LOCAL CODE FOR COUNCILLORS AND OFFICERS DEALING WITH PLANNING MATTERS

1. INTRODUCTION

1.1 This Code contains guidance and best practice advice on probity in public office, including the common law principles of pre-determination and bias, in the specific context of planning.

1.2 It will be taken into account when a complaint is investigated, whether internally (e.g by the Monitoring Team or an Appeals Panel under the Code of Conduct), or externally (e.g by the Local Government Ombudsman).

1.3 The law on registering and disclosing pecuniary interests, and the rules in the Council's adopted Code of Conduct and Standing Orders, should be applied first, followed by the advice set out in this local Code.

1.4 This Code covers any planning matter in which the Council is, or is likely to be, involved that relates to a specific area of land. This includes planning applications, planning policy land allocations, enforcement etc.

2. WHY HAVE A LOCAL CODE FOR PLANNING?

2.1 This local Code aims to ensure the integrity of the planning system, and that it is, and is seen to be, open and fair to all parties.

2.2 Much is often at stake in planning. Opposing views can be strongly held. Private interests have to be balanced with the wider public interest. It is important that decisions are made openly, impartially, with sound judgement and for justifiable reasons. An aggrieved party may:

a. seek judicial review of the way the decision was reached; and/or

b. complain to the Local Government Ombudsman on grounds of maladministration; and/or

c. allege a breach of the Code of Conduct; and/or

d. allege a breach of this local Code.

3. WHO DOES THE CODE APPLY TO?

3.1 This Code applies to all members of the Council who intend to participate as a member at a meeting, or vote, on a planning matter, that is:

Members of the Planning Committee (PC)

Members of the Cabinet when considering site or area specific policy issues

When planning applications or site or area specific policy issues are referred to full Council for decision, all members of the Council.

It also applies to officers (see sections 18 and 19).

3.2 In fulfilling their role as champions of their local community, Councillors may be encouraged to engage in pre-application discussions on development proposals. This may involve attending public meetings. Under common law, members who cannot show that they have an open mind on a matter when it comes to decision time, and then vote, run a risk of being deemed to have predetermined the matter when it comes to PC, the Cabinet, or Council. Members of PC (or the Cabinet or full Council where the matter is ultimately to be decided by those bodies) therefore need to decide, before becoming involved in pre-application or pre-decision discussions:

a. whether they wish to preserve their right to vote, in which case they should not say or do anything to suggest they may be unable to approach decision-making with an open mind (such as making extreme comments or comments it may be difficult to depart from later) or

b. whether they wish to commit themselves and/or represent their community as advocate or opponent of any resulting proposal, in which case they will forego their right to vote on the matter.

3.3 Anyone with any doubts about whether or how the Code applies to their own circumstances should seek advice early from the Monitoring Officer.

4. TRAINING

4.1 Planning Committee (PC) and Cabinet members will receive specialist training on planning law and procedures.

4.2 Members must be able to commit to a minimum level of planning training before agreeing to serve on the PC.

4.3 Attendance will be monitored.

5. MEETINGS – PECUNIARY AND NON-PECUNIARY INTERESTS

5.1 Members should not use, nor give grounds for suspicion that they have used, their position to further a private or personal interest rather than the general public interest.

5.2 Members who have substantial property interests, or other interests that would regularly prevent them voting, should not serve on the PC.

5.3 PC members who are also Parish/Town Councillors should declare a non-pecuniary interest in a planning application at the PC meeting if their Parish/Town Council has commented on the application. The interest need not prevent the member participating in the decision-making process solely because of the Parish/Town Council comment. However, if the Parish/Town Council is the applicant, or the Parish/Town Council's financial position will be

affected, the member should not vote as this could mean the decision would be set aside under common law rules on bias.

Members should also consider the guidance in section 9 of this Local Code before deciding whether to participate in circumstances where common law rules on predetermination and bias may apply.

5.4 PC members who are also Parish/Town Councillors need to carefully consider whether they should participate in debates and vote on development proposals at Parish/Town Council meetings and still participate fully at PC. If they wish to do so, at Parish/Town Council meetings they should make it clear, and ask to have minuted, that the views then expressed are based on the information before them at the time, and might change in the light of further information and/or debate at the PDCC meeting.

6. GIFTS AND HOSPITALITY

6.1 Standing Orders require members to disclose to the Monitoring Officer any gifts or hospitality received in their official capacity with an estimated value of £50 or more. However, it is advisable for members to refuse all gifts offered to them in their official capacity, however low in value, if there is any reason to suspect the person offering them is or may become a planning applicant.

6.2 If such a gift is accepted, its receipt should be brought to the attention of the Monitoring Officer.

6.3 If receipt of a degree of hospitality is unavoidable, members should ensure it is of a minimum nature and its receipt is registered.

6.4 Members should consider whether it would be appropriate in a particular case to notify the Monitoring Officer when gifts or hospitality have been offered, but refused.

7. ACTING AS AGENT

7.1 Members should never act as agents for individuals or bodies pursuing planning applications to the Council.

8. PROPOSALS FOR COUNCIL'S OWN DEVELOPMENT/DEVELOPMENT ON COUNCIL LAND

8.1 It is important that such proposals are dealt with, and seen to be dealt with, on an equal footing with other applications.

8.2 Decisions must be taken strictly on the basis of proper planning considerations.

8.3 Where the Council is the landowner or applicant for development, any member who has been involved in preparing or advocating the proposal is likely to be perceived as having fettered their discretion, and should not take part in its determination. (See the section on predetermination and bias

below). However, a member in this situation can make a public statement at Committee as set out in paragraph 11.1.

9. PREDETERMINATION AND BIAS

9.1 Planning matters should be processed in a fair and open manner. Members making the decision must take account of all the evidence presented. If a member votes on a matter with a closed mind, or could be open to an accusation of bias, the decision may be set aside by the Courts as invalid under common law rules on bias and predetermination.

9.2 Section 25 of The Localism Act 2011 provides that a decision maker is not to be taken to have had a closed mind just because they had previously done anything that directly or indirectly indicated what view they took, would take or might take on the matter. The issue is whether a member might have a closed mind at the meeting where the decision is taken. Past actions or statements are a factor which may be taken into account when deciding this. Members who wish to vote on matters therefore need to take care not to give a prior impression that their mind is made up and cannot be changed, and should avoid making extreme comments, or comments from which it may be difficult to depart when it comes to decision time.

9.3 Members will naturally form preliminary ideas about how they are likely to vote on a matter. This is acceptable, providing they have an open mind as to the merits of the arguments, and only reach a final decision at the meeting after duly considering all the available information.

9.4 In particular, if members do any of the following they should be aware that it may be difficult for them to show that they have an open mind when it comes to decision making time:

a. organise support for or opposition to a proposal;

b. lobby other members;

c. act as an advocate;

d. seek to interfere with the impartiality of an officer's report, or put pressure on officers for a particular recommendation;

e. declare their voting intention before a meeting at which the matter is to be discussed;

f. indicate, or give the impression of, support for or opposition to a proposal in a manner suggesting they have a closed mind to any views or further information which may be available;

g. follow the lead of another member when voting, rather than reach an independent conclusion based on consideration of all the evidence. For example, a decision should not be based on the views of the Executive or a member of the Executive, or of a political group meeting.

9.5 Complying with the additional guidance in this Local Code on pre-decision discussions (paragraph 3.2), lobbying (paragraph 10.1), and the conduct of public meetings (paragraph 14.1 to 14.6) should enable members involved in decision-making to be seen to act impartially.

10. LOBBYING

10.1 While it is inevitable that members will be subject to lobbying, where it occurs they should:

a. simply listen to points of view;

b. explain that, whilst they can listen to what is said, it prejudices their impartiality to express a firm point of view or an intention to vote one way or another;

c. refer an applicant who requests planning or procedural advice to officers;

d. report any undue or excessive lobbying to the Monitoring Officer.

11. PROCEDURE WHERE A MEMBER HAS COMMITTED THEMSELF (PREDETERMINATION) OR COULD BE OPEN TO AN ACCUSATION OF BIAS

11.1 If members do commit themselves to a particular view on a planning issue before a formal decision is reached, or feel that the public would reasonably believe they had done so, or would be biased, they should move to a designated area of the meeting room set aside for members who do not intend to vote, declare their position and explain that they will not be voting. They may then make a statement and answer any questions, and may remain in the meeting for the duration of the business. As well as not voting, they should not move or second any recommendation.

12. APPLICATIONS RELATING TO PROPERTY IN WHICH A MEMBER HAS A DISCLOSABLE PECUNIARY INTEREST

12.1 Members should inform the Monitoring Officer if a planning application is submitted relating to property in which they have a disclosable pecuniary interest (this includes the interests of spouses and partners of which the member is aware). They should not assume that officers will otherwise be aware of this.

12.2 Members must not by law take any part in the decision-making on an application relating to such property, nor speak on the matter at the PC meeting that considers it, unless they have applied for and been granted a dispensation. It is an offence to do so. They will however have the right to make a written submission to explain and justify the proposal to an officer in advance of the PC meeting, just as has any member of the public. If a member is granted a dispensation to address the PC in connection with an application in which they have a disclosable pecuniary interest, they should

do this from the area used by the public for making representations, not from a position amongst Committee members.

13. DECISIONS CONTRARY TO OFFICER RECOMMENDATION

13.1 The reasons for all decisions should be clear, convincing, and supported by planning evidence.

13.2 Where a decision is made to approve or refuse an application against officer advice, or impose additional conditions on a permission, the reasons must be clearly stated when the proposition is moved.

13.3 Officers must be given the opportunity to explain the implications of a contrary decision before a vote is taken.

14. CONDUCT OF MEETINGS

14.1 Members will conduct the business of the PC in a fair and sensitive manner, conscious of the public arena in which they are appearing.

14.2 Members and officers will address one another during the debate in a proper manner and will not refer to one another by first names.

14.3 Discussions about applications, as well as decisions, should be confined to the planning merits.

14.4 Senior Legal and Planning Officers will attend all PC meetings.

14.5 PC members should not communicate with members of the public (either orally or in writing) during the Committee's proceedings. This could give the appearance of bias.

14.6 PC members should not vote on a planning application unless they have been present for the entire debate, including any introduction by officers and representations from the public.

15. APPEALS AGAINST PLANNING DECISIONS

15.1 Before deciding whether to make representations on an appeal, members should remember that their overriding duty as a Councillor is to the whole local community.

15.2 Members wishing to make representations on an appeal should give written notice to the Monitoring Officer and the appellant. Where the appeal is to be dealt with at an inquiry, this notice should be given at least 5 working days before the start of the inquiry.

16. SITE VISITS

16.1. The PC has agreed criteria for deciding when it is appropriate to hold a site visit. These, and administrative considerations arising from them, are set out at Annex 1.

16.2 Applicants and objectors may not address members at site visits.

16.3 PC members may familiarise themselves with a site informally, before the application is debated at PC. When doing so, members should remember that:

a. the Council's adopted Code of Conduct, and this local Code, applies to them at such times;

b. they should not become involved in any conversation with the public during such a visit;

c. they have no legal right to enter private land without the owner's or occupier's permission.

17. Review of Decisions

17.1 Senior officers will monitor PC decisions continuously, and if concerns arise about decisions made contrary to officer recommendations these will be reported to the Committee.

17.2 The PC will monitor the quality of its decisions through an annual tour of sites.

18. ALL OFFICERS

18.1 The onus is on officers to inform their Service Manager if a planning application is submitted relating to a property in which they have an interest. The Employee Handbook contains instructions on how to do this. The officer should not assume that planning officers will otherwise be aware of this.

18.2 Proposals submitted by or on behalf of officers will be determined by the PC. Officers will have the same rights as a member of the public to explain and justify their proposal to a planning officer before it is referred to the Committee.

19. PLANNING OFFICERS

19.1 Officers must always act impartially.

19.2 Officers involved in processing and determining planning matters must act in accordance with the Royal Town Planning Institute's Code of Professional Conduct.

19.3 The Code of Conduct for Employees contains general rules on the acceptance of gifts and hospitality. Officers involved in planning should also

consider whether it would be appropriate in a particular case to notify instances where gifts or hospitality have been offered, but refused.

19.4 Officers should never act as agent for an individual or body pursuing a planning application.

19.5 In any discussion on planning issues, officers will always make it clear at the outset that any views they express are based on their provisional professional judgement and do not commit the Council to any particular decision.

19.6 Advice given will be consistent and based upon material planning considerations. Every effort will be made to ensure that there are no significant differences in interpretation of planning policies between officers.

19.7 Where officers consider it appropriate, a written note of discussions will be made, and/or a follow up letter sent explaining the conclusions of the discussion. Two or more officers will attend potentially contentious meetings.

19.8 Reports to PC must be accurate and cover all relevant points, including the substance of any objections and the views of those consulted.

19.9 All reports will have a written recommendation of action/decision, and oral reporting (other than to update an existing report) will only be used on rare occasions and carefully minuted when this does occur.

19.10 All reports will contain a technical appraisal that clearly justifies the stated recommendation.

19.11 All reasons for refusal, and conditions to be attached to permissions, must be clear and unambiguous.

19.12 If a departure from the development plan is recommended, the material considerations justifying the departure must be clearly stated.

19.13 Every planning application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings or significant telephone conversations.

19.14 Monitoring of record keeping will be undertaken on a continuous basis by Managers in Planning Services.

ANNEX 1

SITE VISITS

The agreed criteria for deciding when it is appropriate to hold a site visit are:

a. where the proposal raises significant policy issues which cannot be readily understood without seeing the context of the site; or

b. where the proposal is being considered under an exceptions policy and has a particular degree of sensitivity; or

c. major developments which would have a significant environmental impact where the wider context of the proposal is important; or

d. unusual or unconventional proposals where the context of the site is relevant to the determination of the proposals.

Even if one or more of the above criteria is met, a site visit shall only be held if the majority of Committee members indicate that they will attend on the appropriate day.

The purpose of a site visit is for members to gain knowledge of the proposal, the site, and its relationship to adjacent sites. It is not a formally convened meeting open to the public.

Applicants and objectors may not address members at site visits.

Officers will prepare a report including any relevant information obtained from the site visit to enable the Committee to decide the application.

The Monitoring Officer will ensure all correspondence about site visits clearly identifies its purpose, format, and conduct. Written procedures on this shall be maintained and communicated to all parties.