

COUNCIL

26 MAY 2015

REPORT OF THE LEADER AND SOLICITOR TO THE COUNCIL & MONITORING OFFICER

REVIEW OF THE CONSTITUTION AND SCHEME OF DELEGATION

EXEMPT INFORMATION

None

PURPOSE

To obtain Council comments, endorsement and approval of the Constitution and Scheme of Delegation as attached at Appendix 2 to the Report.

RECOMMENDATIONS

That the Council:

- 1) Adopt and approve the changes to the Constitution and Scheme of Delegation as presented in Appendix 1.**
- 2) Endorse the changes to the then reviewed Constitution and Scheme of Delegation.**
- 3) Authorise the Solicitor to the Council to invite the Independent Persons to become members of the Statutory Officer Conduct Committee and**
- 4) Refer the reviewed Constitution and Scheme of Delegation to Audit and Governance Committee for consideration and overview.**

EXECUTIVE SUMMARY

The Constitution and Scheme of Delegation as reviewed are adopted by Council at the first business meeting each year to ensure probity and legal compliance. Each year new legislation requires to be taken into account as well as any political arrangements and changes that have arisen from practical considerations.

In December 2012 a project team was set up to take undertake a comprehensive review of the Constitution. Since that time the Deputy Leader of the controlling group have sought proposals for review. The proposals are attached at Appendix 1. Similarly updates required to the Scheme of Delegation for officers' proposed changes are contained in Appendix 1. The amendments are designed to improve and enhance the democratic process for the public engaging with the Council.

In addition year on year a raft of new legislation requires to be taken into account when updating and reviewing the constitution and Scheme of Delegation prior to adoption at full Council. As well as the Anti Social Behaviour Crime and Policing Act 2014 there have been significant developments in financial regulations including benefits and Council tax.

Articles 13 and 15 of the Constitution require the Solicitor to the Council to maintain, monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect. It also requires formal approval and adoption by the Council at the beginning of each municipal year

New legislation coming into force on 11 May 2015, The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 requires the introduction of a new

Statutory Officer Conduct Committee. The new regulations require that a minimum of two Independent Persons must be invited by the Council to be members of this Committee with full voting rights. Provision exists in the regulations to confer this role upon the existing Independent Persons already appointed in terms of the Localism Act 2011. The proposed changes to accommodate the new regulations are contained within the attached Appendix 1 and affect Part 3 and Part 4 Schedule 8 of the Constitution.

The Scheme of Delegation forms part 3 of the Constitution and also requires approval and adoption by the Council at the beginning of each municipal year in relation to those functions arising from the Local Government Act 1972 and subsequent legislation as well as those functions approved by the Leader in accordance with Section 14 of the Local Government Act 2000.

RESOURCE IMPLICATIONS

No external advice was required for the review this municipal year.

LEGAL/RISK IMPLICATIONS BACKGROUND

Without a Constitution and Scheme of Delegation the Council could not operate effectively. The Council would run the risk of failure to comply with statutory requirements which in turn would expose the organisation to further vulnerability in relation to legal challenge and ultra vires operation. Such challenges could lead to serious financial and reputational damage.

SUSTAINABILITY IMPLICATIONS

It is essential that the Constitution and Scheme of Delegation are lawful, fit for purpose and utilised with a pragmatic approach to improve and enhance the democratic process of the Council and operation of its associated services. In addition there is no provision to cover the cost of legal challenge within any envisaged contingency.

BACKGROUND INFORMATION

The Local Government Act 1972 (as amended) provides *inter alia* for a Constitution and Scheme of Delegation.

The Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by the law, while others are a matter for the Council to choose. Accordingly the Constitution governs the Council's business.

The Scheme of Delegation is a document whereby the Council delegates to certain officers powers to undertake functions and duties on behalf of the Authority. Tamworth Borough Council has operated a Scheme of Delegation for officers for several years. The proposed Scheme of Delegation does not purport to grant officers any additional authority to which is already provided, it merely seeks to formulate arrangements into a workable document.

REPORT AUTHOR

If members would like any further information or clarification prior to the meeting please contact Jane M Hackett, Solicitor to the Council and Monitoring Officer , Ext 258

LIST OF BACKGROUND PAPERS

The Local Government Act 1972

The Local Authorities (Functions and Responsibilities) (England) Regulations 2000

The Localism Act 2011

The Local Authorities (Standing Orders)_(England) (Amendment) Regulations 2015

APPENDICES

Appendix 1 – Proposed changes to Constitution and Scheme of Delegation

Appendix 2 - Link to Constitution and Scheme of Delegation -

<http://democracy.tamworth.gov.uk/documents/s10553/Constitution%2012th%20Edition%20-%20Updated%20September%202014.pdf>

CHANGES TO THE CONSTITUTION & SCHEME OF DELEGATION

Part 3 – Responsibility for Functions

In Page 38 add the following to the existing columns:

<u>Committee</u>	<u>Membership</u>	<u>Functions</u>	<u>Delegation of Functions</u>
<u>Statutory Officer Conduct Committee</u>	<u>Seven comprised of five elected members of whom one must be a member of the Cabinet and two (voting Independent Persons</u>	<u>To recommend to Council any disciplinary action etc. See paper part 1.</u>	

Part 3 – Scheme of Delegation

In Page 48 General Delegations Paragraph 3.5.1, delete the existing Paragraph (h) :

Compassionate Leave

Compassionate Leave may be granted in the following circumstances:

Death/illness of close relative ie., spouse, co-habitee (same or opposite sex), parent, parent-in-law, son, daughter, child of co-habitee, brother, sister, grandparent, grandchild.

Breakdown in partnerships (includes married couples and co-habitees).

Absence allowable as current policies (Consult Human Resources for advice)

and replace with:

“Paid Leave

Allowable as provided in current policies (contact Human Resources for advice)”.

In Page 65 at Paragraph 44 insert (a) at the beginning of the paragraph and add the following paragraph (b):

In respect of the Council’s employees to instruct them to cease work where it may constitute a risk to their or others health and safety or where there is a

breach of a statutory duty. Opposite Paragraph (b) in the Authorising Officer column insert: *Director of Transformation & Corporate Performance.*

In Page 65 at Paragraph 46 after “2012” add “*and Staffordshire County Council’s Charging for Residential Accommodation Guide*”.

In Part D – Housing and Health (pages 66-73) the authorised officer delegations have been amended to reflect the restructure and now include where appropriate delegations to the Director Housing and Health, Head of Land Lord Services and Head of Strategic Housing.

In Page 72, paragraph 15 after “offences” add “*including the instigation of legal proceedings and prosecutions*” delete “and” insert after “1977” “*and under the Protection of Harassment Act 1997*”.

In Page 78 insert into the left hand column of table at Number 22 the following: *Part II – General administration to include undertaking enforcement and amending and publishing the Regulation 123 List.*

In Page 83 add “33” to the delegation for the Local Government (Miscellaneous Provisions) Act 1982 insert the following statutes into the table:

<i>Protection from Eviction Act 1977</i>	<i>Parts I, II & III</i>
<i>Protection from Harassment Act 1997</i>	<i>Sections 1-7</i>
<i>Enterprise and Regulatory Reform Act 2013</i>	<i>Part 6 Miscellaneous Provisions</i>

Part 4 – Rules of Procedure

In Page 113 add a new Paragraph 4.2.12:

Receive Nominations to confer the title of honorary Alderman or Alderwoman on past members who have completed at least three consecutive terms as a councillor of the Borough of Tamworth.

In Page 168 in Schedule 7 delete in line one “relevant regulations relating to” and insert after “Contracts” in line 2 “Regulations 2015”.

Part 4, Schedule 8, Paragraph 4 – Page 169. Delete the existing paragraph “The appointment Committee appointed by the Council will appoint chief officers. That committee must include at least one member of the executive” and replace with:

“The Appointments & Staffing Committee will recommend the appointment of the Statutory Officers – Head of Paid Service, Monitoring Officer and S151 Officer to Council for confirmation.

Other changes that will be made will be to

In Page 170 delete the existing Paragraph 6 Disciplinary Action

Schedule 8

Disciplinary Action

6 Disciplinary action

Suspension. The head of paid service, monitoring officer and chief finance officer may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months.

Independent person. No other disciplinary action may be taken in respect of any of those officers except in accordance with a recommendation in a report made by a designated independent person.

Councillors will not be involved in the disciplinary action against any officer below chief officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to members in respect of disciplinary action.

7 Dismissal

Councillors will not be involved in the dismissal of any officer below chief officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to members in respect of dismissals.

And replace with:

6. DISCIPLINARY ACTION

- 6.1** ***Suspension.** The Head of Paid Service, the Monitoring Officer or the Chief Finance Officer (a Relevant Officer) may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and will last no longer than two months.*
- 6.2** ***CHIEF OFFICERS CONDUCT COMMITTEE.** No other disciplinary action may be taken in respect of any Relevant Officer except in accordance with a recommendation in a report made by the Chief Officers Conduct Committee*
- 6.3** *Where it appears to the Council that an allegation of misconduct by a Relevant Officer requires to be investigated, the Chief Officers Conduct Committee will arrange for an investigation into the allegation to be carried out on its behalf*
- 6.4.** *In the course of the investigation the Chief Officers Conduct Committee may direct:*

- 6.4.1 *that the Council terminate any suspension of the relevant officer and that they are reinstated;*
- 6.4.2 *that any such suspension must continue beyond the two month period in 6.1;*
- 6.4.3 *that the terms on which any such suspension has taken place must be varied in accordance with the direction; or*
- 6.4.4 *that no steps (whether by the Council or any Committee, Subcommittee or officer acting on behalf of the Council) towards disciplinary action or further disciplinary action against the relevant officer are to be taken before a report is made under 6.8 below.*
- 6.5** *The Chief Officers Conduct Committee or a person acting on their behalf may inspect any documents relating to the conduct of the relevant officer which are in the possession of the Council or which the Council has the power to authorise them to inspect.*
- 6.6** *The Chief Officers Conduct Committee or a person acting on their behalf may require any member of the Council's staff to answer questions concerning the conduct of the relevant officer.*
- 6.7** *The Chief Officers Conduct Committee must make a report to the Council:*
- 6.7.1 *stating the committee's opinion as to whether (and if so, the extent to which) the evidence the committee has obtained supports any allegation of misconduct against the relevant officer; and*
- 6.7.2 *recommending any disciplinary action which appears to the committee to be appropriate for the Council to take against the relevant officer.*
- unless they have previously directed that the suspension be terminated and the officer reinstated.*
- 6.8** *The Chief Officers Conduct Committee must, no later than the time at which they make a report under 6.7 above to the Council, send a copy of the report to the relevant officer.*
- 6.9** *Before the taking of a vote at a meeting to consider whether or not to approve a proposal to dismiss a relevant officer the Council must take into account, in particular;*
- a) any advice, views or recommendations of the Chief Officers Conduct Committee*
 - b) the conclusions of any investigation into the proposed dismissal; and*
 - c) any representations from the relevant officer*

6.10 *Members of the Council will not be involved in disciplinary action against any officer below deputy chief officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct, through the Council's disciplinary, capability and related procedures, as adopted from time to time which may allow a right of appeal to members in respect of disciplinary action.*

In Page 194 delete the existing Paragraph 3.4.1 and replace with "Public Contract Regulations 2015".

In Schedule 16 (pages 211 – 220) Local Protocol for Councillors and Officers dealing with Planning Matters insert the tracked changes as follows:

SCHEDULE 16 - LOCAL PROTOCOL FOR COUNCILLORS AND OFFICERS DEALING WITH PLANNING MATTERS

1 INTRODUCTION

1.1 This protocol has been prepared to guide members and officers in the discharge of the Borough Council's statutory planning functions. This protocol will also inform potential developers and the public generally of the high standards of ethical conduct adopted by the Council in the exercise of its planning powers.

1.2 For the avoidance of doubt, when an Executive Member attends and participates in the decision-making of the Planning Committee, s/he does so as a Member of the Committee and not as a Member of the Executive. Accordingly, s/he must, along with other Members of the Committee, exercise an independent mind on issues before the Committee.

1.3 The provisions of this protocol are designed to ensure that planning decisions are taken on proper planning grounds, are applied in a consistent and open manner and that Members and officers making such decisions are held accountable for those decisions. The protocol is also designed to assist Members and officers in dealing with approaches from property owners.

1.4 If you have any doubts about the application of this protocol, you should seek early advice, preferably well before any meeting takes place from the Head of Planning and Regeneration and/or the Solicitor to the Council & Monitoring Officer

1.5 Members should always appreciate that when the Council is dealing with planning matters (especially when determining a planning application at Planning Committee) it must act fairly because it is exercising the Council's discretion as local planning authority. As such, the Committee and each individual member of it should avoid the appearance (as well as the substance) of having pre determined an issue or having a fixed opinion about it, or being biased about the outcome.

1.6 Members should always appreciate that the appearance of what they do is just as important as the substance of it.

1.7 This advice applies, with necessary modification, to Officers as well as Members. In the case of delegated decisions there is a risk of accusations of impropriety because of the lack of any public meeting to discuss applications. If a Member would have to declare an interest and take no part in the processing of or decision on an application, then an Officer in the same position must take no part in it, either directly or in a management/supervisory capacity.

1.8 This advice does not prevent contact between applicant and case officer, nor does it rule out the case officer tendering advice to an applicant or officer, but it does mean that it must be clear on the appropriate file that the ultimate decision on an application was made or verified by another, unconnected officer. In rare circumstances it may be appropriate for the delegation to be declined and an otherwise delegated item put before Committee.

1.9 Make sure that you always comply with the statutory requirements in respect of Disclosable Pecuniary Interests, and apply the rules in the Members' Code of Conduct. Then apply the rules in this protocol.

2. CONTEXT

2.1 Planning is not an exact science. Rather it relies on informed judgement within a firm policy context. It is often 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 actively invites public opinion before taking decisions). This is reinforced by the legal status of development plans and decision notices. It is essential, therefore, that the planning process is characterised by open and transparent decision-making.

2.2 One of the key purposes of the planning system is to ensure development takes place through a framework whereby the public interest is well represented at every point from the preparation of Development Plans and policies, the determination of planning applications and in undertaking enforcement action. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. It is important, therefore, that planning authorities should make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable planning reasons. The process should leave no grounds for suggesting that a decision has been partial, biased or not well-founded in any way.

2.3 This protocol applies to both Councillors and planning officers who become involved in operating the planning system – it is not therefore restricted to professional town planners and Planning Committee members. The successful operation of the planning system relies on mutual trust and

understanding of each other's role. It also relies on both Members and Officers ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so.

2.4 The Human Rights Act provides additional safeguards for citizens, and encourages the application of best practice. Article 6 is concerned with guaranteeing a right to procedural fairness, transparency and accountability in the determination of civil rights and obligations.

3. GENERAL PLANNING CONSIDERATIONS

3.1 The Council's Cabinet is responsible for preparing and recommending to Council the adoption of the Statutory Development Plan, Development Briefs and other forms of Supplementary Planning Guidance. Members of the Planning Committee, when determining planning applications, must have regard to the Council's policies contained in the Development Plan and Supplementary Planning Guidance adopted by the Borough Council together with Government Guidance contained in the National Planning Policy Framework and other material considerations. Where this is relevant, applications must be determined in accordance with the Plan unless material considerations indicate otherwise.

3.2 Tamworth Borough Council's Code of Conduct for Members must be complied with throughout the decision making process, which includes mandatory requirements with regard to member interests.

3.3 The responsibility for declaring an interest rests with individual Members and Officers of the Council. This protocol outlines further rules applicable to the planning process in Tamworth.

3.4 Councillors and Officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate, whilst Officers are responsible to the Council as a whole. This applies equally to traditional forms of political management based on committees and to models based on forms of executives or elected mayors. 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, the executive or a committee. A successful relationship between Councillors and officers can only be based upon mutual trust, respect, courtesy and understanding of each others positions. This relationship, and the trust which underpins it, should never be abused or compromised.

3.5 Both Councillors and Officers are guided by codes of conduct. Tamworth's Code of Conduct for Members, provides standards and guidance for Councillors. Employees are subject to the Employees' Code of Conduct. In addition to these codes, a Council's standing orders set down rules which govern the conduct of Council business.

3.6 Tamworth's Code of Conduct for Members sets out the requirements on 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, 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 the Planning Committee or Executive, or who become involved in making a planning decision is the requirement that a Member should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

3.7 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.

3.8 From time to time applicants may submit confidential information for example a financial appraisal in support of an application. Such appraisals will be taken into account in relation to determination of the application but such information due to its confidential nature should not be disclosed to third parties and members of the public.

4 LOBBYING AND ATTENDANCE AT PUBLIC MEETINGS

4.1 As a Member of the local planning authority (LPA), and particularly if you are a Member of TBC, you are likely to be approached by members of the public in connection with planning policies or individual planning applications which have been or are about to be made to the Council. The approach may come from an applicant (or his/her agents), or from an objector, or indeed from an amenity society or similar grouping. Ideally, such approaches should be discouraged, or redirected to planning officers, but realistically they cannot be avoided. You should deal with those approaches having careful regard to the advice in this guidance note.

4.2 Especially with the smaller applications, applicants will frequently wish to seek advice on making or promoting their proposals. If an applicant, or potential applicant, approaches you asking for such advice that person should immediately be directed to the appropriate planning officer in the Directorate of Communities, Planning and Partnerships. Officers will happily assist applicants who are unsure of what to do.

4.3 Approaches may be by way of letter, e-mail or personally either over the telephone or perhaps at a surgery. If the approach is by letter, or e-mail, the advice is that the letter should be copied to or handed to a planning officer. The views expressed can then be taken into account by the case officer. As a courtesy to the writer, the letter, or e-mail, can be simply acknowledged, together with confirmation that it has been passed to the Planning Officer and will be taken into account.

4.4 Personal approaches to Members are more difficult. You may feel that you are "put on the spot" by the person concerned and in such cases the response must be carefully considered.

4.5 In such cases, you may listen to the views being expressed, you may also ask questions by way of clarification. In some cases it might even be appropriate to identify aspects of the proposal which might cause you concern or to suggest possible contrary views to the person making the approach to assess their reaction or simply to make sure that the views they are expressing are in the full knowledge of all the arguments.

4.6 However, you should NEVER

4.6.1 state unequivocally that you are opposed to or in favour of a particular outcome to an application;

4.6.2 promise to or actually campaign for or lobby other Members for a particular result of an application;

4.6.3 promise to take a particular stand or vote in a particular way when an application is presented for decision.

4.7 You may express an understanding of, and sympathy with or opposition to particular aspects of the proposal, but you must (rarely) sympathy for a particular view. You may even express a preliminary view on an application, but you must make it clear that:

4.7.1 you are expressing a view before the meeting and you will only make a final decision at the meeting itself

4.7.2 that you are reaching your current view on the basis of the facts you know at that time and that it does not preclude you from reaching a different decision in the future if further or new circumstances come to light; and

4.7.3 when at the meeting making the decision you state that you are not bound by previous decisions or comments that you have made but that you are considering the application on the information before the meeting and with an open mind.

4.8 It would be most unwise to advise any applicant of the likely outcome of an application, even where you are fully aware that the planning policies for the particular area would be very likely to support or conflict with the proposal. You should also always tell a constituent that you can give no promises on how you will speak or vote at a meeting and that you will listen to all the arguments before coming to your own personal decision.

4.9 It should go without saying that it is highly inappropriate to negotiate in respect of a planning application directly with an applicant or with the planning officer on behalf of an applicant or objector. Although it may be tempting to suggest to an applicant that their scheme might be improved by their

addressing certain factors, such views should only be expressed via the case officer. That way, any promises made by the applicant can be properly noted and incorporated into planning conditions or any Section 106 agreement.

4.10 If you are unwittingly drawn into doing this, as unfortunate as it may be, you should consider whether you are compromised. If you are now effectively committed to vote for or against the application, can no longer consider the application purely on its merits, or are likely to be perceived as committed to acting as an advocate for either the applicant or the objectors, you should take no further part in its processing and absent yourself from the discussion at the meeting when it comes up for decision.

4.11 You must not put pressure on officers to put forward a particular recommendation. You may ask questions and submit written views, and provide the officers with any local knowledge which you consider to be material. However, outside a meeting, you should only discuss a matter with that officer who is authorised by the Director Communities, Planning & Partnerships or Head of Service to discuss such issues with Members. Officers must act in accordance with the Council's Code of Conduct for Officers and their own professional codes of conduct and their recommendations will be presented on the basis of professional expertise and independence. You must accept that, on occasions, this may be at odds with the views and opinions of individual Members and at times, the decision of the Planning Committee.

4.12 You may certainly help members of the public with procedural advice. Many members of the public come into contact with planning perhaps only once or twice in their lifetimes and so may not be familiar with such things as:

4.12.1 how to submit a planning application;

4.12.2 how to inspect a planning application and to make representations in support of to object to an application;

4.12.3 how to find out the relevant planning policies;

4.12.4 which planning applications are determined by officers under delegated powers and which come before the Planning Committee;

4.12.5 whether they can attend the meeting of the Planning Committee and make verbal representations.

You can happily help constituents with this sort of information, but it is a matter of judgement where simple help stops and 'professional advice' begins.

4.13 If you feel that despite having taken all the necessary precautions, you could reasonably be perceived as having pre-determined an application or to have been unduly influenced by your involvement, then you should explain at the meeting that you do not intend to speak and vote because of this and leave the meeting room. This can then be recorded in the minutes.

4.14 Whilst Members involved in making decisions on planning applications may begin to form a view as more information and opinions become available, a decision can only be taken by the Planning Committee after all available information is to hand and has been duly considered. In this regard, any political group meetings prior to the Committee meeting should not be used to determine how Councillors should vote. Decisions can only be taken after full consideration of the Director's report and any public speaking at the Planning Committee.

4.15 The Chair and vice Chair of the Planning Committee should attend a briefing with Officers prior to a Committee, to help give an effective lead in the Committee.

5 SITE VISITS

5.1 Except in accordance with the following provisions of this part of the protocol, you should avoid entering any premises which are the subject of a planning application.

5.2 Whilst the Council has right to enter property on notice to inspect, individual Councillors have no such rights of entry. You should not enter any neighbouring premises unless there is general public access to those premises or if, for instance, they are crossed by a public footpath. Even where the public normally have access to the premises, as in the case of a shop, that invitation is for the purpose of shopping and not for inspection. It may be appropriate for you to view the site from public vantage points, but you should be extremely wary of any situation where you need to gain permission to view a site.

5.3 Where you feel that you need to inspect the site before you can make up your mind on the application, the same is probably true for all members of the Planning Committee. If you genuinely feel that you cannot make up your mind about an application until you have seen the site then the correct course is to attend the appropriate deciding meeting and request or move a site visit stating the reasons. On an official site visit you will attend the site with other Members, with senior Planning Officers in attendance and therefore with professional advice to hand to assist you in interpreting the proposal and what you see, and ensure that any information gained in the site visit is reported back to all members of the Planning Committee.

5.4 Members and Officers are obligated not to waste Council resources and, as such, a site visit is only likely to be necessary if:

5.4.1 the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers (although if that is the case, additional illustrative material should have been requested in advance); or

5.4.2 there is good reason why the comments of the applicant and objectors cannot be expressed adequately in writing, or the proposal is particularly contentious.

5.5 The site visit shall take place in accordance with strict guidelines as follows:

5.5.1 Under the Chair's guidance the role of the Planning Officer attending the site visit will be to brief Members on the planning application(s) the subject of the visit and explain the reasons why the application was deferred for a visit.

5.5.2 The Chair (or Member chairing the visit) shall explain the purpose of the visit and how it will be conducted to all persons present at the site visit.

5.5.3 Members of the Planning Committee should inspect the site as a group. They must ensure that they see or inspect all relevant matters so they can fully assess the planning merits of the proposal.

5.5.4 Members may ask questions, through the Chair, of the applicant or any third parties on the site.

5.5.5 Members should not enter into discussions of the merits of the proposal with the applicant, third parties or other Councillors during the site visit.

5.5.6 Members shall be seen to be perfectly scrupulous and fair to both the applicant and third parties at all site visits.

5.5.7 Members should not leave the site visit until the Chair has indicated the meeting has ended.

5.5.8 Officers shall ensure, where practical, that applicants, Members and interested parties are invited to attend the visit and that they are able to view all key parts within or adjoining the site.

5.6 The purpose of a site visit conducted by Members and officers is to gain information relating to the land or buildings which are the subject of the planning application and which would not be apparent from the planning application to be considered by the Planning Committee. A site visit may also assist Members in matters relating to the context of the application in relation to the characteristics of the surrounding area. Discussions on site visits shall be confined to the application as currently submitted. A Member of Planning Committee who has a personal and prejudicial interest in a planning application, or who has acted in a way that amounts to predetermination, can not attend the site visit in his or her capacity as a Member of Planning Committee. However, the Member concerned would be entitled to attend the site visit in his or her personal capacity as a member of the public.

5.7 Results of the site visit will be reported to the next available meeting of the Planning Committee and should any new material considerations have been identified the application will be deferred for a further report.

5.8 Once the results of a site visit have been reported back to Planning Committee, Members of the Planning Committee who were not present at the site visit can ask questions, offer opinions, take part in discussions and vote in relation to that planning application.

5.9 If you do attend an official site visit, or otherwise visit a site, this should not be considered to be an opportunity to discuss the matter with either the applicant or any objectors. You may suggest questions to be put to the applicant or objectors, but any discussion of the merits of the application should be reserved to the Planning Committee meeting.

5.10 If you are invited onto land, either by a constituent or applicant, you should have careful regard to the advice in part 2 and (if appropriate) part 9. Remember that such activities are very much open to misinterpretation by the public at large. If you have been invited onto a site it would be as well to announce that when speaking on the application at the Planning Committee meeting.

5.11 Ward Councillors and MPs may attend and participate in site visits putting forward their point of view. However, the determination of planning applications rests solely with the Planning Committee and no indication should be given by Members of the Committee of the likely decision during the course of the site visit.

5.12 Prospective election candidates who are not already Members of the Council are welcome to attend a site visit on the same basis as members of the public.

6 MEETINGS OF THE PLANNING COMMITTEE

6.1 A clear distinction has to be drawn between a Member and an Officer attending a Public Meeting and their roles when they attend meetings of the Planning Committee.

6.2 No material revision to any planning application which might lead to a change in the recommendation of the Director shall be considered at Planning Committee unless it has been submitted at least 14 clear days before the relevant Planning Committee meeting, and has been the subject of a written report prepared by the Director of Communities Planning and Partnerships.

6.3 Chairship – The chair should ensure:

6.3.1 Members' comments at Committee only relate to the planning merits of the application before them;

6.3.2 Reference at Committee to non-planning issues by the public/Members are discouraged;

6.3.3 The cross-questioning of speakers should only take place if there is need for clarification of what a speaker has already outlined; and

6.3.4 Late evidence from public speakers – Members and the public should be made aware that the late submission of evidence will not be permitted at Committee as late submission can lead to allegations of unfairness.

6.4 Voting –

6.4.1 A decision is made by simple majority of those members voting and present in the meeting at the time the motion is put.

6.4.2 if there are equal numbers of votes for and against the Chair has a second or casting vote. There is no restriction on how the Chair of the meeting chooses to exercise this vote

6.5 Training

6.5.1 Members dealing with planning issues will be required to attend training sessions each year to receive guidance in relation to planning regulations and procedures and on declarations of personal or prejudicial interests. This training should include a balance of the following:-

- Organised visits to review permissions granted, with evaluation and lessons learned presented as a paper;
- Short (half day) sessions on special topics of interest or where overturns have indicated problems with planning policy;
- Special topic groups to consider difficult and challenging issues in depth;
- Formal training by internal and external speakers;
- Visits to other authorities who have received good inspection / audit feedback;
- Quick presentations by officers on hot topics, e.g. new legislation, white papers and their impact, followed by a brief question and answer session;
- Attendance at inquiries where officers have identified that there is something specific to learn which will benefit members.

6.5.2 The report of the Audit Commission 'Building in Quality' recommend that Councillors should revisit a sample of implemented planning permissions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision making, thereby strengthening public confidence in the planning system, and can help with reviews of planning policies. Such reviews are best undertaken at least annually. They 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. Briefing notes should be prepared on each case. The Planning Committee should formally consider the review and decide whether it gives

rise to the need to reconsider any policies or practices. The Director Communities, Planning and Partnerships will take responsibility for organising the training and the reviews.

7 OUTSIDE BODIES

7.1 Many Members are also members of outside bodies. In some cases you may have been nominated for membership by the Council. In other cases you may simply have joined because of an empathy with that body's view or because of a feeling of civic duty to assist. In some cases you may have been invited to join by the body itself. The advice in this paragraph applies equally to Parish and County Council Members.

7.2 It may well be that the body on which you sit is called on to respond to a consultation on a planning application. There is no absolute bar on your attending that meeting, but if you do you may find it difficult to avoid the problems set out above. You might find it appropriate to avoid taking part in the discussion if you know you are likely to be part of the meeting which makes the ultimate decision on an application. If you do take part in the meeting of the consultative body, it would be advisable for you to declare at the start that you are going to listen to the views expressed by the body but that you cannot be bound by any decision of that body, neither are you bound to take the same line at the Borough Council meeting deciding the application.

7.3 If you are an employee of, hold paid office in, or have a significant shareholding in a body which has submitted a planning application, you will have a Disclosable Pecuniary Interest in the application and must not participate in the discussion or vote on the application unless you have obtained a dispensation from the Monitoring Officer. Unpaid directorships or membership of the Management Committee of an organisation is likely to amount to bias and so preclude your participation on this matter at Planning Committee. Ordinary membership of that organisation may not amount to bias, but you should still consider carefully whether an applicant or objectors might perceive you as being biased as a result of your membership, in which case you should not participate in this matter.

7.4 As a County Councillor, it may be appropriate for you to take part in a meeting even though that meeting is deciding an application made by the County or is considering a response to an application which is made to the County Council. However, if you took the decision within the County Council to submit the planning application, or if you are likely to be part of the County Council meeting that decides the application (as appropriate) you might consider it appropriate not to take part in the Borough Council meeting that considers the matter.

7.5 Similarly, if you took part in the decision within the Borough Council to submit the planning application, it would not be appropriate for you to take part in the planning meeting which considers planning consent for that scheme. A Member who feels obliged to support a Council scheme at the Borough Council because he or she supported the scheme when it was

initiated at the meeting prompting it might have difficulty demonstrating that all the proper planning considerations were taken into account when considering the grant of consent.

8 POLITICAL PARTIES

8.1 As a general rule, party politics should have no place in the consideration of individual planning applications. The views of your party may be a material consideration, but should never dictate the outcome or replace your personal judgement on an application.

9 DISCLOSABLE PECUNIARY INTERESTS

9.1 The Disclosable Pecuniary Interests which members are required to register are now defined by The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, the list of definitions is appended to this Guidance Note.

9.2 Where you have a Disclosable Pecuniary interest in an item of business, you should disclose that interest to the meeting before or at the start of the consideration on that matter, or as soon as it is apparent and you should not participate in the discussion of, or vote on, the item of business. Failure to comply with these requirements may constitute a criminal offence. The Council's Standing Orders also require you to withdraw from the room in which the meeting is being held for the duration of consideration of the item of business.

9.3 Where you have not previously registered a Disclosable Pecuniary interest in a matter, you are now required to do so within 28 days of becoming aware of the interest, or of the date when the agenda for the meeting was sent out to members, whichever is the earlier.

10 OTHER MEMBERS' INTERESTS

10.1 The Council has adopted a Members' Code of Conduct which requires members to register and disclose 'Non-Disclosable Pecuniary Interests and Non-Pecuniary Interests' as defined in that Code (the full requirements of the Members' Code of Conduct are set out in Part 5 of the Council's Constitution). For ease of reference, these interests are referred to as "Other Interests" in this Guidance Note.

10.2 A member will have an "other interest" in an item of business where:

10.2.1 A decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of the member, or of a member of that member's family or a person with whom they have a close association to a greater extent than it would have on the majority if the Council Tax payers, ratepayers or inhabitants of the ward or electoral area for which the member has been elected or otherwise of the authority's administrative area; or

10.2.2 it relates to or is likely to affect any of the interests listed in the Appendix to the Code (appended to this Guidance Note), but in respect of a member of family or a person with whom the member has a close association, and that interest is not a Disclosable Pecuniary Interest.

10.3 Where you attend a meeting at which you have an "other interest" in an item of business, you must make a verbal declaration of the existence and nature of that interest at or before the consideration of the item of business or as soon as the interest becomes apparent.

10.4 The Ombudsman has previously advised that the Council is at risk of a finding of maladministration if a Member who has an interest in an application exercises any of the powers or privileges accorded to Members in respect of that application. There may be a general perception that calling-in a delegated item to Planning Committee ensures that the public will conclude that everything is 'above board'. The Ombudsman does not share that view, so a member who has a Disclosable Pecuniary Interest or an "other interest" in a planning application should not exercise powers of call-in in respect of that application.

10.5 In some cases you may not become aware of your potential interest until after you have submitted comments as local Member or taken some other action. If this happens, you should contact the case officer urgently as soon as you realise the situation so that Officers can take the appropriate action. You should also register this interest with the Monitoring Officer.

10.6 If you do find yourself having to disassociate yourself from an application, you may well feel that your constituents have been disenfranchised. This does not entitle you to set aside this advice. In these cases it is the Ombudsman's view that:

10.6.1 You should invite a Member from the same ward or from a neighbouring ward to take an interest in the matter

10.6.2 Constituents who approach you should be invited to contact that other Member or any other Member of the deciding body

10.6.3 You should avoid expressing any view about the application to other Members (save as set out below) and you must never communicate to other Members of the deciding meeting what you would have said had you been able to do so.

10.7 Having said this, in some circumstances it may be appropriate to comment on a planning application in your private capacity. If this is the case your comments can be reported simply, as third party comments rather than as local/ward Member comments, but to ensure that your comments are treated properly only write in on plain, notepaper, never headed Councillor notepaper, and try to avoid contact with the case officer. If you do need to contact the case officer, please remember to advise him/her that you do have an interest and are calling/visiting purely as an ordinary resident.

11 APPLICATIONS BY MEMBERS AND OFFICERS

11.1 Nothing in this Guidance Note should be taken to prevent a member or an officer of the Council from making an application for planning permission in their personal capacity. Where a member or an officer does make such a planning application, it will be dealt with in accordance with these provisions, which follow the recommendations of the Local Government Association.

11.2 If you are making an application, or if a close relative or business partner is making one, you or the agent should make this clear in a covering letter with the application. A copy of the letter will be lodged with the Monitoring Officer. Equally, if you act professionally as agent for an applicant or objector this should be declared in the same way.

11.3 If the application is one which would normally be dealt with under delegated powers the Director of Communities, Planning and Partnerships may decline the delegation and the matter submitted to Planning Committee for determination.

11.4 Prior to the matter being included on a Planning Committee agenda the file and draft report will be submitted to the Monitoring Officer. The Monitoring Officer will certify that the application has been properly dealt with and the report will show this. If it cannot be so certified, the matter will be the subject of a Monitoring Officer's report to full Council prior to any decision being made. You will be asked to consent to the eight week determination period being extended to allow for this extra procedure to take place.

11.5 This guidance applies equally to applications submitted through or which affect companies which are owned by a Councillor or Officer. This includes companies in which a Member or Officer has a controlling or significant interest. You are reminded of the rules regarding pecuniary interests as well. Nothing in this guidance overrides or alters that position.

11.6 Applications which affect an Officer (as opposed to a Member) will be dealt with in the usual manner. Any letter of representation should identify you as an Officer of the Council or, if submitted by a close family member or on behalf of a company in which you or your family are interested, identify that relationship. The file may be referred to the Monitoring Officer before a decision is made if there is a real potential for an allegation of improper influence. In such cases the Monitoring Officer will be asked to certify that the correct procedures have been followed and that all other matters have been dealt with properly. If the Monitoring Officer considers it appropriate, an otherwise delegated item may be submitted to Planning Committee for decision. This will be the norm when applications affect any Officer whose duties include direct involvement in the planning process. As set out above, this review procedure might result in a Monitoring Officer's report being submitted to Council depending on the application submitted.

11.7 It should go without saying that any attempt by an Officer to improperly influence the outcome of a planning application in which there is a personal interest, other than strictly in accordance with normal procedures and the above guidance, would be looked on as a matter of the gravest misconduct and is likely to result in immediate suspension and dismissal.

11.8 Applications by or which affect Directors or the Monitoring Officer may be the subject of external review if the Chief Executive (after consultation with the Mayor, Chair of Planning Committee and all Group Leaders) considers it appropriate.

12 PUBLIC SPEAKING

12.1 Public speaking as currently constituted allows an objector to an application which is recommended for approval the opportunity to address the Planning Committee. The Ombudsman has made it clear that if you have declared an interest as a Member it is highly inappropriate for you then to attempt to exercise your right as an objector to address the Committee. The Ombudsman has made it clear that his view is that this completely defeats the object of the declaration of interest.

12.2 Even more so, under no circumstances should you exercise a right of reply if you are an applicant or act (professionally or as a friend) on behalf of an applicant.

12.3 At no time during a meeting should you allow a member of the public to communicate with you (either orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.

13 APPLICANT/OBJECTOR MEETINGS

13.1 For the larger applications it is not unusual for Members to be invited to "presentations" by both promoters and opposers of the scheme. You are advised to be extremely cautious about accepting such invitations. If, for instance, the invitation is to attend a presentation at a smart hotel where a lavish buffet is laid on for those attending it would be highly inappropriate for you to attend.

13.2 In some limited circumstances it may be appropriate for you to attend such presentations, but you should always seek advice from the Director of Communities, Planning and Partnerships or the Solicitor to the Council before attending. It would also be wise to check whether the invitation to attend has been extended to Planning Officers, and if it has not, or more importantly if the organiser has intimated that Planning Officers are definitely not welcome, then it would be less appropriate for you to attend.

13.3 If having weighed the above advice you decide that you do wish to attend, you should be careful not to express any views at the presentation, should decline to express a view if called on to do so, and should be careful in the way you phrase any questions that you ask. You should make it clear to

the organisers that their presentation material should be copied to the case officer so that he/she may take it into account and advise on it.

13.4 Any hospitality offered to a Member over the value of £25 (this excludes reasonable and normal meeting refreshments such as tea, coffee and light snacks), whether or not accepted, should be notified to the Monitoring Officer who will record it in accordance with paragraph 5 of the Members' Code of Conduct.

14 DECISIONS CONTRARY TO OFFICER RECOMMENDATION AND/OR THE DEVELOPMENT PLAN

14.1 Legislation requires that where the Development Plan is relevant, decisions should be taken in accordance with it unless material considerations indicate otherwise (Section 38 (6), Planning & Compulsory Purchase Act 2004). Local members may be well placed to identify circumstances in which it might be justified to determine a particular application as a departure from the policies set out in the Development Plan.

14.2 If the Council wants to approve an application which is not in accordance with the Development Plan, the material considerations which lead to this conclusion must be clearly identified by Members and they must also clearly justify why they are overriding the Development Plan. The personal circumstances of an applicant will rarely provide such grounds. The officer should be given opportunity to explain the implications of the contrary decision.

14.3 If the officer's report recommends approval of an application which conflicts with the Development Plan, the report will include full justification for this.

14.4 Where the Committee has concerns about the validity of reasons for approving or refusing an application, consideration should be given to deferring the application to the subsequent meeting to another meeting to have the putative reasons tested and an updated report produced for consideration at the next meeting at which a decision will be made.

14.5 When a planning application has been deferred following a resolution of "minded to approve" or "minded to refuse", contrary to the officer's recommendation, the Chair shall put to the meeting a proposed statement of why the Director of Communities Planning and Partnership's recommendation for refusal or approval is not considered acceptable to the Committee, which, when agreed by the Committee, will be formally recorded in the Minutes.

14.6 When a planning application has been deferred following a resolution of "minded to approve" "or minded to refuse", contrary to the officer's recommendation, then at the subsequent meeting the Director Communities, Planning & Partnerships shall have the opportunity to respond both in a further written report and orally to the reasons formulated by the Committee

for granting or refusing permission. If the Planning Committee is still of the same view, then it shall again consider its reasons for granting or refusing permission, and a minute of the Committee's reasons should be made. Such reasons should be clear and justified. Councillors should be prepared to explain in full their planning reasons for not agreeing with the officer's recommendation. Pressure should never be put on officers to 'go away and sort out the planning reasons'. The officer should also be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome, and chances of a successful award of costs against the council, should one be made

14.7 If a councillor is concerned about an officer recommendation they should discuss their areas of difference and the reasons for that with officers in advance of the committee meeting.

If the Planning Committee makes a decision contrary to the Director of Communities Planning and Partnership's recommendation, the officer should be given an opportunity to explain the implications of the contrary decision. The Courts have expressed the view that reasons for the contrary decision should be clear and convincing. The personal circumstances of an applicant will rarely provide such grounds.

14.8 A senior legal officer should always attend meetings of the Planning Committee to ensure the probity and propriety of the planning and decision-making processes. Whilst authorities make extensive use of standard wordings for conditions, in the case of any conditions which Members may wish to add or amend, an officer should be asked to draft any such conditions and bring them back for approval at the subsequent meeting of the Planning Committee.

14.9 Where there is any doubt as to the voting or of the actual counting of votes in relation to any particular application, clarification should be immediately sought by the Chair prior to dealing with the next agenda item, by requesting from each member as to how they have voted, noting this and the member's name.

15 CONCLUSION

15.1 At all times you must appreciate that as a Member of the Council in general and as a Member of Planning Committee that you take on an onerous duty. As the Code of Conduct points out, your duty is to the whole community and not to any one section of it. By the same token, the whole community has a right to look to you and to the Council as a whole to consider matters dispassionately, having regard only to the relevant factors and disregarding irrelevant ones.

16 GUIDELINES ON PRE-DECISION DISCUSSIONS

16.1 It should always be made clear at the outset that the discussions will not bind the Council to making a particular decision and that any views expressed

are personal and provisional. By the very nature of such meetings not all relevant information will be to hand, neither will formal consultations with interested parties have taken place.

16.2 Advice should be consistent and based upon the Development Plan and material considerations. There should be no significant difference of interpretation of planning policies between planning officers.

16.3 A written note should be made of the meeting. If it is known beforehand that a meeting is likely to be contentious arrangements should be made for at least two officers to be present. What was discussed or concluded should be confirmed in a follow up letter, and the receipt of any written material also confirmed. If the other parties produce a meeting note it should always be carefully scrutinised, compared against the notes taken by Council Officers and any discrepancies challenged in writing. Care must be taken to ensure that advice is not partial (nor seen to be) otherwise a subsequent report could appear to be advocacy.

16.4 To maintain impartiality, as well as the appearance of impartiality, it is preferable that Councillors do not take part in such discussions. However, should there be occasions when Councillors are involved they should always be advised by appropriate professional officers from the Council (which must always include a senior Planning Officer) and be authorised on a case by case basis..

16.5 The involvement of Councillors in such discussions should be recorded in the relevant Panel or Committee minutes.

16.6 A senior legal officer always attends the meeting to ensure that procedures have been properly followed. Whilst the Council makes extensive use of standard wording for conditions, in the case of any conditions which councillors may wish to add to or amend, officers have delegated powers to draft such conditions which need to be reasonable and relevant to the permission.

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