and the Local Development Framework) and other material considerations. Every effort will be made to ensure that there are no significant differences of interpretation of planning policies between planning officers.

5.3 At the beginning of pre application discussions, the officer will hand to the applicant/agent a disclaimer based upon paragraph 5.1 above. Where appropriate, two or more officers will attend potentially contentious meetings, with a follow up letter sent particularly when material has been left with the Council. Officers will make a file note in every case

5.4 Every effort will be made to ensure that the advice given is impartial and is seen to be.

5.5 5.5—The Statement of Community Involvement published by the City Council encourages developers to engage with the local community before an application is submitted. This engagement is expected to include public meetings, and Members (whether or not on the Planning Development Control Committee) may wish to be involved in such meetings. In order to ~~To~~ maintain impartiality, it is important that Members are careful about how they act and what they say at such meetings, if they wish to continue to take part in the decision-making process on the application. They should ensure that any questions they ask are by way of clarification, rather than negotiation, and should avoid giving any indication of their views on the proposal or how they intend to vote on it.

5.6 Apart from such meetings, any ~~it is preferable that involvement of Members in~~ pre-application discussions should be carefully handled, properly documented, open and transparent~~do not take part in the officers' pre-application discussions with applicants.~~ Should there be occasions when Members are involved, they~~.~~ Such involvement should normally be limited to interim committee reports, or public developer presentations to Committee. ~~Members should~~ will be advised by the appropriate professional officers of the Council, which will always include a senior planning officer. The involvement of Members ~~in such discussions~~ will be recorded as part of the written file record. Members should not offer advice in such situations, and any pre-application discussions involving Members should not include negotiations with applicants.²⁶

²⁶ Nov 07 – added to reflect possible greater involvement by Members in pre-application matters.

6. OFFICER REPORTS TO COMMITTEE

- 6.1 Reports to Committee on planning matters must be accurate and cover all relevant points. Where a planning application is subject to a full report this will refer to the provisions of the Development Plan, and all other relevant material planning considerations. Where appropriate, this will include a full description of the site and any related planning history. The report will also summarise the representations and consultations made in response to the application.
- 6.2 All reports will have a written recommendation of action/decision, and oral reporting (other than to update an existing report) will only be used on rare occasions and carefully minuted when this does occur.
- 6.3 All reports will contain a technical appraisal which clearly justifies the stated recommendation.
- 6.4 All reasons for refusal and conditions to be attached to permissions must be clear and unambiguous.

7. THE DECISION MAKING PROCESS AND DECISIONS CONTRARY TO OFFICER RECOMMENDATION AND/OR THE DEVELOPMENT PLAN

- 7.1 In determining all types of applications submitted pursuant to the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Council will follow the guidelines adopted and attached as Appendix A to this Protocol. This will be subject to change from time to time to reflect government guidance and case law.
- 7.2 At meetings of the Planning Development Control Committee, applicants/agents, Ward Members, representatives of Parish and Town Councils, and other interested parties will be allowed to address Members in accordance with the scheme of public speaking in operation at the time of the meeting.
- 7.3 In discussing, and then determining, a planning application or other planning matter, **Members will should confine themselves to the planning merits of the case** and the reasons for making a final decision should be clear and convincing, and supported by planning evidence. Members are reminded that the officer recommendation in a report is treated as a proposed which has been proposed and seconded, and (assuming the recommendation is not accepted by the Committee following a vote) a further proposal will be required before the application can be determined. If Members wish to grant or refuse an application against officer advice, or impose additional conditions on a permission, the clear planning reasons for refusal/grant or the additional conditions to be applied must be clearly stated at the time the propositions are moved at the meeting. If necessary, the application should be deferred to allow time to consider the precise wording. In such cases the wording of the decision notice will normally be delegated to the Head of Planning Control but the final wording will be based on the reasons put forward by Committee.²⁷

²⁷ Feb 07 – added to clarify process for finalising decision notices where officer recommendation not followed.

- 7.4 If a resolution is passed which is contrary to a recommendation of the Head of Planning Control~~Director of Development Services~~ (whether for approval or refusal), the reasons for such a decision will appear in the minutes of the Committee. Officers should also be given the opportunity to explain the implications of the contrary decision. In addition, the manner of voting of individual Members shall, upon their request, be recorded in the minutes.
- 7.5 Conscious of the public arena in which planning decisions are made, Members will conduct the business of the Planning Development Control Committee in a fair and sensitive manner. The debate on a planning application will be confined to the planning considerations of a development proposal. Members and officers should address refer to one another during the debate in a proper manner and direct all remarks through the Chairman.
- 7.6 Due to the quasi-judicial nature of the Planning Development Control Committee, a Member cannot vote on an application unless he/she has been present throughout the whole consideration of that item.
- 7.7 When an application is decided at Committee and the applicant/objector/public speaker is present then leaves the meeting room, Members who have taken part in the decision making process should normally refrain from being seen to engage in conversation with them before the meeting, nor should they follow such a person immediately following them out of the room after the item and engaging them in conversation. Such action can create an unfortunate public perception regarding about the impartiality of the Member regarding the application and should, therefore, be avoided. In addition, it may also mean that they would miss the introduction of the next item and therefore be unable to participate under the terms of para-graph 7.6 above.
- 7.8 If the report of the ~~Director of Development~~Head of Planning Control Services recommends approval of a departure from the Development Plan, the justification for this should be included, in full, in the report.
- 7.8 Senior Legal and Planning Officers should always attend meetings of the Planning Development Control Committee and any Committees/Sub-Committees with significant delegated powers which deal with planning matters, to ensure that procedures have been properly followed and planning issues properly addressed.
- 7.9 Members with a personal and prejudicial²⁸ interest, which they are under an obligation to declare, may exercise their rights under the Code to make oral representations to the Committee and/or answer questions, but after this has been completed, they should withdraw from the meeting, and not speak or vote in the decision making process. If they insist on remaining, and a complaint is received, ~~so doing~~ the Member's action may be investigated by the Standards Board, and the decision reached by the relevant Committee is likely to be void on the basis of being contrary to the rules of natural justice. In addition, those Members who have indicated before the meeting that they had reached a conclusive view on an application or other planning matter, should consider carefully whether their continued involvement in determining the application or other matter would prejudice the integrity of the planning

²⁸ Inserted to clarify that Members need only withdraw when they have a personal **and** prejudicial interest, rather than a personal interest only.

process. Their continued involvement could amount to maladministration or challenge in the High Court on the grounds of bias or predetermination. In this connection Members' attention is drawn to the advice in paragraph 4 above.

- 7.10 Where a Member wishes to support the Council or an appellant in respect of any appeal against an application refused, or an Enforcement Notice issued, by the Council, that Member shall as a matter of courtesy give written notice of his/her intention to the Head of Legal Services~~City Secretary and Solicitor~~ and the appellant. Where in these cases the appeal is to be dealt with at an inquiry or informal hearing, such notice shall be delivered to the Head of Legal Services~~City Secretary and Solicitor~~ and the appellant normally not less than five working days before the commencement of the inquiry.
- 7.11 In deciding whether to make representations in a personal or private capacity, the Member should consider very carefully beforehand the advice given in the City Council's adopted Code of Conduct.
- 7.12 Only officers and Members of the Council who are prepared to observe this Protocol ought to be involved in the process of dealing with planning matters, determining planning applications and applications for listed building consent and conservation area consent.

8. SITE VISITS AND PLANNING DEVELOPMENT CONTROL (VIEWING) SUB-COMMITTEE PROCEDURE

- 8.1 Officers will seek to inform Members at a Committee meeting of the details of a planning application by the use of plans, photographs, videos, and other visual aids as appropriate. A decision by the Planning Development Control Committee to carry out a site inspection should normally only take place where objective decisions cannot be taken without viewing the site and adjoining properties. Site visits will be carried out by a Planning Development Control (Viewing) Sub-Committee, which normally has delegated powers to determine the -application. The Sub-Committee comprises all the established with five or seven members of the parent committee, although (normally including the Chairman and Vice-Chairman plus three other Members would be invited to attend) which will consider the proposal on site, and make a recommendation to the following Planning Development Control Committee. Examples of when site visits might be appropriate would be where:
- ~~t~~There is considerable local concern about a proposal, allied to planning reasons for carrying out a visit (e.g. the physical relationship of the site to other sites in the neighbourhood).
 - ~~t~~The submitted plans are not clear as to the exact nature of the proposal.
- 8.2 The purpose of a site visit is for Members to gain knowledge of the development proposal, the application site and its relationship to adjacent sites. They should not be used merely to appease local opinion or allow additional public participation. Where appropriate, developers will be asked to peg the site out to show the proposed development. The minutes of the meeting referring an application to a site visit should specify the reasons why this course of action is being taken.

8.3 ~~At a site visit, Members will informally observe the site with the assistance of the Head of Planning Control who will explain the material considerations. Public Participation will not be permitted at the site visit. Following the site visit, the Sub-Committee will adjourn to a nearby meeting room or other appropriate venue, where public participation will be allowed. Following site visits, officers will prepare reports on the planning issues and any relevant information obtained from the site visit to enable the Planning Development Control Committee to determine the application.~~

~~8.4 The agreed procedures normally allow Members to receive representations from any interested party during the course of the site inspection. Such representations will be governed by the scheme of public participation at site visits in operation at the time of the visit. If there are a number of interested parties, the Chairman may request that contributions be restricted to nominated spokespersons. Any public participation will normally take place after a presentation from officers. The Members may ask questions during the site visit. However decisions are rarely made at the site visit and it is more usual for a recommendation to be made to the next Development Control Committee. It is essential that Members and Officers ensure that those attending, or making representations, are not led to believe that a decision has been taken on the visit, or that conclusive views have been reached. On rare occasions the Sub-Committee will have delegated powers to determine the matter. In those circumstances it will adjourn to an appropriate venue at a time and date of the meeting (including the site visit and the subsequent meeting in the meeting room) which has been published in accordance with the provisions of the Local Government Act 1972.~~

8.58.4 The Head of Democratic Services will ensure that all correspondence in relation to site visits clearly identifies the purpose of a site inspection, the format and conduct of the inspection and, if appropriate, the procedure for applicants/agents and interested parties to address elected Members.

8.68.5 In the case of meetings of the Planning Development Control (Telecommunications) Sub-Committee, meetings will take place on site, and public participation will be permitted in line with the current public participation procedures and subject to the Chairman's discretion. Due to the strict time limits on matters which are considered by the Sub-Committee, ~~the Sub-Committee~~ it has delegated powers, and will normally make a decision on site.

8.78.6 In some instances the Planning Development Control Committee may take the view that it may not be practicable for either a ~~Planning (Viewing) Sub Committee~~ or ~~the Planning (Telecommunications) Sub Committee~~ to conduct a site visit with the public present e.g. having regard under the Council's Procedure Rules for the need for orderly conduct and/or any physical problems with site access. In such cases, a private site visit for Members only will be undertaken and the procedure set out in paragraphs 8.78 and 8.89 below may be utilised to provide for public participation.

8.88.7 ~~Sub-Committees~~ may be formed, and meetings held, to a) consider the preparation of a development brief for a particular site, before an application has been submitted or b) consider the details of a planning application which is particularly significant, or c) where the Planning Development Control Committee has taken the view that it was not possible to conduct a site visit with the public present. Members, officers, and the Ward Member(s) may visit

the site (in the company of the developer) immediately prior to a Sub-Committee meeting, in order that they may familiarise themselves with the site and the planning issues. The site meeting will be carried out in the same way as a site visit by a planning inspector following a planning appeal. Accordingly, Ward Members and developers will be permitted to point out factual aspects of the site and the proposed development only, and will not be allowed to present their case (whether for or against the proposal). Developers will be encouraged to inform the Officers of the features on site that are relevant so that the Officers can point these out to Members. This will mean that the developer's role will be to ensure the safety of Members and Officers while they are on the site.

8.98.8 The public will not be permitted to attend site visits preceding such Sub Committees. However, following such a site visit, Members will adjourn to a local meeting room, where public participation will be permitted, subject to the Chairman's discretion under the Council's Procedure Rules, and the developer and Ward Members will be allowed to make representations. The Sub Committee will make a recommendation to the relevant scrutiny Committee or Cabinet (for development briefs) or Planning Development Control Committee (in the case of planning applications) after its deliberations.

9. REVIEW OF DECISIONS

- 9.1 At least on an annual basis, the Planning Development Control Committee will make a review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations. A similar review in respect of officers delegated decisions will also be undertaken. This audit may be carried out in conjunction with an audit of the effectiveness of the planning process and may involve visits to application sites.
- 9.2 The Planning Development Control Committee will formally consider the outcome of this review, and any amendments to existing policy or practice will be identified. Such reviews will be in addition to any exercise undertaken by the Principal Scrutiny Committee, relevant Scrutiny Panels~~Performance Improvement Committees~~, or the Cabinet (Local Development Framework) Winchester District Local Plan Committee as part of their work.

10. COMPLAINTS AND RECORD KEEPING

- 10.1 In order that any complaints can be fully investigated, record keeping will be complete and accurate. In particular, every planning application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings or significant telephone conversations.
- 10.2 The same principles of good record keeping will be observed in relation to enforcement and Development Plan matters. Monitoring of record keeping will be undertaken on a continuous basis by Managers in the Planning Control Division~~Development Services Department~~Directorate.

APPENDIX A

Guidelines on Material Considerations for Determining Planning Applications**A. Applications Under the Town and Country Planning Act 1990 (TCPA)**

- (i) Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires all planning applications to be determined by reference to the Development Plan, if material to the application, and any other material consideration. The Development Plan includes the Regional Spatial Strategy and Local Development Documents. If the Development Plan is material to the application then the statutory provision is that the application should be determined in accordance with the Development Plan unless material considerations indicate otherwise. The emphasis in determining applications is upon a plan led system.
- (ii) Other material considerations include policies and proposals in emerging Local Development Documents which will gain increasing weight as the Documents approach adoption. Where policies appear in a Deposit Draft and have not been objected to, considerable weight should attach to those policies. Where other documents are incorporated within a Local Plan and are able to be the subject of consultation and objection also, such as Supplementary Planning Documents, they too will be material to the planning decision which is to be taken.
- (iii) Material considerations include also national planning guidance in the form of Circulars and Planning Policy Guidance and case law. A ministerial statement may be a material consideration.
- (iv) In exceptional circumstances the personal circumstances of an applicant for planning permission may be a material consideration which may outweigh other planning considerations. Where this is the case specific and valid reasons must be given to justify an exception.
- (v) What constitutes a material consideration is a matter of law. The weight to be attached to the consideration is a matter of planning judgement for the decision maker having regard to the planning evidence. In attaching weight to any offers of community benefit accompanying any planning application Members will be mindful of the Advice in Circular [1/975/05](#) (planning obligations; Section 106 Agreement) as to the legality and materiality of such offers.
- (vi) Consider thoroughly any advice given by a statutory consultee or relevant Government Department, including views expressed by English Heritage or the Environment Agency.
- (vii) Take into account the view of local residents when determining a planning application, but recognise that such opposition cannot be a reason in itself for refusing planning permission unless founded on valid planning reasons, which are supported by substantial evidence (Circular 8/93 – Annex 3 Paragraph 15).
- (viii) Take into account earlier Council decisions, appeal decisions in relation to the site, or other related appeal decisions.
- (ix) Not prevent, inhibit or delay development which could reasonably be permitted.

- (x) In relation to planning conditions, avoid the imposition of conditions which are unnecessary, unreasonable, unenforceable, imprecise or irrelevant.
- (xi) In determining planning applications, the Human Rights Act 1998 requires that local planning authorities must not act in a way which is incompatible with the Convention Rights protected under the Act. In certain cases, interference with a Convention Right may be permissible if it is necessary for specified reasons, is proportionate, and in the public interest.

B Application Under the Planning & Listed Building Act (PLBCA)

- (i) It is now established that the determination of planning application and applications for PLBCA are two separate statutory duties. The provisions of the TCPA do not override those of the PLBCA.
- (ii) The Development Plan contains policies that deal with development in Conservation Areas and applications for Listed Building consent to which under the PLBCA to enable them to consider the desirability of preserving the building or its setting or any feature of special historic interest or the Conservation Area.