

# TEWKESBURY BOROUGH COUNCIL

## **PROTOCOL FOR COUNCILLORS AND OFFICERS INVOLVED IN THE PLANNING PROCESS**

**(Approved and adopted by Council on 6 December 2016)**

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## **1. PURPOSE AND STATUS**

- 1.1 This Protocol has been prepared as a public guide to the conduct of **all** Councillors and staff who come into contact with the planning process. It does not just apply to Members of the Planning Committee and professional Planning Officers. Its aim is to ensure and to demonstrate that the Council takes its planning decisions openly, impartially and for sound, justifiable planning reasons. The Protocol, which was first adopted by the Council as a Guide to Good Practice in 2002, has been reviewed and updated. The Human Rights Act 1998 has implications for the planning system and has created enhanced requirements for procedural fairness, transparency and accountability in determining planning applications.
- 1.2 Councillors must observe the Members' Code of Conduct adopted by the Council on 26 June 2012 and Officers are subject to an Officer Code of Conduct. In addition, professional Planning Officers are bound by their Institute's own Code of Conduct.
- 1.3 This Protocol provides supplementary and localised guidance on how the planning system in Tewkesbury Borough will be operated. It provides a measure against which the Council's operation of the planning system can be judged. Adherence to the Protocol should reduce cause for complaint by the public. The Planning Protocol is intended to minimise the prospect of legal or other challenge to planning decisions. However, non-compliance with the Protocol could be taken into account in any legal challenge, investigations into any complaints, allegations of maladministration or allegations of breach of the relevant Code of Conduct (Councillor or Officer).
- 1.4 The purpose of the Protocol is to set out in detail how Councillors and Officers should act, and the procedures which should be followed, to ensure that they not only act in a fair and proper manner but are also seen to do so.

## **2. INTRODUCTION**

### **General Principles**

- 2.1 The planning system is a complex one which regulates and controls development in the public interest. Planning affects land and property interests including the value of land and the quality of the environment. Decisions affect people's daily lives and the private interests of individuals, landowners and developers. The role of the planning system is to regulate the use and development of land in the public interest. Accordingly, planning decisions must be seen to be impartial and properly justified. The planning system can only operate effectively if there is trust among the various stakeholders, the public, applicants, developers, Councillors and Officers.
- 2.2 The planning system is based on the legal framework provided by planning legislation (including the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004) and government policy and guidance contained in the National Planning Policy Framework, planning practice guidance, government circulars, good practice guides, Ministerial statements and case law. Importantly the planning system (and the Borough Council) encourages the involvement of third parties in the process. Parish Councils, local residents, interest groups and local communities are consulted on planning proposals and are invited to comment. The Development Plan is subject to consultation through the Local Development Framework which provides for objections to be considered by Examination by an Inspector.

- 2.3 Planning decision-making is not an exact science but it relies on informed judgement within a firm policy context. It is also highly contentious because its decisions affect the daily lives of everyone and the private lives of individuals, landowners and developers. This is heightened by the openness of the system (it actually invites public opinion before taking decisions) and the legal nature of Development Plans and decision notices. It is important, therefore, that the process is characterised by open and transparent decision-making.
- 2.4 The Council recognises that planning decisions are made in a plan-led system and that in dealing with applications it must have regard to, so far as they are material to the application, the provisions of the Development Plan (which includes Neighbourhood Development Plans which have been made), any local finance considerations (see Paragraph 2.7 below) and any other material considerations; with it being that, where regard is to be had to the Development Plan, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 2.5 Further, that planning legislation requires that, where planning permission is granted subject to conditions, or refused, the decision notice shall include a statement explaining how, in dealing with the application, the Council has worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with a planning application.
- 2.6 Councillors and Officers aim to ensure that the decision-making processes are open and fair, so that all the relevant issues are weighed in the balance and applications are dealt with in a consistent manner, through an appraisal of Development Plan policies and analysis of relevant material considerations. Officers prepare reports for Councillors which cover development plan policy and other material considerations, including the implications of the Human Rights Act 1998, public representations and responses from statutory consultees concluding with a recommendation. Councillors should weigh all the issues in the balance during their considerations at Committee and vote on the planning merits of the case.
- 2.7 Planning legislation provides that regard is to be had to material local finance considerations and defines a local finance consideration as a grant or other financial assistance that has been, that will, or that could be provided, to a relevant authority by a Minister of the Crown, or sums that a relevant authority has received, or will, or could, receive, in payment of the Community Infrastructure Levy. Whether or not a 'local finance consideration' is material to a particular decision will depend on whether it could help to make the development acceptable in planning terms. It would not be appropriate to make a decision on the potential for the development to raise money for a local authority or other government body.
- 2.8 Planning decisions are based on interpretation of policies and guidance and it is essential that decisions are made impartially, having regard only to proper planning considerations, and in a way that does not give rise to public suspicion or mistrust.
- 2.9 This Protocol provides for periodic monitoring of planning decisions taken. Quality of outcomes and consistency of decision-making should be regularly reviewed by the Planning Committee.

## **The General Role and Conduct of Councillors and Officers**

- 2.10 Councillors and Officers have different but complementary roles. Both serve the public but Councillors are accountable to the electorate and Officers are accountable to the Council as a whole. It is the duty of Councillors to represent their constituents as a whole, including those who did not vote for them. Officers advise Councillors and the Council and carry out the Council's work. They are employed by the Council, not by individual Councillors, and it follows that instructions may only be given to Officers through a decision of the Council or its Committees. Any other system which develops is open to question. A successful relationship between Councillors and Officers can only be based upon mutual trust and understanding of each other's positions. This relationship, and the trust which underpins it, must never be abused or compromised. The Council has within its Constitution adopted a Member/Officer Protocol. In the event that Members wish to discuss a particular planning matter (application, potential application or planning policy) with an Officer an appointment should, whenever practicable, be made in advance.
- 2.11 The Council's Code of Conduct sets out the requirements for Councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to Council business, including the need to register and declare interests (see next section), but also appropriate relationships with other Members, staff and the public, which will impact on the way in which Councillors participate in the planning process. Of particular relevance to Councillors serving on Planning Committees, or who become involved in making a planning decision, is the requirement that a Member must:
- “not use your position improperly to confer on or secure for yourself or any other person, an advantage or disadvantage or seek to improperly influence a decision about a matter from which you are excluded from participating or voting”  
(Paragraph 7(4) of the Council's Code of Conduct).
- 2.12 Although Councillors may take into account views of others they should not discriminate in favour of any particular group or individual, or put themselves in a position where they appear to do so should they wish to participate in respect of the determination of a proposal (see further at Paragraph 3.3 below on Voting and Impartiality).
- 2.13 All Officers must follow the Council's Code of Conduct for Employees or any statutory code which may come into force or be adopted by the Council. Officers who are chartered town planners must act in accordance with the Royal Town Planning Institute's (RTPI) Guidance of Professional Conduct and breaches of that guidance may be subject of separate disciplinary action by the Institute.
- 2.14 Professional Officers may have a change of opinion on receipt of further information or a change of circumstances but this must be on the basis of professional judgment; they must not be allowed to be influenced by Councillors or other Officers to change an opinion where this does not genuinely represent their professional view. The Council endorses the RTPI's statement that its members “shall not make or subscribe to any statements or reports which are contrary to their own professional opinions”.

- 2.15 Employees must always act impartially. In order to ensure that senior Officers do so, the Local Government and Housing Act 1989 enables restrictions to be set on their outside activities, such as Membership of political parties and serving on another Council. Such impartiality (particularly crucial in highly contentious matters) is reinforced by requirements on Members in the Council's Code of Conduct. Members are placed under a requirement by Paragraphs 7(1) and 7(5) of the Council's Code of Conduct to:
- (a) treat others with respect; and
  - (b) not to do anything which compromises, or is likely to compromise the impartiality of those who work for, or on behalf of, your authority
- 2.16 The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst Councillors should take account of these views, they should not favour or show bias toward any person, company, group or locality, nor put themselves in a position where they appear to do so. Councillors who do not feel that they can act in this way should consider whether they are best suited to serve on a Planning Committee. Councillors should also be very cautious about accepting gifts and hospitality. The Gifts and Hospitality Protocol for Councillors must be observed by all Councillors including those involved in the planning process. Similarly, during the course of carrying out their duties, Officers may be offered hospitality from people with an interest in a planning proposal. Wherever possible, such offers should be declined politely. If the receipt of hospitality is unavoidable, Officers should ensure that it is of the minimal level and declare its receipt to the Council's Monitoring Officer as soon as possible.
- 2.17 The Council's Code of Conduct provides that Members must notify the Monitoring Officer of the name of any person, organisation, company or other body from whom the Member has received, by virtue of his Office, gifts or hospitality worth an estimated value of £50 or more. Such an interest would automatically be one that would need to be disclosed at a meeting (as an "Other Interest") where a matter in which a Member has such an interest arises and one where consideration would need to be given as to whether the Member should not participate (see Paragraphs 3.1.5, 3.1.6(iv) and 3.1.9 below).
- 2.18 A summary guide of "Do's" and "Don'ts" is attached at Appendix B of this Protocol, but must be read in conjunction with, and in the context of, the Council's Code of Conduct and the whole of this Protocol for Councillors and Officers involved in the Planning Process.

### **3. THE DECISION MAKING FRAMEWORK**

#### **3.1 Registration and Declarations of Interest**

- 3.1.1 The Localism Act 2011 and the Council's Code of Conduct place requirements on Members on the registration and declaration of their interests and the consequences for the Member's participation in consideration of a matter, in the light of those interests. Guidance on the registration and declaration of interests may be sought from the Council's Monitoring Officer. Ultimate responsibility for fulfilling the requirements rests individually with each Councillor.
- 3.1.2 A Register of Members' Interests is maintained by the Council's Monitoring Officer, which is available for public inspection. A Member must provide the Monitoring Officer with written details of relevant interests (disclosable pecuniary interests and other interests falling within Appendix B of the Council's Code of Conduct – see Paragraphs 3.1.3- and 3.1.6 below) within 28 days of his/her election, or appointment to Office. Any changes to those interests must similarly be notified within 28 days of the Member becoming aware of such changes.
- 3.1.3 The Council's Code of Conduct uses the terms "Disclosable Pecuniary Interests" and "Other Interests".
- 3.1.4 The Council's Code of Conduct defines "Disclosable Pecuniary Interests" as an interest set out in Appendix A of the Code of Conduct. These cover interests of the Member or the Member's spouse or civil partner, or a person with whom the Member is living as if they were civil partners or living as husband and wife, in respect of criteria set out in that Appendix relating to: employment, office, trade, profession or vocation; sponsorship; contracts; land; licences; tenancies and securities.
- 3.1.5 The Code of Conduct defines an "Other Interest" in any matter as an interest as specified in Appendix B of the Code of Conduct (see Paragraph 3.1.6 below) or where a decision on the matter might reasonably be regarded as affecting, to a greater extent than it would affect the majority of the other Council taxpayers, ratepayers or inhabitants of the Ward affected by the decision, your wellbeing or financial position or the wellbeing or financial position of a member of your family, or any person with whom you have a close association, or who has a contractual relationship (including employment) with yourself, member of your family or close associate.
- 3.1.6 The interests set out in Appendix B of the Code of Conduct cover interests held by the Member in the following categories:
- (i) any body of which the Member is in a position of general control or management and to which he/she is appointed or nominated by the Council;
  - (ii) any body:
    - (a) exercising functions of a public nature;
    - (b) directed to charitable purposes; or



- (c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which the Member of the Council is a member or in a position of general control or management;

- (iii) any person or body who employs or has appointed the Member;
- (iv) The name of any person, organisation, company or other body from whom the Member has received, by virtue of his/her Office, gifts or hospitality worth an estimated value of £50 or more.

3.1.7 Where a Councillor considers he/she has an “Other Interest” or a Disclosable Pecuniary Interest” in any matter, he/she must declare it at the beginning of the meeting or when the interest becomes apparent. Councillors should be clear and specific in identifying the item on the Agenda in which they have an interest and (unless the Monitoring Officer considers that it is a sensitive interest because its disclosure could lead to you, or the person connected with you, being subject to violence or intimidation) the nature of the interest. This declaration must be made at meetings of the Council, Planning Committee, Committee Site Visits, Working Groups or any outside body to which they are appointed or that they attend for Council, during informal meetings and in all circumstances where attending as a Councillor. Previous declarations or those made at Working Groups or Committee Site Visits must be repeated at Committee/Council meetings.

3.1.8 Where the interest is a “Disclosable Pecuniary Interest” the Member must leave the meeting and not vote (unless a dispensation has been granted). It is a criminal offence to fail to comply with the requirements that relate to Disclosable Pecuniary Interests.

3.1.9 Where the interest is an “Other Interest”, whether one subject to registration or otherwise, the Member then needs to consider whether the “Other Interest” is one whereby the Member is excluded from participating or voting. The Council’s Code of Conduct provides that an “Other Interest” becomes such an interest if the matter being considered either:

- (a) affects your financial position or the financial position of the member of your family or person with whom you have a close association; or
- (b) relates to the determination of any approval, consent, licence, permission or registration in relation to you or any such person or body;

and the interest is one which a reasonable member of the public knowing facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest. If this is the case, unless a dispensation has been granted or the function to be exercised is an excepted function (see Paragraph 3.1.10 below), the Member should not participate in a discussion on the matter, must withdraw from the room and must not seek improperly to influence a decision in the matter.

- 3.1.10 The Council's Code of Conduct includes some exceptions in respect of "Other Interests" and the restriction upon a Member participating or voting as set out in Paragraph 10(2) and the "excepted function" definition within Part IX of the Code of Conduct. These relate to decisions in respect of housing functions and functions in respect of allowances, ceremonial honours and Council Tax or precept setting.
- 3.1.11 In addition to the provisions on interests in the Code of Conduct, if a Councillor, in advance of the decision-making meeting, has taken a firm view on the decision to be made, either in meetings of another body or otherwise, they would not be able to demonstrate that, in participating in a decision, all the relevant facts and arguments had been taken into account. Were they to participate in a decision in those circumstances, they might place their authority in danger of judicial review. The exemptions in the Council's Code of Conduct and any dispensations would only operate in the planning context if the Councillor had also scrupulously avoided forming a fixed view on the issue in advance. This is the general approach taken by this guidance and appropriate conduct in relation to Membership of other bodies and the effects of such Membership on participation in the planning decision-making process. It is expanded in Paragraph 4.1 on lobbying.

### **3.2 Development Proposals submitted by Councillors and Officers; and Council Development**

- 3.2.1 Proposals to their own authority by serving and former Councillors and Officers and their close friends and relatives can easily give rise to suspicions of impropriety. So indeed, can proposals for a Council's own development. Proposals can take the form of either planning applications or Development Plan proposals.
- 3.2.2 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in such a way that gives no grounds for accusations of favouritism.
- 3.2.3 Councillors (whether on the Planning Committee or not) should not act as agents, or submit planning applications for other parties or voluntary bodies in respect of applications that will be determined by the Council. To do so would give rise to suspicion that the Member was not impartial or may influence other Councillors in the decision-making process.
- 3.2.4 Where Councillors need to submit planning applications on their own behalf, or on behalf of their employer as part of their job, the application will only be determined by the Planning Committee and not by Officers using delegated powers. The Councillor must declare an interest and take no part in the decision-making process and must not use their position to improperly influence the decision.
- 3.2.5 Similarly, where an Officer or an agent submits a planning application on their own behalf, or on behalf of their employer as part of their job, the application will only be determined by the Planning Committee and not by Officers using delegated powers. They must take no part as an Officer of the Council in the processing of the application or in the decision-making process.

- 3.2.6 A Councillor or Officer who either submits a planning application or Development Plan proposal on their own behalf, or on behalf of their employer as part of their job, must, whether that Councillor or Officer's involvement is apparent from the application documentation or not, notify the Technical Planning Manager and the Council's Monitoring Officer of the submission of the application or proposal. That notification must be in writing and must be sent at the same time as the submission of the application or proposal.
- 3.2.7 The Council's own proposals for development must be dealt with on exactly the same basis as applications submitted by members of the public or developers and Officers must make recommendations having regard only to proper planning matters and must not have regard to any other benefit financial or otherwise, which may accrue to the Council as a result of any particular decision on a planning proposal save for any material local financial consideration (see above).
- 3.2.8 Where a Council development is being considered, Councillors who have been involved in the decision to seek planning permission (e.g. Members of the Executive Committee) and who are also Members of the Planning Committee should declare this at the Planning Committee when the planning application comes up for determination. In such cases, Councillors are usually still entitled to take part in the debate and vote. The exception to this could be in the case of a Councillor that has been closely involved in negotiations with developers in working up a proposal that needs planning permission. Similarly, where an application is submitted by a Parish Council and the Councillor is also a Member of the Parish Council consideration will need to be given to the role the Member has played in respect of the application at the Parish Council level above the general considerations as to any declarations that may need to be made by way of an "Other Interest" in respect of the application due to Membership of the Parish Council.
- 3.2.9 The consideration of a proposal from a Councillor (or a member of his/her family) would result in the need for that particular Councillor to declare an interest under the Council's Code of Conduct and the Councillor would be required to withdraw from any consideration of the matter. The Code also provides that the Councillor should `not seek improperly to influence a decision about the matter`. It is important to emphasise here that `improperly` does not imply that a Councillor should have any less rights than a member of public in seeking to explain and justify their proposal to an Officer in advance of consideration by a Committee.

### **3.3 Voting and Impartiality**

- 3.3.1 Councillors must vote in the interests of the whole Borough. Their duty is to the whole community, rather than just the people living in their Ward.
- 3.3.2 Members of the Planning Committee must not declare which way they intend to vote in advance of the consideration of an application by the Planning Committee. To do so would, in effect, be pre-judging the application and expose the Council to the possibility of legal challenge or allegation of maladministration. Members must not make their minds up until they have read the relevant Committee reports and heard the evidence and arguments on both sides at the Committee meeting.

- 3.3.3 If a Member of the Planning Committee does declare his or her support or opposition for a proposal before the matter has been put before the Planning Committee, where that Member would be entitled to vote, he/she must make declaration of their view to the Planning Committee, and should withdraw from the Committee whilst that proposal is discussed so that the Member takes no part in the debate or voting on that particular item. This does not mean that the Members of the Planning Committee cannot make a comment or reflect local concerns about a proposal before it is considered by the Planning Committee, but the view or comment must not pre-determine, or be seen to pre-determine, the way that Member will consider and weigh in the balance all the issues or their vote.
- 3.3.4 Some Councillors will be Members of Parish/Town Councils as well as Borough Councillors. This situation can present problems where a Parish Council is to express a view as to whether it wishes to support, object or comment on a proposal, for example where the Parish/Town Council are consulted on planning applications. Whilst the comments of Parish Councils should concentrate on local issues this is often the stage when Borough Councillors can come under pressure to indicate their support or objection to a particular proposal. Of particular concern is the potential for a conflict of interest arising when a Member of both Councils votes on an application at a Parish/Town meeting prior to the Borough Council's Planning Committee meeting. It is quite conceivable that a Councillor in this position could end up voting in a different way when all the relevant information is made available in the Officer's report to the Borough Council. In order to avoid this potential conflict, and creating the impression that they have already made up their minds prior to the Borough Council's Planning Committee meeting, it would be preferable for Borough Councillors not to take part in the consideration of proposals at the Parish Council level (other than to listen to any debate) and not serve on Parish/Town Council Planning Committees/Sub-Committees. If a Planning Committee Member is also a Parish/Town Council Member and does decide to declare support or opposition or make comments at the Parish/Town Council then Paragraph 3.3.3 above shall apply.
- 3.3.5 The provisions of Paragraphs 3.3.4 above apply similarly in relation to Membership of another local authority. For example, if a planning application to be determined by the County Council comes before the Borough Council's Planning Committee for a consultation response, it may be preferable for any Borough Councillor who is also a Member of the County Council not to take part in the considerations of the application at the Borough Council level should they wish to take part in the determination of the application at the County Council level.
- 3.3.6 Where a Borough Council Member is also a Member of a Parish/Town Council or County Council and a proposal in respect of land within the Parish or the area for which the Borough Councillor is also a County Councillor is to be considered at Planning Committee or Council, the Borough Councillor should declare this at the meeting with reference to the relevant Agenda item(s) and also their position as to whether or not they have been, or will be, involved in any previous or subsequent consideration of the proposal at the Parish/Town or County Council level.

- 3.3.7 Councillors should not organise support for or against a planning proposal should they wish to take part in the debate or voting on the proposal since this would also signal that they had made up their mind before hearing the evidence. Nor should they lobby other Councillors (see Paragraph 4.1 below). Each Councillor should make up his or her own mind on the evidence and facts presented to the relevant Committee or to the Council.
- 3.3.8 Councillors must not favour or show bias for or against any particular person, company or group, or any particular site or locality. They should not put themselves in a position where they may appear to do so.
- 3.3.9 Given that the point at which a decision is made cannot occur before the Committee meeting, when all information is to hand and has been duly considered, it is inappropriate for any pre-Planning Committee political group meeting to be held. The use of the party whip is incompatible with the role of the Planning Committee. Less formal arrangements or understandings could also amount to maladministration. Group meetings which involve discussion of planning applications or Development Plan proposals should always commence by reference to the non-political nature of planning decision-making and with a reminder of the need for Councillors to make their decision at the Committee meeting and not previously.

#### **3.4 Pre-Application Discussions/Informal Site Meetings**

- 3.4.1 Most pre-application discussions take place between Officers and potential applicants. Officers of the Council will make it clear at the outset and at the end of such discussions that the advice given is personal and provisional and will not bind the Council to making a particular decision.
- 3.4.2 The advice offered should be consistent and based upon the Development Plan and other material considerations. Senior Officers will ensure that there is no significant difference of interpretation of planning policies between Planning Officers. Officers taking part in such discussions will make it clear whether or not they are the decision maker. A written record will be made of all meetings.
- 3.4.3 Councillors should not seek to advise applicants or agents about the likely acceptability of planning proposals. They should ask prospective applicants to contact the appropriate Officer to advise on both merits and procedures. If Councillors do give an indication of their initial reaction to a proposal (e.g. this appears to accord with planning policy) they should make it clear that they will only be in a position to take a final view after considering the Officer's reports and representations and hearing any debate at the Committee meeting.
- 3.4.4 Formal meetings (i.e. those meetings which are more than merely the receiving and absorbing of information) of Councillors with applicants, developers and their agents should be undertaken in the presence of at least one Officer and a written record should be made of that meeting.

- 3.4.5 Informal site meetings with applicants/agents may be misinterpreted by the public, an applicant, or agent and a Councillor discussing issues on site and perceived to be more than merely the receiving and absorbing of information. Clearly, Councillors need to be able to respond to their constituents and on occasion a visit to a site for a proposed extension (for example) to hear concerns from constituents may be justified. A note should be taken and care exercised to ensure the applicant, objector and supporters are treated equally.
- 3.4.6 The fact that Councillors have discussed any such proposal with the applicant or supporters/objectors must be made clear when the application is before the Committee for determination. Copies of notes (or emails) should be forwarded to the Case Officer to be placed on file.

### **3.5 Chair and Vice-Chair's Management Briefing**

The Chair and Vice-Chair of the Planning Committee will, once the Agenda for the meeting has been produced, receive a pre-Committee briefing on matters pertaining to the management of the business of the Committee. The sole purpose for the Chair and Vice-Chair's Briefing is to enable the efficient management of the business of the Committee.

### **3.6 The Committee's Decisions**

- 3.6.1 In accordance with the law, where the Development Plan is relevant, decisions must be taken in accordance with it unless material considerations indicate otherwise.
- 3.6.2 It is inevitable from time to time that decisions will be made which are contrary to the Officer recommendation. However, it is important that on these occasions the Planning Committee makes clear the reasons for making such a decision at the time. Where a Member is minded to move a resolution which is contrary to Officer recommendation (whether for approval or refusal), clear and convincing reasons based on land use grounds should be given, and in the case of an approval, an indication of the acceptable conditions. The personal circumstances of an applicant will rarely provide convincing grounds to justify development which is contrary to the Development Plan. Officers should be given the opportunity to explain the implications of any proposed resolution that is contrary to Officer recommendation.
- 3.6.3 If the Planning Committee makes a decision contrary to the Officer's recommendation (whether for approval or refusal) the Minutes of the meeting shall contain details of the Planning Committee's reasons and any Officer explanation of the implications.

### **3.7 Regular Review of Decisions**

A review of decision-making will take place each year through consideration of an annual report to the Planning Committee. This report will include a statistical analysis of all decisions taken (specifying the Officer recommendation) during the previous year and will report the outcome of any related appeal decisions. The analysis will also identify the number of cases where Officer's recommendations were not accepted. The annual report will be considered by the Planning Committee along with any recommendations to improve quality, consistency or performance.

### **3.8 Access to Information**

- 3.8.1 Section 2 of Part 4 (Rules of Procedure) of the Council's Constitution sets out the Rules for Access to Information considered by the Council or by any of its Committees. The Freedom of Information Act 2000 entitles any person to request in writing information held by the Council although there are some exemptions which mean that the information will not be disclosed. The Council has a procedure for dealing with requests under the Freedom of Information Act.
- 3.8.2 Section 3 of Part 5 (Codes and Protocols) of the Council's Constitution is a Protocol for Member/Officer Relations which makes clear the restrictions which apply to the supply of information to Members of the Council. Councillors do not have a "roving commission" to access all information held by the Council and would not be permitted to inspect information which is not available to members of the public unless there is a genuine need for that Member to have that particular information, for example, if it is a matter being considered by a Committee on which that Member serves.
- 3.8.3 Confidential/exempt information held on the files relating to complaints of, or investigations into, breaches of planning control (enforcement) would only be disclosed to a Member in the event that the Member has a need to know that confidential information. Similarly, it would only be disclosed to a member of the public if it did not qualify as an exemption under the Freedom of Information Act 2000.

### **3.9 Decision-Making**

Part 3 of the Council's Constitution sets out the responsibility for functions. The Council has delegated a substantial amount of its decision-making to Committees. The Council and/or its Committees have also delegated responsibility for certain decisions and functions to Officers. The Council has not delegated policy making to any Committee or Officer. The Development Plan, for example, will be a matter which requires approval by the Council. In respect of Development Management, there is a Scheme of Delegation to Officers (Part 3 of the Constitution) which enables Planning Officers to determine planning and other applications for consents or permissions and also enables Officers to make decisions on when to take enforcement action in respect of breaches of planning control.

## **4. THIRD PARTY RELATIONSHIPS**

### **4.1 Lobbying of Councillors and Circulation of Unofficial Information**

- 4.1.1 Lobbying is an attempt to influence a Councillor's view in order to achieve a particular decision. It is a normal part of the political process but where Councillors are making statutory decisions, such as planning decisions, it can result in decisions being made improperly, or being perceived to be made improperly with undue influence from applicants' agents or those making representations resulting in inconsistent or erratic decision-making.

- 4.1.2 Planning decisions must be made strictly on the basis of the facts, policies and material circumstances relating to each case. Members must not only act in a way that is fair to all parties but must be seen to do so. In particular, Members must not prejudge proposals before they have read the Officer's reports and considered all the evidence at the Committee meeting.
- 4.1.3 Lobbying can take many forms, including the most common:
- (a) Lobbying of Councillors by applicants, agents, objectors or supporters.
  - (b) Lobbying by other Councillors.
- 4.1.4 Lobbying may be verbal or by the circulation of letters or documents to all or some Councillors. On occasions applications/agents/owners may wish to meet Councillors at the site.
- 4.1.5 Where a Councillor is asked for support by an applicant or agent, supporter or objector in respect of a planning application or related matter then the Member must state that he/she will not indicate support or otherwise until they are in possession of all the facts have had heard the Committee debate. Such contact (lobbying) must be declared at the Committee meeting.
- 4.1.6 Councillors on the Planning Committee who receive correspondence from people seeking to persuade them to vote in a particular way should, where that correspondence is not referred to in either the Officers' report to Committee, or on the Additional Representations Sheet circulated at Committee, copy it to the Technical Planning Manager and the Case Officer for the application.
- 4.1.7 Councillors who receive correspondence from people seeking to persuade them to vote in a particular way in respect of a Development Plan matter should, where that correspondence is not referred to in the Officers' report to Council, copy it to the Planning Policy Manager.
- 4.1.8 Developers often arrange presentations in respect of their development proposals and, provided these are within a public forum (for example at a Parish Council meeting), Members of the Planning Committee may attend and listen to such presentations and ask questions for the purposes of clarifying their understanding of the proposals. However, it is important to be aware that a presentation is a form of lobbying and bear in mind the need to avoid pre-determination. Any attendance at developer presentations must be declared at the Planning Committee meeting.

## **4.2 Gifts and Hospitality; Impartiality and Respect**

- 4.2.1 The Council has adopted a Protocol for Councillors on Gifts and Hospitality, which specifies the circumstances in which Gifts and Hospitality may be received and the procedures to be followed. That Protocol should be read in conjunction with this document.



- 4.2.2 Officers must always act impartially and declare any outside interests or affiliation they may have in the questionnaire provided each year for this purpose.
- 4.2.3 If Officers have a personal interest (which would include, as well as matters relating to their own financial interests, any matters which might reasonably be regarded as affecting the wellbeing or financial interest of themselves, a relative or a friend) or a suspicion that they may be perceived to have a personal interest, which may affect or be perceived to affect their objective, impartial professional advice, they should declare an interest and have no dealings with the application. If the matter is considered at Planning Committee the Officer's declaration shall be made at the Committee meeting.
- 4.2.4 Members and Officers should treat each other with respect at all times and not do anything which is likely to compromise the impartiality of those involved in the process or to create a perception that decisions are not well-founded.
- 4.2.5 Members of the Planning Committee need to avoid members of the public, applicants and other Councillors seeking to communicate with them individually (whether orally or in writing) during the Planning Committee's proceedings. This could be seen as seeking to influence a Councillor improperly and will create a perception of bias that may be difficult to overcome.

## **5. DEVELOPMENT PLANS AND PLANNING OBLIGATIONS**

### **5.1 Development Plans**

- 5.1.1 The preparation of Development Plans (including Neighbourhood Plans) through the prescribed process provides for statutory consultation and ultimately for representations to be considered on Examination by an independent Inspector.
- 5.1.2 In respect of Neighbourhood Plans, the bodies that lead and initiate proposals are Parish/Town Councils or (where there is not Parish/Town Council) neighbourhood forums. However, as well as being a statutory consultee in the neighbourhood planning process, the Council also has a direct role to play in providing advice and assistance, undertaking certain procedural steps and taking decisions on the plan throughout the process. This includes: the designation of neighbourhood areas, assessing whether legal requirements have been met, organising Referendum(s) and bringing the Neighbourhood Plan into legal effect.
- 5.1.3 It is vital that the same guidelines on probity are observed throughout the Development Plan process. Interests must be declared in accordance with the Council's Code of Conduct and Members must not seek to influence colleague Councillors on matters in which they are excluded from participating or voting under the Code of Conduct or due to issues of pre-determination. The Council must ensure that the land use allocation process is based on open analysis and appraisal of sites on planning grounds and that full consultation in accord with the statutory requirements is carried out.

- 5.1.4 The plan-making process is similar to the Development Management decision-making process in that it should be non-political. The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process, particularly in the Local Development Framework process of allocation of housing and employment sites, and opposing views are often strongly held by those involved. Whilst Councillors should take account of these views, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.

## **5.2 Planning Obligations**

- 5.2.1 Under government policy set out in the National Planning Policy Framework and planning legislation, a planning obligation should only be sought and may only constitute a reason for granting planning permission if the obligation is:
- (a) necessary to make the development acceptable in planning terms;
  - (b) directly related to the development; and
  - (c) fairly and reasonably related in scale and kind to the development.
- 5.2.2 The Planning Obligations Officer Working Group will meet to consider the appropriate obligations to impose on all major planning applications for residential development (i.e. those applications for 10 or more dwellings). The Terms of Reference of the Planning Obligations Officer Working Group are attached at Appendix A.
- 5.2.3 In every case the heads of terms of a legal agreement are identified in the Officers' report to Planning Committee. Copies of completed agreements are made available for inspection in the Public Register at the Council Offices.
- 5.2.4 At all times Councillors should convey their observations/comments on legal agreement issues to the responsible Officers and not negotiate local requirements directly with developers unless accompanied by an Officer or in a formal meeting convened by the Borough Council. This does not mean that Councillors cannot comment on or reflect/communicate the needs of a community, which should be taken into account, and Councillors can become involved as set out in Paragraph 5.2.5 below. If Councillors do become involved in discussion with developers or individuals through their Local Member or Parish/Town Council role, a declaration to that effect should be made at any Committee meeting and a written statement submitted to the Technical Planning Manager and the Case Officer for the application, summarising the exchange of views/information. A copy of the statement will be placed on the application file relating to that proposal.

- 5.2.5 Though Councillors should not normally become drawn into negotiations themselves, with instead negotiations undertaken by Officers, Officers should keep relevant Ward Councillors up to date and Councillors should relay matters of local concern in respect of any planning obligation provisions to Officers. Involving Councillors can help identify issues early on, helps Councillors lead on community issues and helps make sure that issues do not come to light for the first time at Planning Committee.

## **6. PLANNING COMMITTEE SITE VISITS**

### **6.1 Purpose of Planning Committee Site Visits**

- 6.1.1 Given the size and geography of the Borough it is not possible to carry out site visits for all applications considered by the Planning Committee.
- 6.1.2 To ensure that Committee applications are dealt with as effectively and quickly as possible, site visits will be held prior to Committee for all outline and full applications for large scale major residential development (i.e. those of 200 dwellings or more). This does not include reserved matters applications.
- 6.1.3 Councillors will also be able to request Planning Committee site visits during the application process, whilst the Planning Committee may also choose to defer applications for a site visit (see Paragraph 6.2.3).
- 6.1.4 The purpose of a Planning Committee site visit is solely to enable Councillors to assess a proposal and its effect on site. The visit, along with the Officer report, will allow Councillors to formulate a view, having regard to all relevant planning matters and representations which have been received.
- 6.1.5 There are a number of reasons why Councillors may request a Committee site visit, including:
- (a) To judge whether the visual impact of the proposed development is acceptable.
  - (b) To consider impact on residential amenity.
  - (c) To consider design considerations including impact on the street scene or public space.
  - (d) To assess highway safety/traffic impact.
  - (e) To assess the impact on areas of landscape designation including the Cotswolds Area of Outstanding Natural Beauty.
  - (f) To assess the impact on the openness of the Green Belt.

## **6.2 Requests for Planning Committee Site Visits**

- 6.2.1 Planning Committee site visits will normally take place on the Friday before the Planning Committee meeting. Any Councillor may request a site visit by the Planning Committee in the same way that requests for Committee determination are made. All requests must be justified with sound planning reasons.
- 6.2.2 Requests must be made as soon as possible following validation of an application. Requests must be made in writing to the Technical Planning Manager who will determine whether or not a site visit is appropriate in each individual case. If it is determined that a site visit is not necessary, the Technical Planning Manager will provide a written response to the Councillor who made the request to explain the reasons why this is the case.
- 6.2.3 The itinerary for site visits will be circulated as soon as possible following finalisation of the Agenda for the next Planning Committee. There will be occasions where a site visit has not been agreed in advance of the Committee meeting yet the Committee decide that a site visit is necessary. In such circumstances, the Committee is able to defer an application for a site visit which will be added to the itinerary for site visits taking place in advance of the next Planning Committee meeting. There must be sound planning reasons to defer an application for a site visit. Such reasons must be clearly set out by the proposer and recorded in the Minutes.

## **6.3 Procedure for Planning Committee Site Visits**

- 6.3.1 In order to ensure that all Planning Committee Site Visits relating to planning matters are dealt with consistently and fairly, site visits will be carried out in accordance with the procedure set out at **Appendix C** of this Protocol.

### Attendance

- 6.3.2 All Members of the Planning Committee will be invited to attend Committee Site Visits along with Ward Members (and, where appropriate, adjacent Ward Members). All site visits will be attended by a Planning Officer and, where appropriate, representatives of specialist consultees (for example, the County Highways Authority or Environment Agency) where they have been expressly invited by the Planning Committee or the Technical Planning Manager.

## **7. MEMBER TRAINING**

### **7.1 Induction Training**

No Councillor shall serve on the Planning Committee unless he/she has attended initial induction training sessions.

## **7.2 Updates and Continuous Member Development Programme**

- 7.2.1 Councillors will be given regular updates to keep them informed of important changes in legislation, procedures or practices verbally at meetings, or in briefing notes (for example, the Member Update Sheet) and be required to participate in the continuous Member Development Programme agreed by the Planning Committee and requiring that each Member of the Planning Committee must attend as an absolute minimum 50% of the training events held in any year.
- 7.2.2 Group Leaders will be asked to encourage Planning Committee Members to participate in the continuous Member Development Programme and will review their nomination for the Planning Committee at the Annual Council meeting if an acceptable level of attendance is not achieved.
- 7.2.3 The continuous Member Development Programme training will be offered to all Members of the Council and all are strongly recommended to attend, whether or not at the time of the training they are a Member of the Planning Committee.

## PLANNING OBLIGATIONS OFFICER WORKING GROUP

### Introduction

Section 106 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) provides for the making of legal obligations in connection with the grant of planning permission, the purpose of which is to address specific issues arising out of development proposals. Legal obligations signed in accordance with Section 106 require certain actions to be undertaken, or payments to be made, to enable development proposals to be deemed acceptable and properly assimilated into their surroundings. All planning obligations must meet the test of the Community Infrastructure Levy (CIL) regulations.

To ensure that policy in respect of planning obligations is being correctly applied, and to support the identification of Section 106 requirements arising from developments, the Council has formed a Planning Obligations Officer Working Group.

### Terms of Reference

1. To provide a mechanism for the formulation of Section 106 obligations from inception to completion and to monitor the implementation of Section 106 obligations.
2. To enable a corporate approach to the assessment of the infrastructure and housing needs arising from new developments.
3. To provide a structured process and an evidence based approach, involving community engagement where required, to identify Section 106 funding and requirements that reflect the needs and aspirations of the community.
4. To provide a recommendation to the Chief Officer Group on the draft heads of terms for major applications of strategic importance.
5. To support Planning Case Officers in their management of the negotiating process.
6. To provide a single point of access to data on all Section 106 activities including detailed information on financial contributions made by developers and the receipt of such by the Council.
7. To provide a means for monitoring the application of Section 106 policy across the Council.
8. To monitor and produce regular monitoring reports to the Chief Officer Group the progress on implementation of legal obligations.

### Meetings

Meetings will be held on a monthly basis with meetings set at least three months in advance.

Extraordinary meetings may be necessary to deal with large-scale major applications.

## **Membership**

The Working Group comprises:

Representatives from Development Management, Planning Policy, Housing Strategy, Community (public open space and community facilities), Finance, Waste, and One Legal.

Where appropriate, colleagues from the County Council (highways and education/libraries), Environment Agency and the Primary Care Trust (or successor organisation) will also be invited.

## **The Role of the Chief Officer Group (COG)**

A report shall be prepared every six months advising of major cases which are likely to be reported to COG over the next six months.

COG will identify which cases they would like to review and comment on whether the proposed obligations in each case are considered appropriate in line with corporate objectives.

## SUMMARY GUIDE OF DO'S AND DON'TS

This must be read in conjunction with, and in the context of, the Council's Code of Conduct and the whole of this Protocol for Councillors and Officers involved in the Planning Process

### DO

Do always ensure that any discussions with developers are structured and involve Officers.

Do inform Officers about any approaches made to you and seek advice.

Do familiarise yourself with the Council's Code of Conduct and follow it when you are representing the Council.

Do keep your Register of Interests up to date.

Do follow the Council's Protocol for Councillors and Officers involved in the Planning Process.

Do be aware of what predisposition, predetermination and bias mean in your role – ask your Monitoring Officer if unsure.

Do be prepared to hold discussions with an applicant and your Officers before a planning application is made, not just after it has been submitted to your authority.

Do preface any discussion with disclaimers; keep a note of meetings and calls; and make clear at the outset that discussions are not binding.

Do be aware of what disclosable pecuniary interests and other interests under the Council's Code of Conduct are – refer to your Monitoring Officer if you are unsure.

### DON'T

Do not use your position improperly for personal gain or to advantage your friends or close associates.

Do not meet developers alone or put yourself in a position where you appear to favour a person, company or group –even a “friendly” private discussion with a developer could cause others to mistrust your impartiality.

Do not attend meetings or be involved in decision-making where you have a disclosable pecuniary interest or another interest which is one whereby you are excluded from participating or voting under the Council's Code of Conduct – except where you have been granted a dispensation or speaking when the general public are also allowed to do so.

Do not accept gifts or hospitality.

Do not prejudge or be seen to prejudge an issue if you want to be a decision-maker on a proposal.

Do not seek to influence Officers or put pressure on them to support a particular course of action in relation to a planning application.

Do not compromise the impartiality of people who work for the Council.



Do recognise the distinction between giving advice and engaging in negotiation and when this is appropriate in your role.

Do stick to policies included in adopted plans, but also pay heed to any other considerations relevant to planning.

Do encourage positive outcomes.

Do ask for training from your Council in probity matters.

Do recognise that you can lobby and campaign but that this may remove you from the decision-making process.

Do feed in both your own and your local community's concerns and issues.

Do be aware that you can engage in discussions but you must have and be seen to have an open mind at the point of decision making.

## PROCEDURE FOR PLANNING COMMITTEE SITE VISITS

### 1.0 Introduction

- 1.1 This procedure relates to the carrying out of site visits by the Tewkesbury Borough Council Planning Committee in connection with the determination of planning and related applications.
- 1.2 The purpose of site visits is solely to enable Councillors to assess a proposal and its effect on site. There will be no debate about the merits of the application during the site visit.
- 1.3 Site visits subject to this protocol will be agreed in accordance with the procedure set out in Paragraph 6.2 of the Council's 'Protocol for Councillors and Officers Involved in the Planning Process'.

### 2.0 Who may attend a site visit?

- 2.1 All Members of the Planning Committee will be invited to the site visits which will normally take place on the Friday before Planning Committee meetings. Ward Members and, where appropriate, Members of adjoining Wards will also be invited.
- 2.2 Relevant external consultees (for example, representatives of the County Highway Authority or Environment Agency) will also be invited where the Technical Planning Manager considers it would be useful for the Committee, or where their attendance has been expressly requested by the Planning Committee/Chair.
- 2.3 The applicant and/or their agent, Parish/Town Council representative, supporters of or objectors to the proposal, or general onlookers will not be allowed to participate in the site visit.

### 3.0 How will a site visit be carried out?

- 3.1 Planning Committee site visits shall be chaired by the Chair of Planning Committee, or in his absence by the Vice-Chair. In the event that neither the Chair nor Vice-Chair is available, a Chair will be elected on the day from the Planning Committee Members in attendance.
- 3.2 Site visits will be conducted in accordance with the following:
  - (a) Site visits shall be conducted in a formal manner.
  - (b) The Chair will open proceedings and ask for any declarations of interest. The Chair will explain the purpose of the visit and how the visit will proceed.
  - (c) The Planning Officer will introduce the application, explaining the proposal and advising those present of any issues relevant to the site visit.
  - (d) The Chair will seek any points of clarification.
  - (e) Local Ward Members (see 2.1) will be asked to highlight any local issues relevant to the site visit.

- (f) Following the site visit, the Chair will invite any further points of clarification arising from the site visit. Councillors will be able to highlight any information which they feel is necessary for the Planning Committee meeting.
- (g) The Chair will close the visit.

#### **4.0 General matters**

- 4.1 No formal notes of the site visit will be made. Members will debate any findings arising from the site visit at the Committee meeting.
- 4.2 No hospitality will be accepted.

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