



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 the Local Plan, other Local Development Documents, Supplementary Planning Documents and other Development Plan Documents, Development Briefs, enforcement cases and all other planning matters.
- 1.3 Members are reminded that they are required to comply with the general law requiring disclosure of Disclosable Pecuniary Interests (as set out in the Localism Act 2011) as well as the City Council's adopted Code of Conduct (included within Part 5 of the Constitution).
- 1.4 Members who are unsure of their position in respect to an application or decision, or wish for clarification of anything contained in this Protocol, should seek advice at the earliest opportunity from the Head of Legal and Democratic Services.
- 1.5 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.
- 1.6 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.
- 1.7 Members and Officers are reminded that the Council has adopted a Code of Conduct, together with number of other documents 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.

- 1.8 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 the Constitution. If, however, a degree of hospitality is unavoidable, Members should ensure that this is minimal and that they declare having received it as soon as possible. Members should send written notice to the Monitoring Officer (Head of Legal and Democratic Services), and Officers should notify their Corporate Director. In all cases details must be entered in the Gifts and Hospitality Register, kept by the Monitoring Officer.
- 1.9 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. Members (including deputies) of the Planning 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 Local Plan and Local Development Documents). Members are reminded that attendance will be monitored by reports to Standards Committee.

2. DECLARATIONS AND REGISTRATION OF INTERESTS

General

- 2.1 Under Chapter 7 of the Localism Act 2011, Members are required to register Disclosable Pecuniary Interests within 28 days of election (or within 28 days of the date when a Councillor becomes aware of any change to their interest). The Act also places requirements on Members to withdraw (unless a dispensation has been granted) when a Disclosable Pecuniary Interest relates to an item under discussion in a committee meeting. In addition, the City Council's Code of Conduct requires certain personal interests to be declared, and, where such interests are prejudicial, restricts participation in the decision-making process.

Disclosable Pecuniary interests

- 2.2 Disclosable Pecuniary Interests are prescribed by regulations made under the Localism Act 2011, and are set out in the Schedule in Part 2 of the Council's Code of Conduct (Part 5 of the Constitution). They include:-
- Employment or office for profit/gain (e.g. employment by an applicant for planning permission, or membership of the County Council where the County Council are the applicants);

- contracts (e.g. a contract for building a development for which planning permission has been applied for and is under consideration);
 - land (e.g. a planning application for the development of land owned, rented, or occupied by a Member or their spouse);
 - corporate tenancies (land let by the Council to a body in which a Member or their spouse has a beneficial interest, e.g. a planning application where the application is made by a company or firm of which the Member is a partner, director, or has a beneficial interest in securities);
 - securities (e.g. a Member or spouse holds a significant proportion of the shares in a company applying for planning permission).
- 2.3 Members should already have registered these interests with the Monitoring Officer following their election. Where these interests change, the change should be similarly registered within 28 days.
- 2.4 A Member cannot participate in any discussion, vote, or discharge any function relating to any matter in which the Member (or their spouse) has a Disclosable Pecuniary Interest.
- 2.5 In addition, the Council's Code of Conduct also requires a Member with a Disclosable Pecuniary Interest to withdraw from the meeting room and not seek to improperly influence the decision. It would also be advisable to indicate the reason for your withdrawal, in the interests of openness and transparency. The effect of this is that a Member with a Disclosable Pecuniary Interest must leave the room throughout the item unless a dispensation has been granted.
- 2.6 Where a dispensation has been granted, however, a Member can remain in the room, participate in the discussion, and vote. Dispensations can be given by the Standards Committee or (in certain circumstances) by the Monitoring Officer.¹ Members seeking a dispensation should contact the Monitoring Officer as soon as the need for a dispensation becomes known to them.
- 2.7 **The rules regarding Disclosable Pecuniary Interests are enforced by the Police, as criminal offences. It is a criminal offence to:-**
- **Fail to register a Disclosable Pecuniary Interest within the statutory time limits;**
 - **Provide false or misleading information on registration;**
 - **Participate in a discussion or voting at a meeting where a Member has a Disclosable Pecuniary Interest (unless they have a dispensation to do so).**

¹ Report ST00095 28 January 2013

- 2.8 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 Committee.

Non-Pecuniary Interests (“Personal/Prejudicial Interests”)

- 2.9 The Council’s Code of Conduct also deals with interests which fall outside the statutory definition of Disclosable Pecuniary Interests. In Winchester’s Code, these are termed “personal and prejudicial interests”. The statutory requirements on Disclosable Pecuniary Interests take precedence over these additional requirements in the Code of Conduct (and therefore it is not possible for a Member to seek to speak under the rules applying to personal and prejudicial interests, if in fact the interest is a Disclosable Pecuniary Interest).

Personal Interests

- 2.10 Personal Interests are covered under Part 6 of the Code of Conduct. There are two forms of interest. The first involves specified personal interests of the Member themselves, arising from their employment, membership, or association by way of gifts/hospitality. They include:-
- Any organisation of which a Member is a member, or in a position of general management or control, *and in each case the Member was appointed or nominated by the Council* (e.g. a sports association which is not charitable, which applies for planning permission for a new pavilion, and where the Member was nominated onto the management committee by the Council);
 - Any body exercising functions of a public nature, directed to charitable purposes, or one whose principal purposes include influencing public opinion or policy, for which the Member is a member or is in a position of general control of management (e.g. a charitable advice service organisation applies for a new shop front and the Member is a supporting member of the organisation);
 - Any employment or business, or any person or body who employs a Member, *other than for profit or gain* (e.g. a Member who does voluntary work for a community shop which is applying for permission for a new extension);
 - Any person or body from whom a Member has received a gift/hospitality with an estimated value of at least £50 in the last three years (e.g. a Member has attended a sporting event at the invitation of an applicant in the preceding three years, and the value of this hospitality was £75).

The second group of personal interests arise where the business in question is likely to affect the **well-being or financial position** of a Member, or their family or close associates (including any business in

which they are employed, are directors, or have significant share holdings. Examples would include:-

- A planning application by a development company employing a person who is a close associate of the Member;
- A planning application where an objection has been made by the Member's son-in-law;
- An item on the committee agenda to consider seeking an injunction against the neighbour of the Member's mother, where the development is affecting the mother's wellbeing.

Disclosure of Personal Interests

- 2.11 Where a Member has a personal interest in an item of business at a meeting, they must disclose the interest.² The Planning Committee Agenda includes a specific item, at the start of the meeting, for this purpose, and Members should also use the forms provided by the Head of Legal and Democratic Services at the beginning of the meeting to record their interest. In any event, disclosures must be made at the commencement of consideration of the business in question, or when the interest becomes apparent (paragraph 7 of the Code of Conduct).

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

Prejudicial Interests

- 2.12 **A prejudicial interest is one where a member of the public, with knowledge of the relevant facts, would reasonably regard it as so significant that it is likely to prejudice the Member's judgement of the public interest.**³

The Code of Conduct restricts prejudicial interests to those which:-

- affect the financial position of the Member or body/relevant person; or
- relate to the determination of any permission in relation to the Member or a body or relevant person as described in the Code (i.e. a body or close association which would constitute a personal interest under the Code).

Hence, in the planning context all personal interests which meet the above "so significant" test in decisions involving planning applications will be prejudicial.

² If the personal interest relates to membership of a group to which you were nominated by the Council, or a public body/charitable body/public policy group, the interest need only be declared if you wish to speak on the matter.

³ Paragraph 1 of Part 8 of Code of Conduct

- 2.13 Examples of prejudicial interests would include:-
- A planning application by a Member's son for a new dwelling in the son's garden [son is a "relevant person" under the Code];
 - An application where a long-standing family friend is objecting to a new development to be accessed off the existing road and which will produce a large increase in traffic movements [although the application was not made by the friend, the application could affect the value of the friend's property.]
- 2.14 If a personal interest in an item of business is also a prejudicial one, a Member may remain to ask questions or make representations (see paragraph 2.15 below) but in the planning context must then leave the room (unless a dispensation has been given) and not seek to improperly influence the decision.
- 2.15 Where a Member has a personal and prejudicial interest, the Code of Conduct allows a Member to remain to make representations or answer questions, but only where the committee procedures allow the public to do the same. After making such representations, the Member must withdraw from the meeting. However, this allowance does not apply where the interest is a Disclosable Pecuniary Interest (in which case the Member cannot remain in the room during any part of the item).
- 2.16 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 however that Members cannot remain in the room as a member of the public once they have made their representations, etc). 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.
- 2.17 Objections made by a lobby group (e.g. a local conservation association) to which a Member belongs will still be personal interests (and should therefore be declared) but the objection is unlikely to be a prejudicial interest, as the business does not "relate to the determining of a.... permission in relation to you or a body or relevant person.....". However, a planning application by the group for alterations to their office premises *would* be prejudicial. Furthermore, if the Member was personally involved in the decision to object by the conservation group, then the question of bias and predetermination may apply and affect the ability to participate.

[NOTE: A planning application by a Member themselves would be a Disclosable Pecuniary Interest, and would not therefore be treated as a personal and/or prejudicial interest under the Code of Conduct.]

Parish Councils

- 2.18 A District Councillor who is also a Parish/Town Councillor should declare a personal interest in a planning application made by a private individual, where the Parish/Town Council has submitted observations to the District Council on that application, if that Member intends to speak on the item. Such Members will not necessarily have a prejudicial interest in such an application, but they 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 3.19 below on whether participation in Parish/Town Council decisions prevents participation at District Council level.

3 IMPACT OF THE LAW ON BIAS AND PREDETERMINATION

General

- 3.1 Section 2 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. Any decision-maker must make the decision with an open mind, and consider all relevant issues. A decision which is made with a closed mind will be vulnerable to challenge. Members need to have an open mind when considering planning matters, and take care to ensure that bias and predetermination (actual or perceived) does not arise when making planning decisions.
- 3.2 It is clear that all Members of Planning Committee have a particular responsibility in this respect. However, where local plan issues are concerned, Members of either 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.
- 3.3 Good decision-making practice requires that the decision-making process is fair. Accordingly, situations where the Committee, or one of the Members of that Committee, is biased (or could be perceived as being biased) in a particular way, should be avoided. A Member may be biased (or perceived as such) if they have a close personal connection with an applicant, or where it might be likely that they will not act impartially.

Avoiding Bias and Predetermination – maintaining an “Open Mind”

- 3.4 Taking account of the need to make decisions with an open mind, Members who wish to participate in the decision-making process should ensure that they do not favour or appear to favour any person,

company, group or locality. They should also take into account all relevant information and views, regardless of any comments or action they may have made or taken before the committee meeting. It is good practice not to openly and finally declare which way a Member intends 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.

- 3.5 If Members are in a position with regard to any matter where they consider it necessary to express an opinion, they are advised to make it 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”). It is, however, good practice to avoid giving an opinion where possible, to prevent problems of predetermination arising.
- 3.6 For example, a Member who states “I am opposed on principle to any late-night drinking club in the city centre and will refuse any application for such development that comes before Committee” and then seeks to sit on the Committee which is considering a planning application for a new pub in the city centre is likely to be found to have been predetermined.
- 3.7 By contrast, a Member who states “I am concerned about the effects that late night clubs have on local residents and will need to be persuaded that a new club should be permitted” is likely to be predisposed, but still have an open mind, and can therefore participate in the decision-making process.
- 3.8 Where the Monitoring Officer believes that a Member has a closed mind 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. It is the Member’s responsibility to take the appropriate action, whether or not the Monitoring Officer has become involved.
- 3.9 Section 25 of the Localism Act 2011 clarifies the common law position on predetermination, as set out above. It applies where the validity of a decision of the Council is called into question, and the validity depends on whether or not the decision-maker (i.e. a committee member) had, or appeared to have had, a “closed mind”. As a result of this legislative change, the fact that a Member may have expressed a view or indicated (directly or indirectly) what view they would take on a particular matter, does not in itself mean that that Member had a “closed mind”.

- 3.10 This means that Members have more freedom to participate in discussions and make comments on proposals, and still take part in the final decision on the application. However, the scope of the legislation has not yet been tested in the Courts, and therefore, in order to reduce the risk of any decision being challenged, Members would be well-advised to ensure that they continue to indicate that they will consider all the evidence before reaching a final conclusion and not participate as a decision-maker if they believe they have a closed mind. Members also need to consider whether an ordinary Member of the public, with knowledge of the facts, would think it was reasonable for them to participate.
- 3.11 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 Committee meetings 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.
- 3.12 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 may find it difficult to demonstrate that they have kept an open mind if they have organised local support or opposition to a proposal, lobbied other Members, or acted as an advocate. In such cases, 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 Committee, an adjoining Ward Member could be requested to assist. If a Member were to step down from the Committee for that item, the issue of a closed mind would not apply, and they can then fully represent local views by addressing the Committee as a Ward Member.

Lobby Groups (General and Single Interest)

- 3.13 Where a general lobby or campaign group (i.e. a group campaigning against a specific development, or type or development) has made representations on an application under discussion, Members who are members of the group should declare a personal interest in the matter. “Membership” should be widely interpreted, and will include acting and participating as a member of a group, as well as being formally signed up.
- 3.14 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.

- 3.15 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 been affected by “bias” or having “predetermined the matter”, taking account of the advice set out above.

Participation in the Decision-Making Process

- 3.16 Members on the Planning Committee who have had previous involvement in an application, or a link with the applicant (such as contact with the applicant/objectors, participation in a campaign group, or speaking at a public meeting on the application) will need to consider:-

- whether they have a Disclosable Pecuniary Interest;
- whether they have a personal and/or prejudicial interest;
- whether they are biased or have predetermined the application

in the light of the guidance above.

If they have a Disclosable Pecuniary Interest, they must leave the room for the duration of the item.

If they have a personal and/or prejudicial interest, they will need to make the appropriate declarations, but may participate to a limited extent, depending on the nature and extent of the interest.

- 3.17 If a Member is biased or has predetermined a matter, they should stand down from the Committee for the item. Unless the matter is a Disclosable Pecuniary Interest, they will be able to participate in public speaking on the application, and remain seated in the public gallery for the debate (provided the interest is not prejudicial).

Members who are not Members of the Planning Committee may participate in public speaking on the application, in the same way, subject to the same restrictions.

- 3.18 A Cabinet Member with a portfolio for development and planning is able to be a member of the Planning Committee. Leading Members who have participated in the development of planning policies and proposals, need not and should not, normally exclude themselves from decision making committees. However, where a Portfolio Holder is also a member of the Planning Committee and where they have had significant prior involvement with detailed matters related to a particular application, they 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 3.12 above), after which they should sit in the public gallery and not participate in the decision making process for that item.

- 3.19 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 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 ⁴ 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.
- 3.20 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 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 1.2 of Part 9 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.

General Process Issues

- 3.21 A Member of the Council should not put pressure on officers for a particular recommendation.
- 3.22 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).
- 3.23 The Chairman and Vice-Chairman of the Planning Committee can and should attend a briefing with officers prior to Committee, to help them give an effective lead at the meeting.

⁴ Paragraph 1.2 a) of Part 6 of the Code of Conduct

4 DEVELOPMENT PROPOSALS SUBMITTED BY OR INVOLVING MEMBERS, OFFICERS, OR FOR COUNCIL DEVELOPMENT

Member/Officer Development Proposals

- 4.1 Where Members or relevant Officers (namely Corporate Management Team, Heads of Team, staff in the Development Management Team and other staff who advise on planning matters):-
- (a) own or occupy land which is the subject of, or is affected by, a planning application (whether that application is submitted by the Member or relevant officer, 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 or object to applications where such a representation would constitute a Disclosable Pecuniary Interest and/or a personal **and** prejudicial interest (e.g. objecting to an application on a neighbour's land)
- they should immediately notify the Head of Legal and Democratic Services (as the Council's Monitoring Officer) and the Head of Development Management, giving details of the application and their involvement/interest. Notification should be in writing, preferably by email. 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 Disclosable Pecuniary Interest and/or a personal and prejudicial interest.
- 4.2 Proposals falling under Paragraph 4.1 above 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 Head of Development Management should confirm that the application has been processed normally and the Minutes of the meeting should record this. Under the adopted Codes of Conduct, neither Members nor officers should seek to improperly influence a decision about their own planning applications, or about other applications in which they have a Disclosable Pecuniary Interest and/or a personal and prejudicial interest. Contact with officers should be through the Head of Development Management or senior management, to avoid a suggestion of undue influence being put on staff.
- 4.3 A Member wishing to exercise their rights to address the Planning Committee under paragraph 1.2 of Part 9 of the Code should ensure that they contact the Public Speaking Co-Ordinator in the Development Management Team in the same way as a member of the public is required to do. In certain circumstances, it may be more appropriate to

request a friend, or engage a professional consultant, to act on their behalf. It should be noted that where the Member has a Disclosable Pecuniary Interest in the matter, they are not entitled to speak or participate in any way in the decision, and must leave the room for the item.

Council Development

- 4.4 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.
- 4.5 Members (and officers) of the County Council are treated as having a Disclosable Pecuniary Interest in matters concerning the County Council, because they "hold office...for profit or gain". However, a dispensation has been granted by the Monitoring Officer which allows specified Members/Officers of the County Council (to the end of their term in office) to participate in matters involving the County Council provided there is no conflict of interest.⁵ Members of a parish council will not have a Disclosable Pecuniary Interest in matters concerning their parish council, because their office is not "for profit or gain". They will however have a personal interest in the matter, which may also be prejudicial in cases where it is an application affecting the parish council itself.
- 4.6 Members who are also members of public or charitable 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 1.2 of Part 9 of the Code to make statements or answer questions, but should then withdraw from the room during consideration of such applications.

⁵ See Report ST00095 28 January 2013 and ST00098 24 June 2013

- 4.7 Members are reminded that Personal Interests are widely defined in Part 6 of the Code of Conduct, and are likely to include planning decisions which are likely to affect family and close associates of Councillors, and their employers. 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 take part in the public participation process and should not be a decision-maker or be present for the debate. 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.
- 4.8 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.
- 4.9 Serving Members and Officers should never act as agents for individuals (including a company, group or body) pursuing a planning matter.

5 MEMBER INVOLVEMENT IN PLANNING APPLICATIONS

- 5.1 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 3.5 above. As a reminder, they should explain that whilst they can listen to what is said, to express a firm point of view or an intention to vote one way or another might exclude them from the final decision making process.
- 5.2 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 Committee) may wish to be involved in such meetings. If Members wish to participate in the decision-making process on the application, the duty to take a decision with an open mind remains, and they should ensure that any questions they ask are by way of clarification, rather than negotiation. If a Planning Committee Member feels that it is necessary to express an opinion, it should be made clear that this is a preliminary view and a final view will only be taken when the matter is formally considered.
- 5.3 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 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.

- 5.4 Detailed 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.
- 5.5 Advice given will be consistent and based upon the Development Plan 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.
- 5.6 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
- 5.7 Members talk regularly to constituents to gauge their views on matters of local concern. Care should be taken by Members on comments they make in such discussions, if they wish to take part as a decision-maker when the matter comes before Committee.
- 5.8 Member involvement can also include interim committee reports, or public developer presentations to Committee. Members should be advised by the appropriate professional officers of the Council, which will always include a senior planning officer. The involvement of Members 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. However, Members can raise issues of interest, potential concern, and seek further information.
- 5.9 Members are reminded of the importance of being cautious about comments they make in correspondence, and particularly emails, as these items (unless relating to exempt matters) will be available for public inspection on the file.
- 5.10 Any involvement of Members in pre-application discussions organised by the Council should be carefully handled, properly documented, open and transparent unless matters of personal/commercial confidentiality arise at that stage.

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 a written update sheet will be circulated to the Committee at the meeting to ensure that Members have up to date information on the application. An oral officer presentation will be made to the Committee explaining the key issues in the application. Otherwise, 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. Informatives will be used to convey relevant information to applicants which falls outside the ambit of planning conditions.

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 and 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 Committee, applicants/agents, Ward Members, portfolio holders, 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 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. 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 by the Member proposing the

contrary decision, at the time the propositions are moved at the meeting. Officers should also be given the opportunity to explain the implications of the contrary decision. If necessary, the meeting may be adjourned for a few minutes for the reasons to be discussed and then agreed, or the decision could be deferred to a later meeting, so that reasons for refusal (or conditions, in the case of a proposed grant of permission) could be further explored.

- 7.4 If a resolution is passed which is contrary to a recommendation of the Head of Development Management (whether for approval or refusal), the reasons for such a decision will appear in the minutes of the Committee. In addition, the manner of voting of individual Members shall, upon their request, be recorded in the minutes. In such cases the wording of the decision notice will normally be delegated to the Head of Development Management but the final wording will be based on the reasons put forward by Committee.
- 7.5 Conscious of the public arena in which planning decisions are made, Members will conduct the business of the Planning 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 refer to one another during the debate in a proper manner and direct all remarks through the Chairman.
- 7.6 Due to the nature of the Planning Committee, a Member should not 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, Members who are taking part in the decision making process should refrain from being seen to engage in conversation with them before (or at) the meeting, nor should they follow such a person out of the room after the item. Such action can create an unfortunate public perception 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 paragraph 7.6 above.
- 7.8 If the report of the Head of Development Management recommends approval of a departure from the Development Plan, the justification for this should be included, in full, in the report. In addition, the application will have been advertised as a departure application by officers before the meeting. If the decision is to grant the application, it may have to be referred to the Secretary of State, depending on the type and nature of the development.
- 7.8 Senior Legal and Planning Officers should always attend meetings of the Planning 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 Unless they have a dispensation, Members with a Disclosable Pecuniary Interest in a matter are not permitted to participate in any discussion or vote, and must withdraw from the meeting room for the whole of the discussion (see paragraphs 2.4 and 2.5 above). Members who have a personal and prejudicial interest (which is not a Disclosable Pecuniary 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. In addition, those Members who have indicated before the meeting that they had reached a conclusive view on an application or other planning matter, may be perceived as having a closed mind, and should consider carefully whether their continued involvement in determining the application or other matter would prejudice the integrity of the planning 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 Section 3 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 Development Management and Head of Legal and Democratic Services 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 and Democratic Services 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, tree preservation orders and applications for listed building consent and conservation area consent.

8. SITE VISITS AND PLANNING (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. In some cases, officers may arrange a site visit prior to a meeting of the Planning Committee, where they believe it is important for Members to see the site and its

surroundings. In such cases, Members who have been unable to attend the site visit should carefully consider whether they have enough personal knowledge and information from the officer presentation to make a decision.

- 8.2 In other cases, the Planning Committee may decide to carry out a site visit. A decision by the Planning Committee to carry out a site visit should normally only take place where objective decisions cannot be taken without viewing the site and adjoining properties, and the impact of the development is difficult to visualise from the submitted plans and photographs. Visits should only be used where there are clear and substantial benefits to the decision-making process from seeing the site. 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 Site visits will be carried out by a Planning (Viewing) Sub-Committee, which normally has delegated powers to determine the application. The Sub-Committee comprises all the members of the parent committee, although Members should only participate in a (Viewing) Sub-Committee if they were present at the preceding Planning Committee where the officer presentation and public speaking on the application would have taken place (as they might not otherwise have all the necessary information to determine the application).
- 8.4 As stated above, 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 to appease local opinion or allow additional public participation (public participation on the application will normally take place at the Planning Committee, prior to the decision to hold a site visit, and no further public participation will be allowed).
- 8.5 At a site visit, Members will informally observe the site with the assistance of the Head of Development Management who will explain the material considerations. Where appropriate, developers will be asked to peg the site out to show the proposed development. Following the site visit, the Sub-Committee will adjourn to a nearby meeting room or other appropriate venue to reach a decision on the application, following a brief presentation from officers if appropriate. No additional public participation will be allowed. The time and date of the meeting (including the site visit and the subsequent meeting in the meeting room) will be published in accordance with the provisions of the Local Government Act 1972.
- 8.6 Where a Member wishes to see a site for themselves in advance of a committee meeting, they are reminded that they have no right of access and should only view the site from public vantage points. If a Member is invited to view a site by the owner, it is not good practice to do so, as this may lead to a perception that the Member is no longer impartial.

- 8.7 The Head of Legal and Democratic Services will ensure that all correspondence in relation to site visits clearly identifies the purpose of a site inspection, and the format and conduct of the inspection.
- 8.8 In the case of meetings of the Planning (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, it has delegated powers, and will normally make a decision on site.
- 8.9 In some instances the Planning Committee may take the view that it may not be practicable for either a Viewing or 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.

9. REVIEW OF DECISIONS

- 9.1 At least on an annual basis, the Planning 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 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 Overview and Scrutiny Committee, or the Cabinet (Local Development Framework) 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 Development Management Team.

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 Local Development Documents such as the Winchester District Local Plan Part 1: Joint Core Strategy. 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 Pre-Submission 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 the National Planning Policy Framework, Circulars 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 the NPPF about 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 3/09 – Annex Part B Paragraph B21).

- (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.