

PART 5

Codes and Protocols

1. **Members' Code of Conduct** (adopted by Council 17 May 2007)
and Confidential Information Protocol (adopted by the Council 2 September 2008)
2. **Planning Protocol** (adopted by the Council 15 April 2008)
3. **Member/Officer Protocol**

Members' Code of Conduct

PART 1

GENERAL PROVISIONS

Introduction and interpretation

1. (1) This Code applies to you as a member of an authority.
- (2) You should read this Code together with the general principles prescribed by the Secretary of State.
- (3) It is your responsibility to comply with the provisions of this Code.
- (4) In this Code:-

"meeting" means any meeting of:-

- (a) the authority;
- (b) the executive of the authority;
- (c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;

"member" includes a co-opted member and an appointed member.

- (5) In relation to a parish council, references to an authority's monitoring officer and an authority's standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

Scope

2. (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you:-
 - (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
 - (b) act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly.

- (2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

- (3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.
- (4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).
- (5) Where you act as a representative of your authority:-
 - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
 - (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

3.
 - (1) You must treat others with respect.
 - (2) You must not:-
 - (a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);
 - (b) bully any person;
 - (c) intimidate or attempt to intimidate any person who is or is likely to be:-
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings,in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
 - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.
 - (3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.
4. You must not:-
 - (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:-

- (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is:-
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; or
 - (b) prevent another person from gaining access to information to which that person is entitled by law.
- 5.** You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.
- 6.** You:-
- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
 - (b) must, when using or authorising the use by others of the resources of your authority:-
 - (i) act in accordance with your authority's reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- 7.** (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by:-
- (a) your authority's chief finance officer; or
 - (b) your authority's monitoring officer,
- where that officer is acting pursuant to his or her statutory duties.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.
- 7A.** (1) You must attend a session of training provided by the Monitoring Officer on the code of conduct

- (a) within three months from the date upon which you are first elected to the Council after 1 May 2002; and
 - (b) within three months from the date upon which this code of conduct is revised or replaced
- (2) You need not comply with the requirement in (1) if the training session offered or all such training sessions offered were held at a time or location which you could not reasonably attend.

Part 2

INTERESTS

Personal interests

8. (1) You have a personal interest in any business of your authority where either:-
- (a) it relates to or is likely to affect:-
- (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
 - (ii) any body:-
 - (aa) exercising functions of a public nature;
 - (bb) directed to charitable purposes; or
 - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),
of which you are a member or in a position of general control or management;
 - (iii) any employment or business carried on by you;
 - (iv) any person or body who employs or has appointed you;
 - (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
 - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
 - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
 - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
 - (ix) any land in your authority's area in which you have a beneficial interest;
 - (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

- (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
- (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of:-
 - (i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;
 - (ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or
 - (iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.
- (2) In sub-paragraph (1)(b), a relevant person is:-
 - (a) a member of your family or any person with whom you have a close association; or
 - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
 - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
 - (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of personal interests

9. (1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- (2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
- (3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- (4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

- (5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
- (6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- (7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

Prejudicial interest generally

10. (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.
- (2) You do not have a prejudicial interest in any business of the authority where that business:-
 - (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
 - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
 - (c) relates to the functions of your authority in respect of:-
 - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;
 - (v) any ceremonial honour given to members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.

Prejudicial interests arising in relation to overview and scrutiny committees

11. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where:-
- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
 - (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

Effect of prejudicial interests on participation

12. (1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority:-
- (a) you must withdraw from the room or chamber where a meeting considering the business is being held:-
 - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
 - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;unless you have obtained a dispensation from your authority's standards committee;
 - (b) you must not exercise executive functions in relation to that business; and
 - (c) you must not seek improperly to influence a decision about that business.
- (2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Part 3

REGISTRATION OF MEMBERS' INTERESTS

Registration of members' interests

13. (1) Subject to paragraph 14, you must, within 28 days of:-

- (a) this Code being adopted by or applied to your authority; or
- (b) your election or appointment to office (where that is later),

register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.

- (2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

Sensitive information

14. (1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.

- (2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

- (3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

ANNEXURE – THE TEN GENERAL PRINCIPLES

The general principles referred to in paragraph 1(2) of the Code governing your conduct under The Relevant Authorities (General Principles) Order 2001 are set out below:

Selflessness

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

2. Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

5. Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal Judgement

6. 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.

Respect for Others

7. Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

Duty to Uphold the Law

8. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship

9. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership

10. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

Confidential Information Protocol

1. A Protocol to support Paragraph 4(a)(iv) of the Members' Code of Conduct which allows for the disclosure of confidential information by a Member where the disclosure is reasonable, in the public interest, made in good faith and complies with the reasonable requirements of the Council.
2. **This Protocol sets out the reasonable requirements of the Council:**
 - (1) That careful consideration is given to the question of whether to make the disclosure and if the disclosure is made, the Member retains a note of the main considerations in reaching that decision.
 - (2) That the content of Committee reports, minutes or appendices that are marked as confidential items will not be disclosed without the prior written agreement of the relevant Head of Service or author of the report who will re-consider the need to retain confidentiality under the provisions relating to exempt information under Schedule 12A of the LGA 1972 and the Freedom of Information Act 2000.
 - (3) That the detail of legal or other professional advice is not disclosed without the prior written agreement of the relevant Head of Service.
 - (4) That the Council's [Whistleblowing Procedure](#) (found within the Anti-Fraud and Corruption Policy, and available on the Council's website) together with the guidelines for reporting concerns (also on the website) are considered.
 - (5) That the current Member/Officer Protocol (found in Part 5 of the Constitution) is considered.
 - (6) That the Members' Code of Conduct and associated guidance is considered.
 - (7) That the advice of the Monitoring Officer or Deputy Monitoring Officer is sought prior to disclosure of the information unless agreement has already been secured under (2) or (3) above.
3. Agreement to the disclosure of confidential information may be with or without conditions.
4. In instances involving particularly sensitive or highly confidential information, a Member may be asked to sign a confidentiality notice before information is released to them. In such cases, it would be the Council's expectation that the information is not disclosed.

BABERGH DISTRICT COUNCIL

PLANNING PROTOCOL

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1 INTRODUCTION

- 1.1 The role of the Council (including its Members and Officers), as the local planning authority, is one of its most high profile roles. Whilst the Council endeavours to ensure that all planning matters are dealt with properly in accordance with the law, it recognises that the public's perception of how the system operates is important in maintaining and promoting public confidence in the integrity and impartiality of the planning system. With these points in mind, the Council has adopted this Protocol, which sets out guidelines for its Officers and Members. The Protocol applies to all Members, although inevitably some provisions will only apply to Members who are appointed onto the Development Committee and thus involved in the determination of planning applications.
- 1.2 Officers are affected by specific codes or Professional Practice Rules issued by their own professional bodies such as the Royal Town Planning Institute. Members are subject to the Council's Code of Conduct, which sets out the more general principles of good conduct, which are required of Members. It should be noted that breaches of the Protocol not only potentially open the Council's planning decisions to challenge in the courts, but also may amount to a breach of the Code of Conduct by individual Members, which in turn may lead to sanctions ranging from public censure to disqualification.
- 1.3 This Protocol is not intended to replace or contradict anything in those documents. Instead, it is intended to supplement and provide additional guidance specifically relating to the planning functions of the Council.

2 THE GENERAL ROLE OF MEMBERS AND OFFICERS

- 2.1 Members and Officers have different roles to perform within the planning system, but their roles are complementary. A successful relationship between Members and Officers can only be based upon mutual trust and understanding of each other's positions.
- 2.2 Officers are responsible to the Council as a whole. Instructions to them may only be given through a Council or Committee decision. Their role within the planning process is to provide impartial and professional advice. They must provide the Council and Committees with all information necessary to enable the Members to make the most appropriate decision. In making recommendations to the Development Committee it is essential that they give clear recommendations, based upon relevant planning considerations.
- 2.3 Members are entitled to expect that their Committee and Council decisions, for which they are statutorily responsible and accountable, are acted upon and implemented by Officers. Consequently, Officers will conscientiously carry out policies and resolutions acting at all times with competence, loyalty and integrity.
- 2.4 In the context of their role, Members must act fairly and openly. Although some Members may have been elected to pursue a particular stance with regards to development, this does not absolve them from ensuring that they make decisions taking into account all relevant considerations. They must approach each application with an open mind whilst carefully weighing up all relevant issues.

Members must determine each application on its own merits and ensure that the reasons for their decisions are clearly stated.

- 2.5 Planning issues, and in particular, development proposals often raise concern locally. As such, there is a need for Members to have direct contact with the Case Officers, to obtain the factual information quickly. To facilitate effective communication, the following guidelines exist:
- 2.6 Contact with the Case Officer should be limited to requests for factual information with regard to development proposals. Advice may also be sought as to the progress of the application and the nature of consultation responses received;
 - Whilst Members are encouraged to discuss their concern with the Case Officer, no pressure should be put on that Officer to make a particular recommendation;
 - If Members have concerns as to the information received or advice given by the Case Officer, then the matter should be discussed in the first instance with the Head of Natural and Built Environment and, if unresolved, then the Corporate Director responsible for Planning.

3 TRAINING

- 3.1 It is recognised that planning is a complex area and that Members need to have a good understanding of planning policies, practice and law, to help them determine applications referred to the Development Committee and to assist members of the public with their responsibilities.

3.2 In 1995, the Nolan Committee undertook a review of the standards of conduct in public life. It recommended that Members should receive adequate training to assist them in the performance of their planning duties. Consequently, the Director of Corporate Services in conjunction with the Head of Natural and Built Environment will seek to ensure that training is available and that all Members receive a proper grounding in the area of planning law, practice and policy and that update seminars/training are offered. The Council will expect all Members who will make planning judgements to undertake relevant training.

4 INTERESTS

4.1 It is a fundamental principle that decisions should not be made by those who have a significant interest in the outcome. The Council is committed to the adherence of this principle in order to avoid public confidence in the planning system being eroded.

4.2 In accordance with the Council's Code of Conduct, all Members must ensure that they comply with the rules regarding declarations of interests set out in the Code of Conduct. Similarly, Officers are required to comply with the statutory restrictions regarding interests set out in section 117 Local Government Act 1972 and also the terms and conditions of their employment.

4.3 Members who have private interests relevant to the work of the Development Committee, particularly those interests that would amount to prejudicial interests under the Council's Code of Conduct, should avoid serving on the Development Committee.

5 DEVELOPMENT BY MEMBERS, OFFICERS AND THE COUNCIL

5.1 It is legitimate for development proposals or representations to be submitted by the above groups or by their close friends or family (where relevant). However, it is vital to ensure that they are handled in a way that does not give any grounds for accusations of favouritism or suspicions of impropriety. Regard should be given to the following:

- Such proposals or representations should be identified, and the Monitoring Officer informed in writing by the person submitting the application, or by the Head of Natural and Built Environment when the application is registered;
- Serving Members or Officers who pursue or make representations on a planning matter must not take part in the decision making process regarding that proposal;
- Relevant Members will need to ensure, for example, that they comply with the Code of Conduct;
- Officers will need to take account of their professional body's standards and the statutory requirements about declaring interests;
- The Head of Natural and Built Environment will ensure that all planning applications made by Members or Officers (including their close family and friends) that are recommended for approval are referred to Committee for determination and not dealt with under delegated powers;
- In the report to Committee, the fact that the application is from a Member or Officer should be highlighted. As part of the report the Monitoring Officer should confirm whether the application has been processed normally;

- In cases where Members or Officers submit representations in respect to other planning applications, the matter should be referred to the Monitoring Officer to determine whether the application should be referred to Committee or dealt with using delegated powers. The Monitoring Officer should note in the case file to record the determination and the reasons in arriving at the determination.

- 5.2 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 (as may be amended or replaced from time to time). A Committee Report should clearly note that the application is made by the Council or that the Council is landowner.
- 5.3 The above 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).
- 5.4 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.
- 5.5 The above considerations also apply to private applications in respect of Council owned land (e.g. prior to a land sale being agreed or negotiated).

6 LOBBYING OF AND BY MEMBERS

- 6.1 Whilst it is recognised that Members will inevitably be approached by persons interested in a particular application to discuss the matter, Members should declare at the Development Committee if they have had any significant contact with persons who may have an interest in the particular application (e.g. applicants and objectors).
- 6.2 Members of the Development Committee should not indicate their likely decision on an application until they have had the opportunity of hearing all relevant evidence and arguments at the formal planning meeting. (See also paragraph 7.6 below).
- 6.3 Individual Members should consider the need for a Planning Officer to accompany them at meetings particularly where those relate to applications, which will potentially be controversial.
- 6.4 It is recommended that Officers and Members should ensure that a note is kept of all contentious meetings they attend with persons who have a particular interest in an application. Such notes will help avoid any future misunderstanding as to what may have been said at such meetings and will be available for other members of the public to see when inspecting the planning file.
- 6.5 In recognising the need for Officers to apply their own professional judgement in evaluating the merits or otherwise of an application, Members must not lobby Officers who are dealing with the application. They should not criticise an Officer for coming to a different conclusion based upon his or her own professional judgement.

6.6 Any concerns a Councillor may have about the view expressed by an Officer should be dealt with in accordance with the guidelines referred to in paragraph 2.5 above before the Development Committee considers the application.

7 PRE AND POST APPLICATION DISCUSSIONS

7.1 It is recognised that discussions between, for example, a potential applicant and a Councillor, prior to the submission of an application can be of considerable benefit to both parties. Indeed, the Audit Commission, Local Government Association, and National Planning Forum encourage pre-application discussions.

7.2 However, the disadvantage of such discussions is that it is easy for such discussions to become, or to be seen (especially by objectors) to become, part of a lobbying process.

7.3 With a view to protecting the integrity of the planning system, it is recommended that Members and Officers remember the guidelines in 7.4 and 7.5 if they become involved in pre or post applications discussions.

7.4 It should be emphasised to persons involved in such discussions, by the Councillor / Officer that:

- Discussions will not bind the Council (or other decision maker) to making a particular decision;
- Any views expressed are personal and provisional;
- There is a need to appreciate that not all relevant information will be to hand at such meetings;
- All Officers taking part in such discussions on delegated matters should make clear whether or not they are the decision maker.

7.5 In addition, Members and Officers should take note of the following:

- To avoid any possible misunderstanding as to what may have been said, a follow up letter is advisable to summarise the matters discussed at the meeting. In any event, a written note should be made of all potentially contentious meetings or potentially contentious telephone discussions;
- Care must be taken to ensure that advice is not partial;
- Particularly where the application is likely to be controversial, an Officer should attend meetings with Members;
- Any advice given at discussions should be consistent and based upon the Development Plan and material considerations.

7.6 Some of these guidelines are also relevant to Members who may be involved in the consultation process affecting a particular application (e.g. in their capacity as a parish or town councillor). Members who find themselves in such a position, should either refrain from taking part in the consultation process or make it clear that any view they express at the consultation stage is based upon information available to them at that time . Further, they may change their view upon reconsideration of the matter at district council level having taken into account any additional relevant information.

8 PLANNING ENFORCEMENT

8.1 In assessing the need for enforcement action, Members should bear in mind that it is not an offence to carry out development without first obtaining planning permission. Whilst this is clearly unsatisfactory, there are occasions, particularly in the case of householder development, where works have been undertaken under the impression that they are “permitted development”. Before initiating formal action therefore, there is always a need to understand the background to any case and to provide the opportunity for the owner or occupier to remedy any breaches voluntarily.

8.2 The Enforcement Concordat also requires the Council to provide businesses with the opportunity to resolve any breaches of planning control without recourse to legal action.

8.3 Any enforcement investigation has the potential to become a criminal matter. As such, any action taken during the course of investigations must comply with the relevant legislation or the Council could be prevented from prosecuting the case by default.

8.4 In order to protect the Council’s position when dealing with enforcement matters, Members are strongly advised to:

- Ensure that at no time does any action on their part prejudice the Council’s position;
- Restrict any enquiries relating to specific issues to matters of fact or general progress of the case;
- Acknowledge that enforcement cases are dealt with in accordance with the Council’s adopted enforcement policy.

8.4 The role of the Enforcement Officer (Principal Development Control Officer) is to establish the facts and ascertain whether any matter brought to his/her attention is actionable under planning legislation. The action taken is determined either by Committee or by the relevant Head of Service (i.e. Head of Natural and Built Environment or Director of Corporate Services) using his/her delegated powers.

8.5 If Members are unhappy as to the way a case is progressing, the matter should be discussed with the Head of Natural and Built Environment or the Director of Corporate Services, as appropriate, in the first instance and, if unresolved, then the Director responsible for Planning.

9 AGENDAS

- 9.1 In the first instance the Head of Natural and Built Environment will decide the content of planning agendas in consultation with the Director of Corporate Services. Should there be any dispute the final decision will rest with the Chief Executive in consultation with the Chairman, Head of Natural and Built Environment and Director of Corporate Services.
- 9.2 The Council's delegation scheme allows Members to require applications for development to be determined by Committee. This should not be exercised in instances where the Member has an interest, as defined in the Code of Conduct, in the application. In order to ensure that the determination of applications is not unnecessarily delayed, Members should:
- in the first instance discuss their concerns with the Case Officer
 - if after having discussed their concerns with the Case Officer the Member still wishes to refer the application to Committee the Member should in making the referral provide clear planning reasons for referring the matter to Committee
 - make the referral within 21 days of registration of the application.
- 9.3 Additionally if Members have concerns regarding other planning matters they can request the Head of Natural and Built Environment to produce a report for the Development Committee. The precise content of reports, however, is not a matter for Members.

10 OFFICERS' REPORTS TO COMMITTEE

- 10.1 The way planning applications are reported to Committee is very important. If applications are not reported properly, there may be public concern and a loss of confidence that the application will be fairly determined. This in turn attracts claims of maladministration and / or judicial review.
- 10.2 Consequently, it is essential that Officers ensure that:
- Reports to Committee are accurate and comprehensive;
 - Reports include reference to the policies of the Development Plan, planning history and other important planning considerations which are material to the application;
 - Other than in exceptional circumstances (the reasons for which will be clearly given), the reports include a clear officer recommendation;
 - Reports include a technical appraisal to justify the recommendation;
 - If the Officer recommendation is contrary to the Development Plan, then the material considerations which justify this must be clearly explained;
 - Reports set out the nature of planning consultation responses, including objections to the proposal and all material planning considerations raised by third parties and that these are properly addressed in the reports.

11 PUBLIC SPEAKING

- 11.1 Guidance on the entitlement to speak at the Development Committee is set out in a leaflet available from the Development Control Section

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

- 12.1 When determining planning applications, Members must bear in mind that legislation requires that planning decisions must be made in accordance with the Development Plan unless material considerations indicate otherwise. If it is proposed to make a decision, which is at odds with the Development Plan (a “departure application”), the application must be handled very carefully to ensure that the Council does not undermine the proper implementation of the Development Plan for the area.
- 12.2 If Officers propose to recommend an application for approval, which is contrary to the Development Plan, full justification must be given in the Committee report.
- 12.3 Although it is important that the reasons for a Committee decision are clear at all times, it is essential that the reasons for approving a departure application, are clearly minuted.
- 12.4 If a resolution is passed which is contrary to a recommendation of the Head of Natural and Built Environment (whether for approval or refusal) a detailed minute of the Committee’s reasons, and whether or not such reasons can be supported by planning evidence, will be made and a copy placed on the application file.

13 SITE INSPECTIONS

- 13.1 It is important that site inspections to view planning application sites are not held without being justified. A site inspection should only be considered necessary where for example:
- The building and or site needs to be seen in context, as plans or photographs are not sufficient to properly assess the impact of the development; or
 - The proposal raises particularly unusual factors, for example it would have a major environmental impact or could lead to loss of jobs and/or financial hardship (e.g. enforcement against an existing use or development that has already been carried out); or
 - There is considerable local concern about a proposal, allied to planning reasons for carrying out a visit (e.g. the physical relationship of the site to other sites in the neighbourhood).
- 13.2 Members proposing site inspections should specify reasons for doing so and these should be minuted. The request should be made at the earliest opportunity and within 21 days of the date of registration of the application to avoid unnecessary delay in the determination of the planning application.

- 13.3 Where a site inspection is requested by a member at Development Committee in respect of an application on the agenda, the request (unless withdrawn) should be considered by the Committee before progressing to the next item of business. If however there are no members of the public in attendance for that item the Chairman may at his discretion defer consideration of the request until the application falls to be considered on the agenda. A proper consideration of the request may involve the provision of details by the Case Officer, but should not extend to the public speaking session
- 13.4 Site inspections are conducted for the purpose of enabling Members of the Development Committee to undertake a visual assessment of the site to assist with decision-making. Site inspections are not public meetings and all Members should be aware of the need to avoid discussion with members of the public and applicants present at or in the vicinity of the site.
- 13.5 It is essential that Members and Officers ensure that those attending are not led to believe that a decision has been taken on the inspection, or that conclusive views have been reached.
- 13.6 The Director of Corporate Services will ensure that all correspondence in relation to site inspections clearly identifies the purpose of the site inspection and the format and conduct of the inspection.
- 13.7 The arrangements which will apply at the site inspections are:
- The Chairman (or Vice-Chairman) of the Development Committee will formally ‘open’ the site inspection and conduct all other proceedings during that site inspection.
 - The Chairman (or Vice-Chairman) will ask the Planning Officer to give a brief, factual, introduction to the application under consideration, concentrating on the issue(s) giving rise to the need for a site inspection and pointing out relevant features to assist Members in their understanding of the issues.
 - The Chairman (or Vice-Chairman) will then afford each Member attending the site inspection the opportunity to ask any relevant questions. No discussion on the merits of the application will take place.
 - The Chairman (or Vice-Chairman) will then ask the Ward Member(s) and the Parish Council representative (if in attendance) whether he or she has any relevant factual local information about the application of which Members should be made aware.
 - Normally, it will be unnecessary for anyone else present at the site inspection to ask questions or contribute to the inspection in any other way. Verbal representations are facilitated through the public speaking session at the Committee meeting itself and no verbal representations from any interested person will be heard at the site inspection.
 - The site inspection will then be formally closed by the Chairman (or Vice-Chairman).
- 13.8 Any other Members who wish to attend site inspections should first seek the permission of the Chairman of the Committee.

14 REVIEW OF DECISIONS

- 14.1 Every two years arrangements will be made for Members to visit a sample of implemented planning permissions throughout the District in order that the quality of decisions can be assessed.
- 14.2 The outcome of this review will be formally considered by the Development Committee and any amendments to existing policy or practice will be identified. The review 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.

15 COMPLAINTS AND RECORD KEEPING

- 15.1 The Council's complaints system applies to all planning related complaints.
- 15.2 In order that any complaints can be fully investigated, it is important that every planning application file contains a full and accurate account of events throughout its life, particularly the outcomes of meetings or significant telephone conversations.
- 15.3 The same principles of good record keeping will be observed in relation to all planning enforcement and Development Plan matters. The relevant Heads of Service will undertake the monitoring of record keeping on a continuous basis.

16 CONFIDENTIALITY

- 16.1 Officers and Members will whenever appropriate deal with planning matters in open business. Where it is necessary to report in confidential business full reasons will be given and all persons involved in the decision making process will be expected to respect the confidentiality.

15 April 2008

Member/Officer Protocol

Introduction

1. The purpose of this Protocol is to guide Members and Officers of the Council in their relations with one another so as to ensure the smooth running of the Council.
2. Given the variety and complexity of such relations, this Protocol does not seek to be either prescriptive or comprehensive. It seeks simply to offer guidance on some of the issues which most commonly arise. It is hoped, however, that the approach which it adopts to these issues will serve as a guide to dealing with other issues.

Role of Members/Officers

3. The National Code of Local Government Conduct for Members states:

“23. Both Councillors and Officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the Council. Their job is to give advice to Councillors and the Council, and to carry out the Council’s work under the direction and control of the Council, their Committees and sub-Committees.”

4. Members undertake many different roles. Broadly these are:-

- (a) As politicians - expressing political values and supporting the policies of the group to which they belong.
- (b) As representatives and advocates - representing the ward and the citizens who live there
- (c) As decision makers - on full Council, on Committees, on partnership organisations.
- (d) As policy makers - developing and reviewing policy and strategy
- (e) Providing scrutiny and overview - monitoring and reviewing policy implementation and service quality
- (f) As regulators - regulating certain activities e.g. planning, licensing
- (g) As community leaders and networkers - through active partnerships with other organisations.

5. In broad terms, Officers have the following main roles:-

- (a) Managing and providing the services for which the Council has given them responsibility and being accountable for the efficiency and effectiveness of those services and for proper practice in discharging their responsibilities.

- (b) Providing advice to the Council, its Committees, Sub-Committees and Members in respect of its services.
- (c) Initiating policy proposals as well as implementing agreed policy.
- (d) Ensuring that the Council always acts in a lawful manner.

Relations between Members and Officers

6. The National Code of Local Government Conduct also states:

“24. Mutual respect between Members and Officers is essential to good local government. Close personal familiarity between individual Members and Officers can damage this relationship and prove embarrassing to other Councillors and Officers.”

- 7. It is not enough to avoid actual impropriety. Members and Officers should, at all times, avoid any occasion for suspicion and any appearance of improper conduct. Members must declare to the Chief Executive any relationship with an Officer which might be seen as influencing their work as a Member or vice-versa. This includes any family, business or close personal relationships. It is not possible to define exactly the range of relationships that could be considered as close or personal. Examples, however, would include a family or sexual relationship or regular social mixing such as holidays or meals together.
- 8. Officers serve the Council through its Committees, Sub-Committees and working groups. They work to the instructions of their senior officers - not individual Members of the Council, whatever office the Member may hold. It follows, therefore, that Officers must not be asked to exceed the bounds of authority they have been given by their manager nor should they have unreasonable demands placed on them in terms of support to an individual Member (or Members).
- 9. In line with the National Code's reference to “mutual respect” it is important that any dealings between Members and Officers should observe standards of courtesy and that neither party should seek to take unfair advantage of their position.

Complaints or concerns about Officers or services

- 10. Members have the right to criticise reports or the actions taken by Officers but they should always:-
 - (a) avoid physical or personal attacks on or abuse of Officers,
 - (b) ensure that criticism is constructive and well founded, and
 - (c) take up an individual concern with the Officer privately, where possible.

11. Members should not raise matters relating to the conduct or capability of an Officer at Committee meetings or in any public forum. This could be damaging both to effective working relationships and to the image of the Council. An Officer has no means of responding to such criticisms in public. If a Member feels he has not been treated with the proper respect, courtesy or has any concerns about the conduct or capability of an Officer, and fails to resolve it through direct discussion with the Officer, he should raise the matter with the appropriate Head of Service or Director. The Head of Service or Director will look into the facts and report back to the Member. If the Member continues to feel concern, he should then report it to the Deputy Chief Executive who will look into the matter afresh. A complaint about a Head of Service or Director should be raised with the Deputy Chief Executive and then if necessary the Chief Executive. Similarly a complaint about the Deputy Chief Executive should be raised with the Chief Executive. A complaint about the Chief Executive should be raised with the Chairman of Strategy Committee and/or the statutory officers eg. the Monitoring Officer. Any action taken against an Officer in respect of a complaint will be in accordance with the provisions of the Council's disciplinary rules.

Complaints or concerns about Members

12. Where an Officer feels that:-

- (a) he has been unlawfully discriminated against by a Member
- (b) he has not been properly treated with respect and courtesy by a Member or
- (c) his position or impartiality has been compromised by a Member,

then he should raise the matter with his Head of Service, Director, the Deputy Chief Executive or the Chief Executive as appropriate, especially if he does not feel able to discuss it with the Member concerned. In these circumstances the Head of Service, Director, Deputy Chief Executive or Chief Executive will take appropriate action by approaching the individual Member and/or Group Leader. Further, as the provisions of (a) – (c) reflect paragraph 3 of the Code of Conduct, a breach thereof could be the subject of an investigation and subsequent hearing before the Standards Committee.

13. Members and Officers have a duty to raise any issues where they have reason to believe fraud or corruption of any sort is involved. (See Anti- Fraud Policy Statement -pages E.20 of the Members' Handbook) The Standards Committee may consider complaints of misconduct made against individual Members.

Officer advice to Members and Party Groups

14. It must be recognised by all Officers and Members that in discharging their duties and responsibilities, Officers serve the Council as a whole and not exclusively any political group, combination of groups or any individual Member of the Council.
15. There is statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body except for those Members fulfilling a statutory determination process such as Development or Licensing and Appeals. Officers may properly be called upon to provide information to party groups but must at all times maintain political neutrality. All Officers must, in their dealings with political groups and individual Members, treat them in a fair and even handed manner.

16. The support provided by Officers can take many forms, ranging from a briefing meeting with the Chairman/Vice-chairman prior to a Committee meeting to a presentation to a full party group meeting. Whilst in practice such Officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.
17. Certain points must, however, be clearly understood by all those participating in this type of process, Members and Officers alike. In particular:-
 - (a) Officer support must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if Officers are not expected to be present at meetings or parts of meetings, when matters of party business are to be discussed.
 - (b) Party group meetings, whilst they form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such.
 - (c) Similarly, where Officers provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant Committee or Sub-Committee when the matter in question is considered.
18. Special care needs to be exercised whenever Officers are involved in providing information and advice to a party group meeting which includes persons who are not Members of the Council. Such persons are not bound by the National Code of Local Government Conduct (in particular, the provisions concerning the declaration of interests and confidentiality). For this and other reasons Officers may not attend and give information and advice as they would to a Members' only meeting.
19. Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relate the content of any such discussion to another party group.

Officer/Chairman relationships

20. It is clearly important that there should be a close working relationship between the Chairman of a Committee or Sub-Committee and the Officers who report to or interact with that Committee. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the Officer's ability to deal impartially with other Members and other party groups.
21. The Director of Corporate Services is responsible for drawing up the agenda for Committee and Sub-Committee meetings. The Officers will always be fully responsible for the contents of any report submitted in their name.
22. In relation to action between meetings, it is important to remember that at the moment the law only allows for decisions (relating to a discharge of any of the Council's functions) to be taken by a Committee, a Sub-Committee (in its wider sense encompassing boards with delegated powers) or an Officer. The law does not allow for such decisions to be taken by a Chairman or indeed by any other single Member.

23. At some Committee and Sub-Committee meetings, a resolution may be passed which authorises named Officers to take action between meetings in consultation with the Chairman. It must be recognised that it is the Officer, rather than the Chairman, who takes the action and it is the Officer who is accountable for it.
24. Finally, it must be remembered that Officers within a Division are accountable to their Head of Service or Director, as appropriate, and that whilst Officers should always seek to assist a Chairman (or indeed any Member), they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Head of Service or Director.

Correspondence

25. Correspondence between an individual Member and an Officer, particularly when it has been initiated by the Member, should not normally be copied (by the Officer) to any other Member. Where exceptionally it is necessary to copy the correspondence to another Member, this should be made clear to the original Member. In other words, a system of “silent copies” should not be employed.
26. Official letters on behalf of the Council should normally be sent in the name of the appropriate Officer, rather than in the name of a Member. It may be appropriate in certain circumstances (e.g. representations to a Government Minister) for a letter to appear in the name of a Member, but this should be the exception rather than the norm. Letters which, for example, create obligations or give instructions on behalf of the Council should never be sent out in the name of a Member.

Media Liaison

27. Communications with the media can be an important part of a Member’s workload - issuing press releases or responding to queries. Generally, Members provide comments and views and Officers provide factual information. If any Member is unsure about the facts of any issue he should contact the appropriate Officer or ask the media representative to do so.
28. If a Member contacts or is contacted by the media he/she should indicate in what capacity he/she is speaking e.g. in a personal capacity, as Ward Member, as Chairman of a Committee, on behalf of the Council or on behalf of his/her political group. In certain circumstances it may be useful to advise the Communications and PR Manager, or other appropriate Officer, of the press release or discussion.

Conclusion

29. Mutual understanding, openness and basic respect are the greatest safeguard of the integrity of the Council, its Members and Officers.
30. Whilst this Protocol affords guidance only to Members on the most frequently encountered issues, a breach of the guidance may be regarded as bringing the Protocol and the Council itself into disrepute.

I

hereby undertake to observe the Member/Officer Protocol set out above.

Signed: Date: