INTRODUCTION

The aim of this code of good practice is to ensure that in the Town and Country Planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

The key purpose of the Planning System is to regulate the development and use of land in the public interest.

Your role as a Member of the Planning Authority is to make planning decisions openly, impartially, with sound judgement and for legally justifiable reasons. You are also a democratically accountable decision taker who has been elected to provide and implement policies. You are entitled to be pre disposed to make planning decisions in accordance with your political views and policies provided that you have considered all material considerations and have given fair consideration to relevant points raised.

When the Code of Good Practice applies. This code applies to Members at all times when they are involved in the planning process. (This includes taking part in the decision making meetings of the Council when it is acting in its role as a Local Planning Authority which will usually be through the Planning Committee, or when you are involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies not only to the determination of planning applications but also to planning enforcement matters or site specific policy issues.

If you have any doubts about the application of this Code to your own circumstances you should seek advice from the Monitoring Officer or her staff, preferably well before any meeting takes place.
1. RELATIONSHIP TO THE MEMBER’S CODE OF CONDUCT

1.1 You must apply the rules in the Members’ Code of Conduct first, as they must always be complied with. This is both the rules on interests, Disclosable Pecuniary Interests and any other interests identified by the Council, and the general rules giving effect to the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

1.2 You should then apply the rules in this Planning Code of Good Practice, which explains and supplements the Members’ Code of Conduct with specific reference to the Council’s role as a Local Planning Authority.

1.3 If you do not abide by this Code of Good Practice, your conduct may put the Council at risk of proceedings on the legality of the related decision or maladministration. You may also put yourself at risk of being reported to the Standards Committee which could result in you being named in a report made to the Council or, if the failure is also likely to be a breach of the interest provisions of the Localism Act 2011, a complaint being made to the police to consider criminal proceedings.

2. DEVELOPMENT PROPOSALS AND INTERESTS UNDER THE MEMBER’S CODE OF CONDUCT

2.1 The Members Code of Conduct requires you to notify the Council’s Monitoring Officer of any Disclosable Pecuniary Interests and any Personal Interests. You are also required to declare any private interests, both pecuniary and non-pecuniary, that relates to your public duties and take steps to resolve any conflicts arising in a way that protects the public interest. This could be done by registering or declaring those interests in accordance with the Members Code of Conduct.
2.2 Disclosable Pecuniary Interests

The definition of a Disclosable Pecuniary Interest is set out in the Member’s Code of Conduct. In addition you should take into account when approaching a decision the principle of integrity which is defined in terms that:

“Holders of public office must avoid placing themselves under an obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships”

If you have a Disclosable Pecuniary Interest in any matter that is being considered by the Council /Planning Committee;

You must not participate in any discussion of the matter at the meeting.

(You do not now have a right to speak on the matter in the same way as a member of the public unless you have obtained a dispensation from the Standards Committee)

You must not participate in any vote taken on the matter at the meeting.

You must disclose the interest to the meeting.

If the interest is not registered and is not the subject of a pending notification, you must register the interest in your register of member’s interests within 28 days.

You must also leave the meeting room whilst any matter in which you have a Disclosable Pecuniary Interest is being discussed or voted on.

The Member’s Code of Conduct explains how failure to comply with the requirements relating to Disclosable Pecuniary Interests can amount to a criminal offence.
2.3 **Personal Interests**

The definition of a Personal Interest can be found in the Member's Code of Conduct. If you have a personal interest in any planning matter before the Council / Planning Committee you must disclose that interest at the meeting. You do not however have to leave the meeting as you may take part in the discussion and voting.

2.4 You should notify the Monitoring Officer in writing of your own applications / proposals. This notification should be given to the Monitoring Officer no later than submission of the application. The proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers. It would also be advisable to employ an agent to act on your behalf on the proposal in dealing with officers and any public speaking at the Planning Committee. You are not prevented from seeking to explain and justify a proposal in which you have a conflict of interest to an appropriate officer, in person or in writing, but your role as a councillor may place additional limitations on you in representing the proposal in which you have a personal interest. For example, you will need a dispensation from the Standards Committee if you wish to speak as a member of the public in respect of your planning application.

3. **PREDISPOSITION, PREDETERMINATION OR BIAS**

3.1 Don’t limit your discretion and therefore your ability to participate in a planning decision by making up your mind, or clearly appearing to have made up your mind on how you will vote on any planning matter prior to formal consideration of that matter at the meeting of the Committee and of your hearing the officer's presentation and evidence and arguments on both sides. This applies in particular to applications or objections made by the Council or external interest or lobby groups),
3..2 Restricting your discretion in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and/or legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

3.3. This rule should not however be interpreted in such an unnecessarily restrictive way so as to limit the quality of debate or stifle valid discussion.

3.4 Section 25 of the Localism Act 2011 clarifies the rules on predetermination by providing that

“A decision maker is not to be taken to have had, or to appear to have had, a closed mind when making the decision just because-

a) the decision- maker had previously done anything that directly or indirectly indicated what view the decision maker took or would or might take, in relation to a matter, and
b) the matter was relevant to the decision.

The advice issued by the Department of Communities and Local Government is that members should not have to avoid campaigning, talking to constituents or publicly expressing views on local issues for fear of being accused of bias or facing legal challenge. Instead they should play an active role in local discussions. This will help members to better represent their constituents and enrich local debate.

3.5 Do consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of a parish council, for example, or both the Borough and County Council), provided:

The proposal does not substantially affect the well being or financial standing of the consultee body;

You make it clear to the consultee body that:

Your views are expressed on the limited information before you only;
You must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Committee and you hear all of the relevant information; and,

You will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee; and you disclose the personal interest regarding your membership or role when the Planning Committee comes to consider the proposal.

3.6 Don’t speak and vote on a proposal where you have openly and uncompromisingly limited your discretion. You do not have to withdraw from the meeting room, but you may prefer to do so for the sake of appearances.

3.7 You should explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.

3.8 There are specific ward member rights to speak at the Planning Committee on applications in their wards. However even though you are not on the Planning Committee you are prohibited from speaking if you have a Disclosable Pecuniary Interest and have not been granted a dispensation by the Standards Committee. Such dispensations are also available to members of the Planning Committee.

3.9 If you have a private interest under paragraph 2 (f) of the Members Code of Conduct you may consider that the only way to resolve any conflict of interest is not to vote or even participate in any discussion.

3.10 Any Ward member who does not have a Disclosable Interest or other conflict of interest of any description may address the Planning Committee in the same way as member of the public. I.e. by registering to speak. In such cases members of the planning committee should remove themselves from the seating area reserved for members of the committee.
In determining whether there is an appearance of pre determination or bias members who are responsible for making the decision should apply the following test:

**Would a fair minded and informed observer having considered all the facts, decide that there is a real possibility that the member had determined the issue or was biased.**

However when applying this test it is important to remember that it is legitimate for a councillor to be pre disposed towards a specific outcome as long as they are prepared to consider all the arguments and points made about the specific issues under consideration.

4. **CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS**

4.1 Do refer those who approach you for planning, procedural or technical advice to officers.

4.2 Don't agree to any request (other than from the Chief Planning and Transportation Officer to attend a meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Chief Planning and Transportation Officer to organise it. The officer will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.

4.3 Do otherwise:

   - follow the guidance on lobbying;
   - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
   - report to the Chief Planning and Transportation Officer any significant contact with the applicant and other parties, explaining the nature and purpose of the
contacts and your involvement in them, and ensure that this is recorded on the planning file.

4.4 In addition in respect of presentations by applicants/developers:

Don’t attend a planning presentation or any pre application discussions unless an officer is present and/or it has been organised by officers.

You may ask relevant questions for the purposes of clarifying your understanding of the proposals but remember that the presentation is not part of the formal process of debate and determination of any subsequent application; this will be carried out by the Planning Committee.

You should however aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other members might vote.

5. LOBBYING OF COUNCILLORS

5.1 Do explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, expressing an unequivocal intention to vote one way or another or such a firm point of view that it amounts to the same thing prejudices your impartiality and therefore your ability to participate in the Committee’s decision making process. In such cases it may be advisable to refer those lobbying you to another Ward Member.

5.2 Do remember that your overriding duty is to the whole community not just to the people in your ward/local area and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.

5.3 Don’t accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum; its acceptance is declared as soon as possible and remember to register the gift or hospitality where its value is over £100 in accordance with the Members Code of Conduct.

5.4 Do copy or pass on any lobbying correspondence you receive to the Chief Planning and Transportation Officer at the earliest opportunity.
5.5 You should promptly refer to the Chief Planning and Transportation Officer any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.

5.6 If you believe that you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality) you should inform the Monitoring Officer who will in turn advise the appropriate officers to follow the matter up.

5.7 You must comply with the guidance on lobbying, and presentations

5.8 Do note that, unless you have a Declarable Pecuniary interest, you will not have compromised your discretion or breached this Planning Code of Good Practice through:

- listening or receiving viewpoints from residents or other interested parties;
- making comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
- seeking information through appropriate channels; or
- being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided you explain your actions at the start of the meeting or item and make it clear that having expressed the opinion or ward /local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

6. Lobbying by Councillors

6.1 If you are a member of the Planning committee it is inadvisable to become a member of, or lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do you will have restricted your discretion and are also likely to have a personal interest
6.2 You may join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society, but disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal.

6.3 Don’t excessively lobby fellow Councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.

6.4 Don’t decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue.

7. SITE VISITS

7.1 Try to attend site visits organised by the Council where possible.

7.2 Don’t request a site visit unless you feel it is strictly necessary because particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or there are significant policy or precedent implications and specific site factors that need to be carefully addressed.

7.3 Any information which you gained from the site visit should be reported back to the Committee, so that all Members have the same information.

7.4 Ensure that you treat the site visit only as an opportunity to obtain information and to observe the site.

7.5 During the site visit you may ask questions or seek clarification from the officers on matters which are relevant to the site inspection.

7.6 During the site visit you should not hear representations from the applicant or any other party. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present. They should also be advised of the right to
address the Planning Committee when the application comes forward for decision.

7.7 During the site visit try to avoid express opinions or views to anyone.
7.8 Don’t enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless you feel it is essential for you to visit the site other than through attending the official site visit. In such cases it is advisable to inform the Chief Planning and Transportation Officer about your intention to do so and why (which will be recorded on the file). You must ensure you will comply with these good practice rules on site visits.

8. PUBLIC SPEAKING AT MEETINGS
8.1 Don’t allow members of the public to communicate with you during the Committee’s proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
8.2 Do ensure that you comply with the Council’s procedures in respect of public speaking.

9. OFFICERS
9.1 Don’t put pressure on officers to put forward a particular recommendation. This does not prevent you from asking questions or submitting views to the Chief Planning and Transportation Officer which may be incorporated into any committee report.
9.2 Do recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with a Head of Service or those officers who are authorised by their Head of Service to deal with the proposal at a Member level.
9.3 Do recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council’s Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute’s Code of Professional Conduct. As a result, planning officers’ views, opinions and recommendations will be presented on the
basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

10. DECISION MAKING

10.1 Do ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your reasons are recorded and repeated in the report to the Committee.

10.2 Do come to meetings with an open mind and demonstrate that you are open minded

10.3 Do make decisions in accordance with section 70 of the Town and Country Planning Act 1990 (as amended) all relevant planning policies and material considerations, such as the National Planning Policy Framework

10.4 Do come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary defer or refuse.

10.5 Don’t vote or take part in the meeting’s discussion on a proposal unless you have been present to hear the entire debate, including the officers’ introduction to the matter.

10.6 Do have recorded the reasons for Committee’s decision to defer the determination of any application

10.7 Do make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.
11. **TRAINING**

11.1 Members are required to attend any training prescribed by the Council before they participate in decision making at meetings dealing with planning matters.

11.2 Do endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures etc beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.

11.3 Do participate in any review of a sample of planning decisions to ensure that Members’ judgements have been based on proper planning considerations.

12. **GENERAL**

12.1 This Code of Good Practice will be kept under annual review by the Executive Director, Legal and Democratic Services. It will also be reviewed following any relevant change in the Council’s Constitution and Rules of Procedure.

**FAQ’s**

**I am a member of the Planning Committee and have made an application for planning permission. Can I sit on the committee whilst the application is dealt with?**

No. If you have a Disclosable Pecuniary Interest in the application you may not take part in any discussion or voting. You must also leave the meeting room whilst the application is being considered. You must also declare the interest at the meeting.

**If I am not a member of the planning committee can I address the committee on the application in my capacity as an applicant?**

You may not address the Planning Committee if you have a Disclosable Pecuniary Interest which precludes you from taking part in any discussion of the application unless you first obtain a dispensation from the Standards Committee and register to speak.
Can I sit on the planning committee if an application is made by a friend or a family member other than my partner?

Even if your relationship with an applicant does not constitute a Disclosable Pecuniary Interest as defined by the relevant regulations, you still need to comply with the Members Code of Conduct which requires you to take steps to resolve any possible conflicts of interest. In such cases it may be prudent to withdraw from the meeting.

Can I represent the views of any of my constituents who have a strong opinion on a planning application?

If you are a member of the planning committee it is permissible to speak on behalf of constituents providing you retain an open mind on the application. In such cases it may be appropriate to refer the constituents to another member who is not on the committee and who is willing to speak on behalf of the residents.

My political party has taken a position on an application which it expects me to follow. Is this permissible?

No. it is important that each member of the planning committee forms their own view on applications after considering officer advice and any representations.

I have such a strong opinion on a matter that I do not feel able to participate in discussion / voting as a member of the Planning Committee. Can I still speak on behalf of concerned residents?

Subject to the rules on Interests you may stand down from the Planning Committee and speak a member of the public on behalf of residents.

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