

PROBITY IN PLANNING PROTOCOL FOR COUNCILLORS AND OFFICERS

1. PURPOSE OF THIS PROTOCOL

- 1.1 This Planning Protocol guides Members and Officers in the discharge of the Council's statutory planning functions, and informs potential developers and the public generally, of the high standards of ethical conduct adopted by the Council, in the exercise of its planning functions. This Planning Protocol is also designed to ensure that planning decisions are taken on proper planning grounds, are applied in a consistent and open manner and that Members and Officers are held accountable for those decisions.
- 1.2 This Planning Protocol applies to the operation of the Development Control Board when determining planning applications, and with the exception of para. 5.5, applies to the Cabinet, when in the process of formulating the Local Development Framework and the Development Plan and to the General Assembly of the Council, when adopting the LDF and Development Plan.
- 1.3 If you have any doubts about the application of this Planning Protocol, you should seek advice, preferably in advance of any Development Control Board meeting, from the Regeneration Director or the Head of Legal Services.

2. THE PLANNING SYSTEM

- 2.1 Planning is not an exact science. Rather it relies on informed judgement within a firm policy context. It is often highly contentious, because decisions of the Council, as local planning authority, affect the daily lives of everyone and the private lives of individuals, landowners and developers. This is heightened by the openness of the system, which actively invites public opinion before taking decisions and is reinforced by the legal status of development plans and decision notices. It is essential, therefore, that the planning process is characterised by open and transparent decision-making.
- 2.2 One of the key purposes of the planning system is to ensure that development takes place through a framework, whereby the public interest is well represented at every point, from the preparation of Development Plans and policies, the determination of planning applications and in undertaking enforcement action. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. It is important therefore, that the Development Control Board should make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable planning reasons. The process should leave no grounds for suggesting that a decision has been partial, biased or not well-founded in any way.
- 2.3 The introduction of the Human Rights Act 1998 led to comment about its implications for the planning system and in particular, compliance with Article 6 of the European Convention on Human Rights which is concerned with guaranteeing a right to procedural fairness, transparency and accountability in the determination of civil

rights and obligations. The Local Government Association, with JUSTICE, has provided a guide 'Deciding rights – applying the Human Rights Act to good practice in local authority decision-making'. The guidance comments that:-

'The implementation of Article 6 should not be considered a particularly burdensome or onerous obligation. In many instances, current good practice, coupled with the availability of an appeal procedure will meet the requirements of the Article. Ensuring that decisions are properly recorded and supported by adequate reasons are examples of good practice which will be encouraged by the introduction of Article 6'.

The Human Rights Act, therefore, provides additional safeguards for citizens and encourages the application of best practice.

- 2.4 The Development Control Board determines planning applications. The Cabinet is responsible for preparing/formulating the Local Development Framework (LDF), Development Plan, Local Action Plans, Development Briefs and other forms of Supplementary Planning Guidance (SPG) or Supplementary Planning Documents (SPD). The General Assembly of the Council (the GAC), adopts the LDF and Development Plan. The responsibilities of the GAC, the Cabinet and the Development Control Board are set out in their Terms of Reference.
- 2.5 The successful operation of the planning system relies on mutual trust and understanding of each other's role. It also relies on both Members and Officers ensuring that they act in a way which is not only fair and impartial, but is also clearly seen to be so.
- 2.6 Although this Planning Protocol is purely advisory, failure to follow it without good reason could be taken into account in investigations by the Standards Committee or the Standards for England and indeed, the Ombudsman, into possible maladministration.

3. GENERAL CONSIDERATIONS

- 3.1 When determining planning applications, the Development Control Board must have regard to the Development Plan, Government Guidance (PPGs/PPSs) and SPG/SPD, together with other material considerations. Where this is relevant, applications must be determined in accordance with the Development Plan, unless material considerations indicate otherwise.
- 3.2 The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst Development Control Board members have a special duty to their ward constituents, including those who did not vote for them, their over-riding duty is to the whole community. Councillors should not favour any individuals or groups and not put themselves in a position where they appear to do so. Although Councillors may be influenced by the opinions of others, they alone have the responsibility to decide what view to take. Councillors must, therefore, represent their constituents as a body and vote in the interests of the whole Borough. Councillors who do not feel that they can act in this way should consider whether they are best suited to serving on the Development Control Board.

4. CODES OF CONDUCT

- 4.1 Councillors must not only comply with the Member Code of Conduct but must also

act in accordance with the General Principles which underpin the Code e.g. a Councillor should not place himself/herself in situations where their honesty and integrity may be questioned, and must reach their own conclusions on the issues before them.

- 4.2 The Member Code of Conduct sets out the requirements on Councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to Council business, including the need to register and declare interests, but also appropriate relationships with other Members, Officers and the public, which will impact on the way in which Councillors participate in the planning process. Of particular relevance to Councillors serving on the Development Control Board or other Members who become involved in making a planning decision, is the requirement that a Member:

[Paragraph 6\(a\) of the Code](#): 'must not use or attempt to use [their] position as a Member improperly to confer on or secure for [themselves] or any other person, an advantage or disadvantage'.

[Paragraph 12\(1\)\(c\) of the Code](#): 'must not seek improperly to influence a decision about that business'.

- 4.3 The Member Code of Conduct must be complied with throughout the decision making process, which includes mandatory requirements with regard to personal and prejudicial interests. In brief, planning decisions should not be influenced by personal or prejudicial interests of Councillors (including the interests of their family, or people with whom they have a close association), or because of undue pressure exerted by applicants, agents or third parties. The same principles apply to Officers under the Code of Conduct for staff.
- 4.4 The responsibility for declaring a personal or prejudicial interest rests with individual Councillors and Officers.
- 4.5 Councillors and Officers have different but complementary roles. Both serve the public, but Councillors are responsible to the electorate, whilst Officers are responsible to the Council as a whole. Officers advise Councillors and the Council and carry out the Council's work. They are employed by the Council, not by individual Councillors, and it follows that instructions may only be given to Officers through the decision-making structure set out in the Council's constitution. A successful relationship between Councillors and Officers can only be based upon mutual trust, respect, courtesy and understanding of each other's positions. This relationship, and the trust which underpins it, should never be abused or compromised. The Member/Officer Protocol explains in more detail, what is expected of Members and Officers in their relations with one another.
- 4.6 Officers are guided by the Code of Conduct for staff. Chartered Town Planners will also be guided by the Royal Town Planning Institute's (RTPI) Code of Professional Conduct, breaches of which may be subject to disciplinary action by the Institute. In addition to these Codes, the Council's Standing Orders set down rules which govern the conduct of Council business.
- 4.7 From time to time, applicants may submit confidential financial appraisals in support of an application. Such appraisals should not be disclosed to third parties and members of the public, unless the applicant has consented.

5. REGISTRATION AND DECLARATION OF INTERESTS

5.1 The Member and Officer Codes of Conduct place requirements on Members and Officers respectively, on the registration and declaration of their personal interests and the consequence for their participation in consideration of an issue in the light of those interests. The Codes' requirements must be followed scrupulously and Members and Officers must bear in mind that not only should impropriety be avoided, but also any appearance, or perception of improper conduct. The responsibility for this rests individually, with each Councillor and Officer.

5.2 Register of Members' Personal Interests and Register of Officers' Personal Interests

5.2.1 It is considered good practice for Councillors and Officers to review the information on their Register, on a six-monthly basis, although any intermediate changes must be notified by Councillors to the Monitoring Officer within 28 days of any change and by Officers, to the Head of Paid Service.

5.2.2 The Register of Members' Personal Interests is maintained by Member Services under the direction of the Monitoring Officer and a Register of Officers' Personal Interests is maintained by Human Resources, under the direction of the Head of Paid Service.

5.3 Personal Interests

5.3.1 A Development Control Board member will have a personal interest in any business of the Board, where it is likely to affect:

- (a) an interest that they must register under the Member Code of Conduct;
- (b) the well-being or financial position of them, members of their family, or people with whom they have a close association, more than it would affect the majority of the people in their ward or electoral division.

5.3.2 Although Members have declared a personal interest in the Register of Members' Personal Interests, they must nevertheless, orally declare the existence and nature of the interest at a Development Control Board meeting, where matters relating to that interest are discussed e.g. membership of a group that lobbies or campaigns. The Member Code of Conduct requires that the declaration be made, either before the consideration of the matter or when the interest becomes apparent. There is however, an exception to this rule in circumstances where the interest arises solely from the Member's membership of, or position of general control or management on:

- (i) any other body to which they were appointed by the Council e.g. Citizens Advice Bureau;
- (ii) any other body exercising functions of a public nature e.g. Parish/Town Council.

If the exception applies and provided the personal interest is not prejudicial, Members need only declare the interest and the nature of the interest if and when they speak on the matter. If they do not speak, Members may vote on the matter without making a declaration.

For the sake of expediency, the Development Control Board may require that Members declare their personal interests at the beginning of the meeting or as soon

as the interest becomes apparent and for the Legal Officer to make a general personal interest declaration on behalf of all Parish/Town Councillors present at the meeting – the nature of the interest being membership of the Parish/Town Councils.

5.3.3 If the personal interest of the Member is 'sensitive information' e.g. where the Member is employed in areas of sensitive employment, they must declare that they have a personal interest at the beginning of the Development Control Board meeting, or as soon as they become aware that they have a personal interest in a matter under discussion, but will not have to declare the nature of the interest.

5.3.4 A Member with a personal interest may remain in the meeting room, speak and vote on the matter, unless their personal interest is also a prejudicial interest, whereupon the procedures on prejudicial interests detailed in this Planning Protocol, will apply.

5.4 Prejudicial Interests

5.4.1 The Member Code of Conduct states that a Member will have a prejudicial interest where:

- (a) the matter affects the Member's financial position or the financial position of a person or body referred to in his/her Register of Personal Interests.
- (b) the matter relates to the determination of any approval, consent, licence, permission or registration in relation to the Member or any person or body referred to in the Member's Register of Personal Interests.
- (c) a member of the public who knows the relevant facts, would reasonably think that the Member's personal interest is so significant, that it is likely to prejudice their judgment of the public interest.

5.4.2 Where a Member has a prejudicial interest in a matter under discussion, they will declare the interest and the nature of that interest, either before the consideration of the matter or when the interest becomes apparent, although the Development Control Board may require that such declarations be made at the beginning of the meeting, or as soon as the interest becomes apparent.

5.4.3 Unless a dispensation has been granted (refer to para.5.5.3 of this Protocol), the Member will leave the meeting room immediately before the debate starts.

5.4.4 In order to determine whether or not a Member's personal interest is prejudicial, a Member has to consider how a reasonable and objective observer with knowledge of all the relevant facts would view the situation and, in particular, how the circumstances are likely to impact on the Member's judgment of the public interest. For a personal interest to be prejudicial, the interest must be perceived as likely to harm or impair the Member's ability to judge the public interest. The mere existence of local knowledge, or connections within the local community, will not normally be sufficient to meet the test. To constitute a prejudicial interest, there must be some factor that will positively harm the Member's ability to judge the public interest objectively.

5.4.5 Regular reports are submitted to the Standards Committee on the number and types of prejudicial interest declarations. The purpose of this is to expressly bring under the Standards Committee's scrutiny, the suitability of individuals to sit on the decision-making bodies of the Council. Councillors who have substantial property interests, or other interests, which would prevent them from voting on a regular basis,

should avoid membership of the Development Control Board.

5.5 [Participation by Member with a prejudicial interest - \(Member Code of Conduct paragraph 12\(2\)\)](#)

5.5.1 The Member Code of Conduct supports the Councillor's role as a community advocate and enables them, even with a prejudicial interest, to represent their community and to speak on issues important to them and the community **PROVIDED** that the public are also allowed to attend the meeting for the same purpose.

5.5.2 The Development Control Board allows for public participation in its meetings, in accordance with the 'Protocol for Public Speaking at Development Control Board Meetings'.

5.5.3 Where any Member (not restricted to members of the Development Control Board) has a prejudicial interest in any business to be discussed at a Board meeting, the Member may attend the meeting, but only for the purpose of making representations, answering questions or giving evidence relating to the business and the following procedure applies:

- (a) the Member must register with Member Services, their intention to make representations, no later than 12:00 p.m. on the Monday before the Development Control Board meeting. For the avoidance of doubt, the Member will lose their right to make representations where they have not registered;
- (b) having registered with Member Services in accordance with para.(a) above, the Development Control Board will deal with the order of representations on a 'first come, first served' basis. If more than one Member wishes to speak on the same item, the Board will give priority to the first Member who has registered;
- (c) the Member will declare the prejudicial interest and the nature of the interest at the beginning of the meeting;
- (d) if, during public submissions or the debate, a Member realises that they have a prejudicial interest in the item under discussion, they will lose their right to address the Board and must immediately declare the interest and the nature of the interest and leave the meeting room;
- (e) the Member's representation etc will be heard by the Board, before the public are invited to make their representations;
- (f) the Member will make his/her representations from the seat reserved for public representation;
- (g) the Member's representation will be limited to 3 minutes;
- (h) the Member may read from a prepared statement, but may not distribute or display any written or visual material, e.g. written statements, photos, videos etc;
- (i) Development Control Board members may ask questions of the Member;
- (j) having made representations, answered questions or given evidence, the Member must immediately leave the meeting room before the debate on the item starts;
- (k) if the Chairman decides that the Member has finished speaking, despite their intention to say more, the Member must comply with the Chairman's decision, stop speaking and leave the meeting room.

5.5.4 Unless a dispensation has been granted by the Standards Committee, where a Member with a prejudicial interest in a matter under discussion chooses to participate

in the discussion and vote, the Chairman may refuse to count the 'vote' of the Member concerned, for the 'vote' will have been cast illegally and cannot be considered to be a vote at all.

5.5.5 Making representations by other means

- (a) Paragraph 12(1)(c) of the Member Code of Conduct prevents Councillors with a prejudicial interest seeking 'improperly to influence a decision about that business', which in this context, means any attempt by a Member to use his/her position to further his/her own interests in a way that would not be open to ordinary members of the public.
- (b) The status of councillor means that a Member gives up certain rights that members of the public may exercise, such as being able to observe the debate and vote on their own planning applications.
- (c) Any Member of the Council can still present their views to the Development Control Board meeting through ways other than attending the Board meeting to make representations. Other ways that do not involve improperly influencing the decision, include a Member with a prejudicial interest being able:
 - to make written representations, providing they disclose the existence and nature of their interest and do not seek preferential consideration for their representations. Such written representations in a private capacity, can be made to Officers, but not to individual Members;
 - to use a professional representative to make an application on their behalf, thus avoiding any appearance of impropriety;
 - to arrange for another Councillor to represent constituents' views. The Member should formally advise their constituents about their prejudicial interest and inform them that another Councillor will represent their views on the issue and this Councillor should make it clear to the Development Control Board or Officers, that he/she is acting in place of a Member who has a prejudicial interest in the matter.

5.5.6 Any Member (not restricted to Development Control Board members) with a prejudicial interest in an item under discussion:

- cannot be present in the public gallery to observe the debate and vote;
- should not make written representations to Development Control Board members – written representations should be submitted to Planning Officers;
- should avoid discussing their personal application with other Councillors, but the Member may approach other Councillors to represent their constituents' views;
- cannot ask a Councillor to represent them on a personal application;
- must not attempt to lobby Development Control Board members about the matter, before or after a meeting, attempt to use their status as a Member to influence consideration of a submission, or try to get Officers to change a decision or recommendation.

6. REPRESENTING CONSTITUENTS

- 6.1 Ward Members (who are not members of the Development Control Board) may, with the Chairman's permission, attend a Board meeting to make representations on behalf of their ward/constituents, although it should be noted that specific procedures apply to ward Members who have a prejudicial interest in the matter under discussion (refer to para.5.5 of this Planning Protocol).

6.2 If a ward Member is representing an applicant or constituent in a professional capacity e.g. as a paid agent or advocate, the following Member Code of Conduct provisions must be considered:

- (a) the ward Member will have a personal registerable interest i.e. an interest which must be recorded in the Register of Members' Personal Interests. The Member must then consider whether a member of the public with knowledge of the relevant facts would reasonably regard the personal interest as so significant that it is likely to prejudice their judgement of the public interest. If the answer is yes, the interest is also prejudicial and the procedure detailed in para. 5.5 of this Planning Protocol will be applied, should the Member wish to make representations to the Development Control Board;
- (b) the ward Member might be seen as attempting to use their position as a Member, to use or attempt improperly to confer or secure an advantage or disadvantage;
- (c) the ward Member must not do anything which compromises, or is likely to compromise, the impartiality of those who work for or on behalf of the Council.

6.3 Councillors wishing to act on behalf of applicants or constituents in a professional capacity, should remember that the efficacy of acting in a representative capacity, relies on them being present throughout the Development Control Board's decision making process but that, in accordance with para. 5.5 of this Planning Protocol, the efficacy of their representation is significantly reduced by the requirement on them, to leave the meeting room after having made their representations etc.

6.4 Proposals involving representation by Councillors in a professional capacity, will be reported to the Development Control Board as main items, and not dealt with by Officers under delegated powers.

7. MEMBERSHIP OF LOBBY AND CAMPAIGN GROUPS

7.1 Councillors must register on the Register of Members' Personal Interests, their membership of lobby and campaign groups, as these are bodies 'whose principle purposes include the influence of public opinion or policy'.

7.2 Even if a lobby or campaign group does not keep a formal membership list, the Member Code of Conduct still applies to Councillors who are acting as a member of the group - perhaps by attending meetings or participating in group activities. In such cases, Councillors are still required to register their membership of the group in the Register of Members' Personal Interests and declare the existence and nature of the interest at relevant meetings of the Development Control Board.

7.3 When Development Control Board members are considering what interests arise from their membership of a lobby or campaign group, they should keep in mind the General Principles that underpin the Member Code of Conduct. Statements and activities of Board members should not create the impression that their views on a matter are fixed, and that they will not fairly consider the evidence or arguments presented to them when they are making a decision. Public confidence in the probity of decision making is paramount:

- (a) The first General Principle states that Members should 'serve only the public interest'. This does not mean that Members should be devoid of general views about a range of local issues. In fact, they may well have been elected because of their views on those issues. The Standards for England believes

that it would not serve the public interest for people with strong views on local issues to be discouraged from involvement in local government.

- (b) The second General Principle states: 'members should not place themselves in situations where their honesty or integrity may be questioned'.
- (c) The third General Principle states: 'members should make decisions on merit.'
- (d) The sixth General Principle states: 'members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions'.

7.4 If the matter to be discussed at a Development Control Board meeting has a direct impact on a lobby or campaign group to which a Board member belongs, the Member is likely to have a prejudicial interest. This includes anything that directly affects the rights and obligations of a group to which the Member belongs e.g. a planning application submitted by the lobby group.

7.5 Matters that relate to the issues on which a group campaigns or has expressed public opinions about, without affecting the operation of the group directly, has an indirect impact on that group. If the matter to be discussed at a Development Control Board meeting relates indirectly to a lobby or campaign group to which a Board member belongs, the Member may, depending on the facts, have a personal or prejudicial interest. Members need to consider the following factors in determining whether they have a prejudicial interest in a matter of indirect impact:

- the nature of the matter to be discussed;
- the nature of their involvement with the lobby or campaign group;
- the publicly expressed views of the lobby or campaign group;
- what the Member has said or done in relation to the particular issue.

Members must weigh up all these factors in relation to the specific matter being discussed and consider whether a reasonable member of the public who knows the relevant facts, would think it likely that their judgment of the public interest would be prejudiced.

7.6 Regulatory matters, such as planning are particularly sensitive. For instance, the Development Control Board must follow a formal administrative process involving rules of procedure and rights of appeal, and Board members are expected to act reasonably and fairly when making decisions. In planning matters, the public is entitled to make applications and have them determined in accordance with the law. Often, individual rights under the European Convention on Human Rights are involved. Therefore, Development Control Board members should adopt a particularly cautious approach to planning matters. Membership of a group that campaigns for or against a particular planning application may well constitute a prejudicial interest. Members should avoid committing themselves on any matter that may fall to be decided by them, as a Board member.

7.7 Different considerations apply when the Council, as local planning authority, is consulted for its views on a matter in which it does not have the power to take a final decision. A reasonable and informed member of the public would accept that campaigners should be able to participate in consultation, even in consultation on planning matters. In these cases, Development Control Board members should declare a personal, but not prejudicial interest, even if they have campaigned heavily on the issue.

7.8 Membership of clubs and societies (unincorporated associations)

- 7.8.1 Although membership of private clubs (including the benefit of holding a season ticket) and societies are not registerable interests by law, the Council has adopted as a local protocol, the requirement to register such interests, and for the sake of expediency and consistency, such interests are declarable on the Register of Members' Personal Interests. The provisions of the Member Code of Conduct requiring Members to orally declare such interests in meetings continues to apply where matters relating to that interest are discussed (refer to paras. 5.3 and 5.4 of this Planning Protocol).
- 7.8.2 It is possible that, in certain circumstances, membership of a private club or society could give rise to bias and predetermination considerations.

8. GIFTS AND HOSPITALITY

- 8.1 Councillors are required to register on their Register of Members' Personal Interests form, any gifts or hospitality which are received and accepted by them, in the conduct of the business of the Council, the business of the office to which they have been elected or appointed or when they are acting as representative of the Council. The source of the gift or hospitality must also be registered. Guidance on gifts and hospitality is set out in the Annex to this Planning Protocol.
- 8.2 Councillors and Officers should be very cautious about accepting gifts and hospitality, particularly from persons with an interest in a planning proposal.
- 8.3 Where the personal interest is related to a gift or hospitality which has been registered, Members are required, for a period of three years from the date of registration, to declare at a relevant meeting of the Development Control Board, the existence and nature of the gift or hospitality, the person who gave it to them and how the business under consideration relates to that person. The obligation to disclose the interest to any relevant meeting ceases after three years.

9. PUBLIC SPEAKING

The Development Control Board allows for public participation in its meetings, in accordance with the 'Protocol for Public Speaking at Development Control Board Meetings'. During public speaking, the following should not occur:

- Members should not cross-examine speakers at any time;
- Members should not ask leading questions of Officers or speakers as by way of introducing new facts to the debate;
- Members should only ask relevant planning-related questions; and
- Late evidence will only be introduced with the agreement of the Chairman.

10. LOBBYING, KEEPING AN OPEN MIND AND BIAS

Predisposition and predetermination - the main principles

The Member Code of Conduct does not prevent a Member from having a

predisposition towards a particular outcome for a planning proposal. However, where for example, a Councillor is strongly identified in favour of or against a particular planning proposal, that might amount to predetermination, were that Member to participate in the decision on that application.

A Member who is considering an issue at a Development Control Board meeting is entitled to have formed a preliminary view about how they will vote on the matter before they attend the meeting. They are entitled to express that view publicly. Indeed, they may have been elected specifically because of their views on the issue. What the Member must not do, is finally make up their mind before the Development Control Board meeting, so as not to be prepared to listen to the arguments and representations under consideration at the meeting. Also, they must not give the impression that this is their position.

- *Predisposition – no problem*
- *Predetermination – a problem*

- 10.1 Councillors are at the heart of local democracy, making a difference in people's daily lives and represent people in their area and take forward concerns of individuals, neighbourhoods and interest groups, drive change, participate in community and action groups, and make decisions for the benefit of the community as a whole. Sometimes, these roles and responsibilities conflict, and Councillors need to strike a balance between representation, driving change and ensuring the Council as local planning authority, can even-handedly decide matters on their merits and be seen to be doing so.
- 10.2 It is important to recognise that lobbying is a normal and perfectly proper part of the political process: those who may be affected by a planning decision will often seek to influence it through an approach to their elected ward Member or to a Development Control Board member.
- 10.3 As the Nolan Committee's Third Report (paragraph 288) states: 'It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is via the local elected representatives, the Councillors themselves'. However, such lobbying can, unless all parties concerned exercise care and common sense, lead to the impartiality and integrity of a Councillor being called into question'.
- 10.4 The law requires that Development Control Board members take decisions fairly, on the merits known to them at the time they make the decision. Members should not reach a final conclusion before they come to take a decision on an issue.
- 10.5 Development Control Board members need to take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in a transparently open and fair manner, in which Members taking the decision will take account of all the evidence presented before arriving at a decision, and that to commit themselves one way or the other before hearing all the arguments and evidence makes them vulnerable to an accusation of partiality.
- 10.6 [Keeping an open mind](#)
- 10.6.1 Central to the determination of planning applications by the Development Control Board, is the principle that Members who determine planning applications should come to the Board meeting with an open mind, and be ready to hear and consider all

arguments relating to the application. Members of the Development Control Board are, of course, free to form a personal opinion on planning applications, listen to a point of view about a planning proposal, give procedural advice and agree to forward any comments to Officers, but should not publicly commit themselves to a particular point of view on a planning application prior to its full consideration at Development Control Board, as this could be perceived by others, as the Member having closed his/her mind to hearing all the relevant planning considerations and/or other relevant considerations i.e. predetermined the matter. Members in this situation must not indicate (or give the impression of) supporting or opposing a proposal or declare their voting intention before the matter has been fully reported to the Board.

- 10.6.2 It is important that no Member comes to a Development Control Board meeting with a pre-determined decision on any application. To do so, increases the risk of the Board's decision being successfully challenged in the Courts, by way of judicial review. Members should restrict themselves to giving procedural advice, including suggesting to those who are lobbying, that they should write to the relevant Officer, in order that their opinions can be included in the Officer's report to the Board.
- 10.6.3 Development Control Board members should notify the Board of any approach by any group, person, organisation etc, prior to the discussion of the relevant matter at the Board meeting.
- 10.6.4 Whilst Members involved in making decisions on planning applications may begin to form a view as more information and opinions become available, a decision can only be taken by the Development Control Board after all available information is to hand and has been duly considered. The sixth General Principle states: 'members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions'. In this regard, any political group meetings prior to the Board meeting should not be used to determine how Councillors should vote. The view of the Ombudsman is that the use of political 'whips' at group meetings in this way, amounts to maladministration. Decisions can only be taken after full consideration of the Regeneration Director's report and consideration at the Board meeting.
- 10.6.5 The Chairman of the Development Control Board attends a briefing with Officers prior to a Board meeting, to help give an effective lead in the meeting. Such a briefing with Officers will be available to other party spokespersons on the Board, on request.
- 10.6.6 Development Control Board members should not organise support or opposition to a proposal, lobby other Councillors, act as advocate or put pressure on Officers for a particular recommendation.
- 10.6.7. Development Control Board members who represent a ward affected by an application may be faced by considerable lobbying from people living in the area or applicants. If the Member responds to lobbying by deciding to go public in support of a particular outcome – or even campaigning actively for it – it will be very difficult for that Member to argue convincingly, when the Board comes to take a decision on the application, that he/she has carefully weighed the arguments presented – perhaps in some respects for the first time – at the meeting. If a Board member has responded to lobbying by openly advocating a particular course of action prior to the full report from the Regeneration Director to a Board meeting (and there may be particular local circumstances where this is considered appropriate), the Councillor should declare a prejudicial interest, and may make representations in accordance with paras. 5.5.3 or 5.5.5 of this Planning Protocol.

10.6.8 It cannot be stressed too strongly that the striking of a balance between the private interests of a Councillor and the wider public interest is, ultimately, the responsibility of the individual Member, and that in doing so, regard needs to be paid to the general provisions in the Member Code of Conduct. Whilst Members may be influenced by the views of others, and of their party in particular, it is their responsibility alone to decide what view to take on any question which Councillors have to decide. Members should never do anything as a Councillor which they could not justify to the public.

10.6.9 **Bias**

As stated above, Development Control Board members should not reach a final conclusion on an issue before they come to take a decision on it. This doesn't mean that Members cannot form a view about the matter before the meeting, but if they have formed a provisional view, they must still be willing to consider all arguments presented at the meeting and be open to persuasion on the merits of the case. If they are not, the Development Control Board's decision might be open to legal challenge because of the common law concept of predetermination. This is a legal concept that the courts have always applied to local authority decision making and predates the Member Code of Conduct and is not altered by it. It is for the courts to determine if a decision is flawed because a Member was not open to persuasion on the merits of the case. Participation in the decision making at a Development Control Board meeting by a Councillor disqualified by bias potentially invalidates the decision.

A public statement by a Councillor saying that they are open to persuasion may not be sufficient to prove they are not predetermined – they must genuinely be open to persuasion.

Example

A Councillor made a particular issue a centrepiece of their election campaign, or was elected on the basis of a single-issue campaign, but is not a member of a related lobby group. Here the Councillor will not have a personal or prejudicial interest under the Member Code of Conduct. However, they still need to consider whether they are genuinely open to persuasion about the matter.

11. **DUAL - HATTED MEMBERS**

11.1 The Member Code of Conduct does not automatically prevent Councillors from considering the same issue at more than one tier of local government, including speaking and voting in both tiers. So, for example, if an issue comes up for discussion at both the Parish and Development Control Board level, and a Member sits on both the Parish and the Board, they should:

- at the Parish level, make it clear that they will reconsider the matter at the Development Control Board level, taking into account all relevant evidence and representations to the Board;
- at the Board level, declare a personal (but not prejudicial) interest arising from their membership of the Parish Council which has already expressed a view on the matter, and make it clear that the Parish Council's view does not bind them and that they are considering the matter afresh (refer to the procedure on declarations of interest at para.5.3.2 of this Planning Protocol).

11.2 These guidelines apply even if a proposal has a direct impact on a particular location

e.g. there is no objection, in principle, to a Member speaking and voting on issues relating to the Council's Development Plan that particularly affects their parish. Of course, they must still consider if they have a prejudicial interest arising from the impact of the proposals on their well-being or financial position, which includes the well being of their family and people with whom they have a close association.

- 11.3 In some situations, it is unrealistic to expect a member of the public to believe that a Member would disregard the interests of another public body on which they serve. For example, a Parish Councillor who also sits on the Development Control Board should not participate in the Board's decision making on a planning application submitted by the Parish Council precisely for the reason that a member of the public would think that the Councillor's judgment is likely to be prejudiced. In addition, a legal challenge could be made against the Board's decision-making process under the 'bias' principle referred to in para.10.6.8 of this Planning Protocol.

12. DEALING WITH CORRESPONDENCE

Development Control Board members often receive correspondence from constituents, applicants and developers asking them to support or oppose a particular proposal. Members should acknowledge the correspondence by saying that the matter has been referred to the Regeneration Director. Condoning a point of view in advance of all the planning considerations of a proposal being reported to the Development Control Board will raise the issue of pre-determination and will prevent the Member from fully taking part in the determination of the application.

13. PRE-APPLICATION DISCUSSIONS

- 13.1 Discussions between a potential applicant and the Council as local planning authority prior to the submission of an application, can be of considerable benefit to both parties and is encouraged by the Audit Commission - 'Building in Quality' (paragraph 56). It is also encouraged by the Local Government Association and the National Planning Forum. However, it would be easy for such discussions to become, or be seen (especially by objectors) to become, part of a lobbying process.
- 13.2 When involved in pre-application discussions, Officers should always act fairly to all and completely impartially, by providing accurate advice and assistance when required or requested by the general public, developers or Members. A written record of all such discussions should be retained on the planning file.
- 13.3 Occasionally, the Development Control Board Chairman or other Board members may be invited to attend pre-application discussions with an applicant. Where Members choose to accept the invitation, they should be accompanied by an Officer and a written note made of the discussion and retained on the planning file. For Board members to do otherwise, could leave them open to accusation of partially or undue influence.
- 13.4 Pre-application discussions should take place within clear guidelines and the same considerations should apply to any discussions which take place before a decision is taken or when the application is submitted to the Council, as local planning authority:
- it should always be made clear at the outset, that the discussions will not bind the Council to making a particular decision and that any views expressed are personal and provisional. By the very nature of such meetings, not all relevant information may be at hand, nor will formal consultations with

- interested parties have taken place;
- advice should be consistent and based upon the Development Plan and material planning considerations, including any relevant PPG/PPS and SPG/SPD. There should be no significant difference of interpretation of planning policies amongst Planning Officers. In addition, all Officers taking part in such discussions should make clear whether or not they are the decision-maker under delegated powers;
- a written note should be made of all meetings. At least one Officer should attend such meetings and a follow-up letter is advisable at least when documentary material has been left with the Council. A note should also be taken of telephone discussions;
- care must be taken to ensure that advice is not partial, nor seen to be.

14. OFFICER REPORTS

14.1 To avoid public concern and a loss of confidence in the planning system, and in order to avoid criticisms relating to inadequate consideration of the issues, inconsistency of decision-making, or claims of unclear or non-existent reasoning behind a recommendation or no recommendation, Officers should have regard to the guidelines set out below. It is particularly important to do so, not only as a matter of good practice, but because failure may constitute maladministration, and/or give rise to judicial review on the grounds that the decision was not taken in accordance with the provisions of the Development Plan and the Council's statutory duty under Section 54A of the Act.

- reports must be accurate and cover, among other things, the substance of objections and the views of people who have been consulted;
- relevant points must include a clear exposition of the Development Plan, site or related history, and any other material considerations;
- reports must have a written recommendation of action;
- oral reporting (except to update a report) is extremely rare and must be carefully minuted when it does occur;
- reports must contain a technical appraisal which clearly justifies the recommendation;
- reports must contain an appraisal of the human rights implications relevant to the issue and which clearly justifies that any interference is 'proportionate' to the aims of the legislation;
- if the report's recommendation is contrary to the provisions of the Development Plan, the material considerations, which justify this, must be clearly stated.

14.2 Decisions Contrary to Officer Recommendation and/or the Development Plan

14.2.1 The law requires that where the Development Plan is relevant, decisions should be taken in accordance with it, unless material considerations indicate otherwise (Section 54A of the Act).

14.2.2. If the Development Control Board makes a decision contrary to the Officer's recommendation (whether for approval or refusal), the Officer should always be given the opportunity to explain the implications of the contrary decision. Unless the Board's argument against the Officer's recommendations are very clear and substantiated on planning grounds, the application should be deferred to enable the Officer to draft a further report for a subsequent meeting of the Board, outlining the implications of making a decision contrary

to the Officer's recommendation. The Board's reasons must be formally recorded in the minutes.

14.2.3 When a planning application has been deferred following a resolution of 'minded to approve' or 'minded to refuse', contrary to the Officer's recommendation, then at the subsequent Board meeting, the Regeneration Director will have the opportunity to respond both in a further written report and orally, to the reasons formulated by the Board for granting or refusing permission. If the Board is still of the same view, then it will again consider its reasons for granting or refusing permission, and a summary of the planning reasons for that decision will be given, which reasons must then be formally recorded in the minutes of the meeting.

14.2.4 The Courts have expressed the view that reasons should be clear and convincing. The personal circumstances of an applicant will rarely provide such grounds. A notable exception is where planning policy allows for this e.g. a dwelling for an agricultural worker.

14.2.5 In the case of conditions which the Board wishes to add or amend, the Officer should be invited to draft the condition and either refer this to the Board for approval at a subsequent meeting, or by resolution of the Board, the Officer may be granted delegated authority to agree the condition with the Board Chairman.

15. SITE MEETINGS/SITE VISITS

15.1 **Site meetings** are arranged before a Development Control Board meeting. The lack of any common approach on when and why to hold a site meeting and how to conduct it, may leave the Development Control Board open to the accusation that it is, at best, arbitrary and unfair and, at worst, a covert lobbying device. All site meetings are therefore conducted in accordance with the 'Site Visit Procedure'.

15.2 As discussed in para. 5.5.1 of this Protocol, the Member Code of Conduct supports the Councillor's role as a community advocate and enables them, even with a prejudicial interest, to represent their community and to speak on issues important to them. Members with a personal and prejudicial interest in a planning application may attend site meetings in their capacity as ward Member but only for the purpose of eliciting information on an application in accordance with para 15.4 of this Protocol which will enable them to make representations in accordance with para.5.5.3 of this Protocol. Members are required to declare their personal interests at site meetings.

15.3 The deferral of an application for a site meeting should not be on the basis of exposing Development Control Board members to local opinion, but should be on sound and proper planning grounds, which will be recorded in the minutes of the meeting.

15.4 Members should avoid expressing an opinion on the planning application or on its merits (or otherwise) at the site meeting. Discussions at site meetings must be confined to the application, as submitted.

15.5 Member Services will inform the ward Member of the date and time of the site meeting.

15.6 The Development Control Board member who proposes and seconds the site

meeting should attend the site meeting or arrange for a substitute Member to attend.

- 15.7 The Member Code of Conduct applies as much to site meetings, as any other area of conduct (refer to para. 15.3 above).
- 15.8 Ward Councillors may attend and participate in site meetings.
- 15.9 Prospective election candidates who are not already Council members, may attend a site meeting on the same basis as members of the public.

16. DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS AND OFFICERS AND DEVELOPMENT PROPOSALS BY THE COUNCIL

- 16.1 Proposals to the Council, as local planning authority, by serving and former (within the last four years) Councillors and Officers and their family or close associates, can easily give rise to suspicions of impropriety. Although it is perfectly legitimate for such proposals to be submitted, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism.
- 16.2 A Development Control Board member or their family, or close personal associates may submit planning applications. The Member will need to consider whether a member of the public with knowledge of the relevant facts would reasonably regard the personal interest as so significant that it is likely to prejudice their judgement of the public interest. If the answer is yes, the interest is also prejudicial and the procedure detailed in para. 5.5 of this Planning Protocol, will be applied, should the Member wish to make representations to the Board meeting.
- 16.3 Proposals for the Council's own development can take the form of either planning applications or Development Plan proposals. Such proposals can easily give rise to suspicions of impropriety. It is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism. Proposals for the Council's own development must be treated in the same way as those by private developers. The Development Control Board will normally be the appropriate forum for determining the Council's major development proposals with minor proposals being dealt with by Officers under delegated powers.
- 16.4 Planning Officers should not submit applications on behalf of third parties except as part of their duties as Council employees. In cases where Planning Officers or members of their family submit applications for planning permission, they should inform the Regeneration Director.
- 16.5 Proposals of the nature detailed in this para.16, will be reported to the Development Control Board as main items, and not dealt with by Officers under delegated powers.

17. ROLE OF CHAIRMAN

The Development Control Board Chairman should ensure that:

- 17.1 Members' comments at Board meetings only relate to the planning merits of the application before them;
- 17.2 reference at Board meetings to non-planning issues by the public and or Members are discouraged;

17.3 cross-questioning of speakers should only take place, if there is need for clarification of what a speaker has already outlined; and

17.4 Members and the public should be made aware that the late submission of representations will normally not be permitted at Board meetings, as this can lead to allegations of unfairness.

18. LOCAL DEVELOPMENT FRAMEWORK PREPARATION

18.1 The Cabinet is responsible, under its Terms of Reference, for formulating the Local Development Framework (LDF) in accordance with the statutory planning system and for recommending to the GAC, the approval/adoption of the LDF.

18.2 The approval of the draft LDF proposals for public consultation, prior to the LDF being placed on deposit, is a decision of the GAC and not the Cabinet.

18.3 The Local Development Framework Members' Working Group (LDFMWG) is responsible under its Terms of Reference, for acting in an advisory role to the Cabinet, in the preparation of the various stages of the LDF.

18.4 Cabinet Members may be involved in discussions with a number of third parties over development proposals within the Borough and may also themselves have ideas on the future development of/within the Borough. Members should always be mindful that third parties may wish to influence them over the LDF's content, for their own or others' personal benefit.

18.5 Cabinet members exercise their own judgement in deciding whether they might be influenced or could be seen as being influenced over the LDF's preparation. If it could be reasonably considered that discussions with third parties are such as to lead Members to be influenced or seen to be influenced, the following should apply;

- any discussions with the third party over the contents of the LDF should be recorded and submitted to the Regeneration Director;
- where a third party is lobbying to advance a particular site or policy stance for inclusion in the LDF, any meetings with that third party should be recorded and be held in the presence of the Regeneration Director or a nominated representative. Similarly, any Officer should only hold such discussions in the presence of a colleague.

18.6 In any discussion with the third party, Members should make it clear:

- (a) that consideration of any particular proposal will have to be judged against the advice of professional Officers of the Council and the statutory planning framework;
- (b) that it is for the Council to make the final decision through its formal decision making procedures.

18.7 Members and Officers involved in the preparation of the LDF must:

- (a) comply with their respective codes of conduct;
- (b) act with competence, honesty and integrity;

- (c) exercise their independent professional judgment with impartiality and to the best of their skill and understanding.

18.8 Should a Cabinet member with portfolio responsibility for strategic development be able to vote on planning applications? The appropriate action is not clear cut and will depend on the circumstances of a particular case. However, the general advice is that a Member in such circumstances, may well be so committed to a particular development as a result of their Cabinet/portfolio responsibility, that they may not be able to demonstrate that they are able to take account of all material considerations before a final decision on a planning application is reached. In such circumstances, the appropriate approach is likely to be that the Member is able to argue for the development, but should not vote on the relevant application.

19. TRAINING AND REVIEWS

19.1 Development Control Board members may be required to attend a training session each year to receive guidance in relation to planning regulations and procedures and on declarations of personal and prejudicial interests. Members who fail to attend such training may be excluded from meetings of the Development Control Board until they have been trained.

The training may include a balance of the following:-

- organised visits to review permissions granted, with evaluation and lessons learned presented as a paper;
- short (half day) sessions on special topics of interest or where appeal decisions have indicated problems with planning policy;
- special topic groups to consider thorny issues in depth;
- formal training by internal and external speakers;
- visits to other authorities who have received good inspection/audit feedback;
- brief presentations by Officers on hot topics, e.g. new legislation, white papers and their impacts, followed by a brief question and answer session;
- attendance at inquiries, where Officers have identified there is something specific which will be of benefit to Members.

19.2 The report of the Audit Commission 'Building in Quality' recommends that Councillors should review a sample of implemented planning permissions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, thereby strengthening public confidence in the planning system and may also assist with reviews of planning policies.

19.3 Reviews are best undertaken at least annually. They should include examples from a broad range of categories such as major and minor development; permitted departures; upheld appeals; listed building works and enforcement cases. Briefing notes should be prepared on each case. The Development Control Board should formally consider the review and decide whether it gives rise to the need to reconsider any policies or practices. The Regeneration Director will assume responsibility for organising the training and the reviews.

20. COMPLAINTS ABOUT THE ADMINISTRATION OF PLANNING APPLICATIONS

- 20.1 The Council has a formal Corporate Complaints Procedure for handling complaints from applicants, agents and members of the public about the administration of planning matters. It is preferable to use the Complaints Procedure prior to any recourse to the Local Government Ombudsman.
- 20.2 So that complaints may be fully investigated and, in any case, as a matter of general good practice, record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. The guiding rule is that every planning application file should contain an accurate account of events throughout its life. It should be possible for someone not involved with an application, to understand what the decision was and how and why it was reached. Particular care needs to be taken with applications determined under the Scheme of Delegations for Officers, where there is no Development Control Board report. Such decisions should be documented and recorded in the same way as those taken by the Board.
- 20.3 Appeals against refusal of planning permission are dealt with by the Planning Inspectorate of the Department for Communities and Local Government.

21. OMBUDSMAN

- 21.1 The Commission for Local Administration ('the Ombudsman') is a principal mechanism for accountability in respect of local authority administration, and constitutes an independent system for the investigation and resolution of complaints of injustice caused by the maladministration (with injustice or without injustice) of local authorities (and of certain other bodies).
- 21.2 Members of the public who claim to have sustained injustice in consequence of maladministration in connection with action taken by or on behalf of the Council, can bring a complaint, or can have a complaint brought on their behalf, and on occasions may ask Councillors to take a complaint forward on their behalf.
- 21.3 Although complainants can approach the Ombudsman at any time, the Council must first be given an opportunity to answer the complaint, through its Corporate Complaints Procedure. The Ombudsman may ask what efforts, if any, have been made to resolve concerns personally and locally, and may encourage and assist complainants to make this effort.
- 21.4 The Ombudsman has discretion as to whether or not to investigate a complaint, although such discretion must be exercised reasonably.
- 21.5 In assessing a complaint, the Ombudsman will not be concerned with the nature, quality or reasonableness of the decision itself. Of concern, will be the manner in which Development Control Board decisions are reached and the manner in which they are, or are not, implemented.
- 21.6 The five most common causes of maladministration relate to:
- unreasonable delay in taking appropriate action;
 - failure to provide adequate information, explanation or advice to users;
 - failure to take appropriate action;
 - taking incorrect action;

- failure to investigate an issue properly.

22. CONCLUDING REMARKS

- 22.1 Maintaining high ethical standards enhances the general reputation of the Council, its Members and its Officers. Open and transparent decision-making enhances local democracy and should lead to better informed citizens. A common understanding of the various roles, responsibilities and accountabilities should also enhance citizen participation. This Planning Protocol, along with Council's codes of conduct, therefore, serves an essential part in the local and corporate governance of Dartford Borough Council.
- 22.2 If any person believes that a Member or Officer has breached any aspect of this Planning Protocol, they should refer the matter to the Monitoring Office for consideration. A breach by an Officer could be a relevant consideration in any disciplinary matter and a breach by a Member, could be referred to the Council's Standards Committee and/or the Standards for England.

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