

Report of the City Solicitor and the Assistant Director Planning, Highways and Transportation to the meeting of Full Council to be held on 21 January 2014.

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Subject:

REVIEW OF THE PLANNING CODE OF CONDUCT

Summary statement:

This report sets out proposals and options for amendments to the Council's Planning Code of Conduct in the light of adoption within the Council's Constitution of a local Members Code of Conduct by Council. The proposed amendments also take account of the provisions of Section 25 of the Localism Act 2011. The Council's Standards Committee considered the proposals at its meeting on 13 November 2013 and the Council's Governance and Audit Committee at its meeting on 10 January 2014.

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Portfolio:

Environment and Culture



1. SUMMARY

- The Localism Act 2011 replaced the previous national standards regime for elected members with a new local regime based on local codes of conduct. This report forms part of the process of updating the Planning Code of Conduct in the light of those changes.

2. BACKGROUND

- The proposed Planning Code of Conduct was taken to Standards Committee on 13 November 2013 and has been amended in line with their recommendations. Standards Committee wished to ensure that elected members who attended planning panels and who had disclosable pecuniary interests in agenda items, whether or not they were members of the panel, should declare those interests and leave the meeting. The report to Standards Committee, which sets out the wider issues relating to the proposed Planning Code of Conduct, forms Appendix 1 to this report.
- The proposed Planning Code of Conduct was then taken to Governance and Audit Committee on 10 January 2014 and has been further amended in line with their recommendations. Governance and Audit Committee wished to ensure that planning site visits should only take place where there was a clear and substantial benefit in having a site visit and sought clarification of the provisions ensuring that pressure is not put upon officers to make a particular recommendation on an application.

The proposed Planning Code of Conduct as amended forms Appendix 2 to this report.

3. OPTIONS

Members are asked to consider whether they support the revised Planning Code of Conduct.

5. FINANCIAL & RESOURCE APPRAISAL

- Training initiatives will be facilitated through existing member training budgets.

6. RISK MANAGEMENT AND GOVERNANCE ISSUES

See the attached report to Standards Committee.

7. LEGAL APPRAISAL

- See the attached report to Standards Committee.

8. OTHER IMPLICATIONS

8.1 EQUALITY & DIVERSITY

- Central to the Code of Conduct is the need to secure fairness and transparency of regulatory decision making.

8.2 SUSTAINABILITY IMPLICATIONS

Proposed review of planning decisions would give opportunities to review the local impact of planning decisions in addressing sustainability issues.



8.3 GREENHOUSE GAS EMISSIONS IMPACTS

➤ No direct implications.

8.4 COMMUNITY SAFETY IMPLICATIONS

No direct community safety implications

8.5 HUMAN RIGHTS ACT

➤ The Council must consider Human Rights implications when making planning decisions. A robust planning code of conduct should assist in ensuring proportionate and fair decision making.

8.6 TRADE UNION

➤ None.

8.7 WARD IMPLICATIONS

➤ None.

8.8 AREA COMMITTEE ACTION PLAN IMPLICATIONS (for reports to Area Committees only)

➤ None.

9. NOT FOR PUBLICATION DOCUMENTS

➤ None

10. RECOMMENDATIONS

That Council adopt the revised Planning Code of Conduct.

11. APPENDICES

- Appendix 1 – Report to Standards Committee on 13 November 2013
- Appendix 2 – Revised Planning Code of Conduct

12. BACKGROUND DOCUMENTS

Probity in Planning for Councillors and Officers [Local Government Association/Planning Advisory Service, April 2013]

http://www.pas.gov.uk/c/document_library/get_file?uuid=e0cde66c-8cda-4f56-b784-a45cdd41f089&groupId=10180

Openness and transparency on personal interests: guidance for councillors
[Department for Communities and Local Government, September 2013]

[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/240134/
Openness and transparency on personal interests.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/240134/Openness_and_transparency_on_personal_interests.pdf)

Report of the City Solicitor and the Assistant Director Planning, Highways and Transportation to the meeting of the Standards Committee to be held on 13th November 2013.

Subject:

REVIEW OF THE PLANNING CODE OF CONDUCT

Summary statement:

This report sets out proposals and options for amendments to the Council's Planning Code of Conduct in the light of adoption within the Council's Constitution of a local Members Code of Conduct by Council. The proposed amendments also take account of the provisions of Section 25 of the Localism Act 2011.

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Portfolio:

Environment and Culture

Improvement Committee Area:

Environment and Waste Management



1 SUMMARY

- 1.1 This report sets out proposals for amendments to the Council's Planning Code of Conduct after review of its contents and consultation with the Executive Portfolio Holder and the chairs of the Regulatory and Appeals Committee and the two Area Planning Panels. The proposed amendments reflect changes to the Council's local Members Code of Conduct with regard to the rules relating to members' interests and also endeavour to clarify issues of predetermination of planning matters in the light of section 25 of the Localism Act 2011. Miscellaneous other amendments have been made in the light of experience and to give greater clarity to the Code. The proposed revised Planning Code is attached in the Appendix to this report.

2 BACKGROUND

- 2.1 Part 2 of Chapter 5 of the Constitution contains the Members and Officers Planning Code, which gives members of this Committee advice on probity issues related to making decisions on town and country planning matters. The Planning Code does not form a part of the adopted Members' Code of Conduct but is a separate document, which is both supportive of the Members' Code of Conduct and the source of expanded guidance in the particular area of planning. The Planning Code is intended to provide advice to Members so as to minimise the prospect of legal or other challenge to decisions.
- 2.2 Following the provisions of the Localism Act 2011 relating to member Interests coming in to force, Council adopted a new local Member Code of Conduct in July this year. As a result, the existing Planning Code requires updating.
- 2.3 The Localism Act 2011 places requirements on Councillors to notify the Monitoring Officer of or to disclose at committee Disclosable Pecuniary Interests (DPI) and prohibits participation in the business of the Council where a Councillor has such an interest. The current list of DPIs is set out in the list attached to the Members' Code of Conduct.

3. DETAILS OF PROPOSED AMENDMENTS TO THE PLANNING CODE

- 3.1 The proposed amendments to part 3 of the Planning Code set out the circumstance where members who have a pecuniary interest in a planning matter as defined by the Members Code of Conduct would be required to register or disclose such an interest and not take any part in the processing or determination of the related planning matter. The proposed amendments to part 3 of the code also set out circumstances where planning members would be expected to disclose non-pecuniary interests where circumstances might give rise to a public perception that such a member's dealings with a planning matter may be governed not just by issues of the public interest.
- 3.2 Paragraph 4 makes a clear distinction between the implications of the member's code of conduct with regard to planning decisions involving an obligation to declare

members interests; and common law issues of predetermination and bias. Section 25 of the Localism Act 2011 recently clarified the law on members' predetermination in that it makes clear that the mere fact that a member has previously expressed views about a matter does not of itself amount in law to proving that they have closed their minds with respect to a final decision. The proposed revisions to the Planning Code however emphasise the need for planning members to exercise caution to ensure they both approach, and can be perceived to have approached, planning matters with an open mind.

- 3.3 Part 16 has been amended to give greater clarity as to how decisions taken at the Regulatory and Appeals Committee or Planning Panels should be taken in order to ensure transparency, fairness and compliance with the legal obligation to have regard to material planning considerations.
- 3.4 Part 17 of the proposed revised Code gives further clarity to how requests for site visits should be appropriately be considered by Planning Panels or by the Regulatory and Appeals Committee and the appropriate protocol for undertaking site visits.
- 3.5 Miscellaneous other minor amendments of a drafting nature or to add greater clarity to the Code have also been made.

5. **OPTIONS**

- 5.1 Members are asked to consider whether they support the proposed revised Members Planning Code of Conduct.

6. **FINANCIAL AND RESOURCE APPRAISAL**

- 6.1 Training initiatives will be facilitated through existing member training budgets.

7. **LEGAL APPRAISAL**

- 7.1 The Localism Act 2011 brought to an end the previous standards regime and enabled local authorities to adopt a locally determined code. The Council adopted a new Code in July 2013. The Localism Act, together with the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, introduced the new concept of "Disclosable Pecuniary Interests" (DPIs). Members are required to notify the Monitoring Officer of their DPIs and may not take part in a discussion or vote on any matter in which they have a DPI. Failure to do this, with reasonable excuse, is now a criminal offence. The Members Code of Conduct also requires Members with DPIs to withdraw from the room during a discussion on a matter in which they have a DPI.
- 7.2 Guidance from the Department for Communities and Local Government states that a member may not participate in any discussion or vote at any committee or subcommittee where have a disclosable pecuniary interest *relating* to any business that is or will be considered at the meeting. There are provisions in the Localism Act 2011 which permit a Member with a DPI to apply for a dispensation from the Council to allow the Member to take part in a discussion or vote.

- 7.3 DPIs include a member's (or their spouse or civil partner's) ownership of land (including the Member's home), employment, interests in contracts, trusts, professions or sponsorship. The full list of DPIs is set out in the Members Code of Conduct.
- 7.4 As a result of the above changes it is necessary to amend the Planning Code to replace advice on prejudicial and personal interests with advice on DPIs in relation to planning matters. Information is also included in the proposed code illustrating where it is appropriate for members to disclose non-pecuniary interests
- 7.5 In addition, since the existing Code was drafted there have been developments (both case law and provisions in the Localism Act) in the law on pre-determination and bias, and these have been reflected in the amended Code.
- 7.6 Adoption of a revised Code is within the powers of the Council to agree its own constitutional arrangements within the legislative framework regulating local government.

8. OTHER IMPLICATIONS

8.1 Diversity and Equality

Central to the Code of Conduct is the need to secure fairness and transparency of regulatory decision making.

8.2 Sustainability implications

Proposed review of planning decisions would give opportunities to review the local impact of planning decisions in addressing sustainability issues.

8.3 Community safety implications

No direct community safety implications

8.4 Human Rights Act

The Council must consider Human Rights implications when making planning decisions. A robust planning code of conduct should assist in ensuring proportionate and fair decision making.

8.5 Trade Union

None.

7.7 Ward Implications

The code sets out the rights and limits of ward members to engage in the planning process.

7.3 Greenhouse Gas Emissions Impacts

No direct implications.

9. NOT FOR PUBLICATION DOCUMENTS

9.1 None.

10. RECOMMENDATIONS

10.1 That Members note progress to date towards review and update of the Members Planning Code of Conduct contained in the Appendix to this report and instructs the City Solicitor to undertake further consultation with the relevant Portfolio Holder and Planning Chairs with a view to agreeing a finalised version for consideration by the Corporate Governance and Audit Committee for adoption by Council.

11. APPENDICE

11.1 Proposed revised Members Planning Code of Conduct

12. BACKGROUND DOCUMENTS

12.1 Local Government Association's Guidance Note on the preparation of Local Codes of Good Practice

12.2 Department for Communities and Local Government Guidance on Openness and transparency on personal interests: guidance for councilors.

PART 4B MEMBER AND OFFICER PLANNING CODE OF CONDUCT

1 Introduction

- 1.1 This Code is applicable to all town and country planning related matters that fall to be determined by the Council as local planning authority and the general principles are applicable to the exercise of other regulatory functions of the Council.
- 1.2 Any references in this Code to members of the area planning panels or the Regulatory and Appeals Committee are also intended to include alternate members only where they sit or propose to sit as a member of an area planning panel or the Regulatory and Appeals Committee.
- 1.3 This Protocol provides rules (set out in **bold** type) and guidance (in *italics*) for members, co-opted members and officers in dealing with town and country planning related matters.

2 Membership of the Regulatory and Appeals Committee and Area Planning Panels

- 2.1 **Any member having a significant involvement in planning or development matters, and so is likely to be regularly prevented from any direct input into the Committee's or area planning panel's business, should not serve on the Regulatory and Appeals Committee or the Bradford or Keighley and Shipley Area Planning Panels.**
- 2.2 **Members of the Regulatory and Appeals Committee or the Bradford or Keighley and Shipley Area Planning Panels should never personally act as agents for people pursuing a planning matter with the Council.**

It is important to secure public and business confidence in the planning system that planning matters are dealt with openly, fairly and without any suspicion of Members or officers having a personal interest in the outcome of planning decisions.

3 Declarations of Interest

- 3.1 **Members must strictly comply with the requirements as to disclosure of interests contained in the Members' Code of Conduct.**
- 3.2 **A member with a disclosable pecuniary interest must comply with the requirements in the Members' Code of Conduct and not participate in the decision making process. The member must also declare their interest and leave the meeting room during consideration of the matter in which they have the disclosable**

pecuniary interest. Any member present who is not a member of the Panel and who has a disclosable pecuniary interest in any matter being considered must also declare their interest and leave the meeting room.

- 3.3 Members with a disclosable pecuniary interest must also absent themselves from the discussion of the matter during any official briefing process.

This principle is important in order to ensure fairness and transparency of decision-making. It should also be noted that where a Member has an interest in an item, then any obligation not to participate extends outside formal meetings. It applies equally to other official dealings related to the matter in question, for example any contact with the planning officers who are dealing with the application.

In this regard members should be aware that, whilst they are not prevented from seeking to explain or justify a proposal in which they have a disclosable pecuniary interest to an appropriate officer, this code places greater limitations on members than would apply to an ordinary member of the public and sensible steps must be taken to ensure openness and fairness in the decision making process. In particular it is advisable to notify the Monitoring Officer in writing of your own application (or that of a relative or employer where known).

- *Note that the proposal will always be reported to Panel for decision and not dealt with by officers under the scheme of delegation. - Consideration should be given to whether it is advisable to employ an agent to act on the affected member's behalf in dealing with officers - Note that affected members have a right to make written representations to officers about the proposal.*
- *Failure to disclose a disclosable pecuniary interest is a criminal offence. Section 34 of the Localism Act 2011 creates criminal offences relating to councillors' and co-opted members' duties under the Code of Conduct. A brief guide to the offences is set out below:*

Consequences of failure to Register and Declare Disclosable Pecuniary Interests (s.34(1))

A member is guilty of a criminal offence if without reasonable excuse they fail to register disclosable pecuniary interests in accordance with the Code of Conduct or after declaring a disclosable pecuniary interest at a meeting or individual executive decision meeting fails to notify the monitoring officer to update the register or fails to disclose a disclosable pecuniary interest

and /or participates in a discussion and/ or votes on an item where they have a disclosable pecuniary interest.

Providing False or Misleading Information when registering and declaring Disclosable Pecuniary Interests (s.34 (2))

A member will be guilty of an offence if when registering and / or notifying the monitoring officer of a disclosable pecuniary interest, declaring interests at meetings (including individual executive decision making meetings), s/he either:

- provides false or misleading information and the member knows the information is false or misleading or***
- is reckless as to whether the information is true and not misleading.***

Prosecutions and Penalty

Any alleged offence will be investigated by the Police and prosecuted by the Director of Public Prosecutions, not the Council.

- 3.4 Aside from the legal requirement to disclose disclosable pecuniary interests, Planning Members should also disclose interests other than disclosable pecuniary interests that might give rise to a public perception that such a member's dealings with a planning matter may be governed not just by issues of the public interest. A member may regard herself/himself as not having such an interest in a planning or regulatory matter if that matter solely relates to:

3.4.1 Another relevant authority of which s/he is a member

3.4.2 Another public authority of which s/he is a member

3.4.3 A body to which s/he has been appointed or nominated by the Council as its representative.

Provided the member does not have a disclosable pecuniary interest as a result of any financial gain they receive as part of that role.

Examples of circumstances in which Members and Officers would be expected to disclose an interest and not participate in consideration of the related item include:

- A member or officer's own application or made on her/his own behalf or circumstances where (despite the requirements of paragraph 2.2 above) a member or officer is representing or acting as agent (in any capacity) for an applicant. Any such application must be dealt with at an area planning panel. [A member will usually have a disclosable pecuniary interest in any planning application made on their behalf].***

• The involvement of a member or her/his family in a consultancy, agency or company that may potentially be involved in related land or property dealings or construction within the district

• Close working relationships, friendships or family connections of a member or officer with a consultancy, agency, developer, construction company or land or property owners (other than a member's own home) which operates in the locality and has an interest in a planning application or development generally within the district.

• Close neighbours involved in a planning application.

• Where a Planning Member lives in very close proximity to the Site or location of issues related to a planning matter and it could be perceived by the public that the member concerned could be directly affected in their personal capacity by the matter in issue.

• Where an elected member is also a member, representative or employee of an organisation, charity, society, campaigning or pressure group or club, which has a direct interest though not necessarily a pecuniary interest in a planning application, including a voluntary organisation, development or partnership agency, housing association, etc.

• Membership of another committee, sub-committee or advisory body of the Council that is promoting, advocating approval of, or has passed a resolution opposing an application.

• Where a member has an interest which is not a disclosable pecuniary interest as set out above in land or property subject to discussion as part of the Local Plan process.

There may be circumstances where a member only becomes aware that s/he has an interest during discussion of the item at the meeting. In the circumstances the member concerned should bring this to the attention of the chair disclose the nature of the interest, and leave the meeting room during all subsequent consideration of the item. The legal responsibility lies with individual members to disclose an interest where appropriate. Legal advice should always be sought where in doubt, but generally speaking members should always err on the side of declaring an interest where there is any uncertainty.

4 Predetermination and Bias

4.1 Members of the relevant area planning panel or the Regulatory and Appeals Committee should avoid openly expressing a view for or against a proposal or act as advocate for the views of interested

supporters or objectors in advance of the meeting until after they have heard or considered all relevant material evidence and arguments (including issues observed at any related formal site visit),

To do so could lead a fair minded and informed observer to conclude that there was a real risk that the member concerned had predetermined the outcome.

- 4.2 Where despite the advice given in 4.1 a planning member has put themselves in a position where they could be considered or perceived to have predetermined the outcome of a planning decision then they must disclose this fact at the start of the meeting and a record of such disclosure will be made in the minutes of the meeting. The member concerned must not then participate in any discussion or determination of the item.**
- 4.3 Having disclosed that they could be considered or perceived to have predetermined the outcome of a planning decision then having stood down from the Regulatory and Appeals Committee or relevant panel during discussion of an item it is not appropriate for that member to seek to speak as an objector or supporter of the application or planning proposal in question. Equally, where a Committee or panel member does not sit on the Committee or panel at the meeting in question, but would have had to disclose that they had predetermined the outcome of a planning decision and not participate in that item on the Agenda had such a member been officially in attendance, then it is inappropriate for that member still to attend the meeting to support or oppose the application in question.**

Planning members need to take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in a transparent, open and fair manner, in which members taking the decision will take account of all the evidence presented before arriving at a decision, and that to commit themselves one way or the other before hearing all the arguments and evidence makes them vulnerable to an accusation of partiality. The determination of a planning application is a formal administrative process involving rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly, with the added possibility that an aggrieved party may seek Judicial Review of the way in which a decision has been arrived at, or complain to the Ombudsman on grounds of maladministration.

Members should be aware that in most cases issues of predetermination will not amount to a personal or prejudicial interest for the purposes of the Council's Members Code of Conduct. However, depending on the facts of the case there is the potential for allegations of breaches of paragraph 14 and/or 15.1 of the Council's Members

Code of Conduct i.e. because a planning member who renders the decision of a council unlawful due to predetermination might reasonably be regarded as bringing the authority or her/his office into disrepute or attempting to use their position on the determining panel/committee to improperly confer or secure advantage for their self or another person.

There may be cases where issues of predetermination also bring into question possible issues of personal and prejudicial interests. An example of this would be where a planning member has publicly made a firm statement about how an application should be determined where that member also has a close friendship or association with the applicant or an objector. In such circumstances both a declaration of a personal and prejudicial interest; and a disclosure that the member could be considered or perceived to have predetermined the outcome of the planning decision should be made.

The Council's Constitution allows for planning applications to which the Town and Country Planning (Consultation) (England) Directions 2009 apply to be referred by the Strategic Director of Regeneration and Culture to the appropriate Area Planning Panel so that the Panel can express its views and then, if the Panel would have been minded to grant the application, make a recommendation to the Regulatory and Appeals Committee. This process gives rise to the possibility of a member of the Panel who is also a member of the Committee having expressed their views and voted on an application by the time the application comes before the Committee for determination. It is in order for such "dual hatted" members to fully participate when the application is considered by the Committee. However; in the interests of transparency, affected members are advised to publicly disclose their involvement with the Planning Panel but stress that they are approaching the matter at the Regulatory and Appeals Committee with an open mind and in the light of any new material planning issues that may be brought to their attention since the Planning Panel considered the application.

5 Planning Applications from Councillors or Officers

- 5.1 If a councillor, officer employed within the planning service, or an officer recognised as part of the Council's "top management" submits their own proposals or those of a spouse, partner, business associate or client, or close relative to the Council, they must take no part in its consideration. The Council's Strategic Director of Regeneration and Culture must be informed of such proposals. All such applications must clearly state on the application form the status of such a councillor or officer.**

These proposals must always be reported to the Committee or relevant area planning panel as main items and must not be dealt with by officers under delegated powers.

- 5.2 **As part of the officer report to the Committee or panel, the Strategic Director Regeneration must confirm the reason why the application is being reported to the Committee or area planning panel in accordance with this requirement and name the officer or councillor concerned.**

6 Planning Applications from the Council

- 6.1 **Proposals by the Council in relation to its own development must be treated in the same way as those by private developers in accordance with DoE Circular 19/92, or any other relevant circular, particularly in relation to officer advice and consideration of the planning merits of the application.**
- 6.2 **Councillors who sit on both the initiating committee and the relevant determining area planning panel or Regulatory and Appeals Committee must declare an interest and leave the meeting room when the application is being considered.**

7 Officer Reports

- 7.1 **All officer reports to Area Planning Panels or the Regulatory and Appeals Committee should generally be in writing and fully detailed, including the substance of all objections and other representations received.**
- 7.2 **Oral reports should generally only be used to update members about further material information or representations received after the agenda has been circulated. Oral reports may also be necessary where items have had to be referred to an Area Planning Panel or the Regulatory and Appeals Committee outside the main agenda for reasons of urgency. However, even in these circumstances officers should where time permits present a written report summarising the main material issues which can be circulated to members and interested parties.**
- 7.3 **Where oral reports or updates are given the minutes of the meeting should confirm that this information was given orally and fully note the substance of relevant information given in the oral report.**
- 7.4 **All reports should contain an exposition of the local development plan context, relevant planning policies, site history, a technical appraisal, and suggested reasons for approval/refusal/service of notices; any relevant conditions/ planning obligations and a clear recommendation.**
- 7.5 **Where the recommendation contained in the report would, if acted upon, be contrary to any policies set out in the local development**

framework then the report should fully detail the material circumstances justifying the recommendation.

Site Visits

7.6 Any elected member on an Area Planning Panel or the Regulatory and Appeals Committee who has been lobbied or taken part in discussions on independent site visits with respect to a planning matter, aside from the Committee or Area Planning Panel's approved site visit, must declare this at the relevant Area Planning Panel or Committee meeting when the application is considered.

7.7 Any member of the relevant Area Planning Panel or Regulatory and Appeals Committee may request a site visit. Site visits will only take place where the Chair is satisfied that the benefit in a site visit taking place is clear and substantial. A site visit is only likely to be necessary where –

7.7.1 the impact of the proposed development is difficult to visualise with the plans and any supporting material, including photographs taken by officers; or

7.7.2 the comments of the applicant cannot be expressed adequately in writing;

7.8 During a site visit any meeting of the Area Planning Panel or Regulatory and Appeals Committee is 'in session' and, in particular, the Chair is responsible for presiding over proceedings during a site visit.

Any member, who has previously declared a prejudicial interest in an agenda item subject to a site visit, should not participate in the related site visit.

7.9 Members should attend the site visit as a group and any representations on the site visit made by third parties may only be allowed at the discretion of the Chair and must be made to the visiting Area Planning Panel or Regulatory and Appeals Committee members as a whole.

7.10 Generally speaking such representations will only be allowed on the invitation of the Chair in order to clarify factual matters not apparent to members by way of visual inspection of the site alone.

7.11 Individual members should not enter into separate discussions with third parties on site visits in isolation from the relevant Area Planning Panel or Regulatory and Appeals Committee Members as a whole.

7.12 No decision in respect of the planning application must be made on the site visit.

8 Lobbying

8.1 Elected members on the relevant area planning panel or Regulatory and Appeals Committee should avoid organising the support or opposition to planning applications, acting as an advocate in support or opposition to an application or lobbying other members.

Where a member is in this position they must declare an interest in the item and not participate.

8.2 Elected members on the relevant area planning panel or Regulatory and Appeals Committee must refer any approaches by lobbyists, agents, applicants, etc to planning officers.

8.3 Where members of the relevant area planning panel or the Regulatory and Appeals Committee are approached by developers wishing to discuss or make a special presentation of their development proposals outside of the formal meeting, then such requests should be declined.

If a special presentation would be helpful in reaching a decision, then with the agreement of the chair, this should be arranged as part of a formal meeting of the area planning panel or Regulatory and Appeals Committee so that other interested parties are able to participate if they wish. The chair may, at her/his discretion, arrange a special meeting for this purpose.

8.4 Elected members must not put pressure on officers for a particular recommendation when officers are preparing reports for panel.

8.5 More senior officers of the Council should not exert pressure on planning case officers to alter their recommendation on how a planning matter should in their professional opinion be determined.

The Royal Town Planning Institute Code of Professional Practice requires, inter alia, that Planning Officers who are members of the Institute do not make statements purporting to be their own, but which are contrary to their bona fide professional opinion.

8.6 Ward councillors who also sit on the relevant area planning panel or the Regulatory and Appeals Committee, when in receipt of representations from constituents must confine themselves simply to communicating the views of their constituents to planning officers or to the chair and the relevant area planning panel or Committee as a whole. They should not adopt a firm and fixed position on an application or other matter prior to the item being fully considered.

Where appropriate; correspondents or lobbyists should be directed to another ward councillor who is not on the relevant area planning panel or the Regulatory and Appeals Committee.

- 8.7 In order to ensure transparency of decision-making and avoid any imputation of unfair lobbying of the Committee or area planning panel members, ward councillors who are not members of the Committee or panel should not attend or participate in official briefing meetings during discussions of items they are supporting or objecting to. The current agreed arrangements for briefing Committee and area planning panel members on legal and procedural issues are included in the Appendix to this Code.**
- 8.8 Party whips or the chairs of the Committee or area planning panel must not direct any member, or officer acting under delegated powers, to vote on or determine an item in a particular way.**

A standard letter explaining that members of the Committee and the Bradford and Keighley and Shipley Area Planning Panels have a neutral position on planning matters is available from the Strategic Director Regeneration and Culture. This should be sent out to all applicants and objectors when representations are received.

As all ward members receive lists of planning applications in their ward, those not on the Committee or the Bradford and Keighley & Shipley Area Planning Panels should be advised of possible approaches by lobbyists in light of the constraints applicable to the Committee and Bradford and Keighley & Shipley Area Planning Panel members.

9 Gifts and Hospitality

- 9.1 Where members of the relevant area planning panel or the Regulatory and Appeals Committee are offered hospitality or gifts from any person who they know or suspect to be an applicant, agent, or interested party (including an objector) in a planning matter due to be considered by the Planning Panel/Committee this should be declined.**

Part 4D of the Council's Constitution contains detailed advice on the Protocol for Members Gifts and Hospitality.

10 Right to make Representations

- 10.1 All Council members have the right to make written comments on an application and attend meetings of the Committee and the Bradford, Shipley & Keighley Area Planning Panels. Ward members also have the right to speak. Other members (subject to any issues**

concerning the need to declare an interest and not participate as discussed elsewhere in this Code) who have indicated that they wish to make representations on behalf of supporters or objectors may speak at the discretion of the chair and in line with procedures drawn up by the Strategic Director Regeneration and Culture in consultation with the chair.

Members when approached should advise lobbyists, agents, applicants and objectors of any known public consultation arrangements, the standard representation system adopted by the Council (including timescales), for which there are information sheets and notes for guidance, and the public speaking rights available.

11 Committee and Area Planning Panel Members Meeting Lobbyists

- 11.1 **On those limited occasions where elected members on the Committee or the area planning panel do meet lobbyists, etc, outside formal meetings or organised site visits they should do so whenever possible in the presence of a professional officer, preferably a planning officer. This is especially important if the lobbyists concerned are professionally represented.**
- 11.2 **On attending any such meeting elected members of the relevant area planning panel or Regulatory and Appeals Committee should agree only to listen and question but should either express no comment or make it clear that they are unable to commit themselves to a point of view with lobbyists, agents, applicants or third party objectors, etc, prior to the full determination of the application by the Panel or the Committee.**
- 11.3 **The agenda of any such meeting should be restricted to material planning matters and relevant development plan policies as advised by the planning officer.**
- 11.4 **Elected members should not attempt to negotiate on planning matters with applicants, lobbyists, agents, or third party objectors, etc.**
- 11.5 **At the conclusion of any such meeting it must be made clear that any comments made by the elected members are personal rather than those of the Council, are made without prejudice and are provisional pending other evidence, consultations and officer advice.**
- 11.6 **A full record should be taken of the meeting and agreed outcomes should be minuted.**

- 11.7 **Where hospitality is offered a record of that offer should be kept, whether it is accepted or not. Where hospitality is unavoidable it should be kept to a minimum.**

It is important that members are seen to have taken account of all material considerations and representations before making a decision. Unrestricted contact with applicants, lobbyists, agents, or third party objectors outside of formal meeting runs the risk of decisions being perceived to be partial.

12 Pre-application Discussions – Members and Officers

- 12.1 **It should always be made clear at the outset that discussions will not bind the Council to making a particular decision and that any views expressed are personal, provisional and given without prejudice to full and proper consideration of any application that maybe made subsequently.**
- 12.2 **Advice should be consistent and based upon the Local Development Plan and other material considerations.**
- 12.3 **A written note should be made of any discussions or meetings. Two or more officers should attend potentially contentious meetings. A follow-up letter from the Council should set out the matters discussed, comments made, and any agreed action.**
- 12.4 **Care must be taken to ensure that advice is not partial (nor seen to be) otherwise a subsequent report could appear to be advocacy. To maintain impartiality, and its appearance, it is preferable that councillors do not take part in such discussions. Should there, however, be occasions when councillors are involved they should 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, by the relevant area planning panel or following notification to the chair or deputy chair. The actual officer(s) who will attend must be agreed in advance between the chair and the Strategic Director Regeneration and Culture.**
- 12.5 **The involvement of councillors in such discussions should be recorded in the Committee or area planning panel report (where appropriate) and notes of the meeting (which should always be sent to all parties attending the meeting) must be kept on the planning file.**

13 Decisions by Officers Under Delegated Powers

- 13.1 **The principles and spirit of this Code apply equally to planning decisions taken by officers under delegated powers.**

13.2 All such decisions must be made on their planning merits and in accordance with Standing Orders and the Scheme of Delegation of Planning Decisions.

14 Function of Agenda Preparation Meeting

14.1 The role of the agenda preparation meeting should be confined to appraising the chair of the planning implications and representations made about particular applications or other planning matters for the purpose only of deciding which of these should be referred to the Committee or area planning panel or can be dealt with by officers under the Scheme of Delegation of Planning Decisions. When a member requests in writing, or by any other formal means, that an application which relates to their ward be considered by the Committee or the area planning panel, as appropriate, the application shall be considered by the Committee or panel in accordance with the Scheme of Delegation approved by the Regulatory and Appeals Committee.

14.2 No actual decisions on any individual applications should be made at an agenda preparation meeting by officers, nor should any pressure be put on officers or directions given by the chair, other members or more senior officers on how a particular application or planning matter should be determined by officers.

14.3 Under Article 14 of the Constitution, the Strategic Director Regeneration and Culture is always entitled to refer any item to an area planning panel or the Regulatory and Appeals Committee where s/he considers it expedient to do so. The Strategic Director Regeneration and Culture should not be pressurised or instructed to waive the exercise of this right where she/he considers this to be desirable.

15 The Decision of Officers

15.1 No decision of officers acting under delegated powers should be taken without the benefit of a proper written appraisal of all the relevant planning issues.

15.2 A full and formal record of the decision must be made, including details of the relevant part of the Scheme of Delegation giving authority to the officer concerned, any relevant planning conditions, and any relevant reasons for refusal or reasons for serving planning notices.

15.3 All such written records should be dated and kept in an official 'Record of Delegated Decisions' that must be open to public inspection.

15.4 Any decisions taken under delegated powers should be taken entirely separate to the agenda preparation meeting.

15.5 There should not be any reference to the agenda preparation meeting in the Record of Delegated Decisions.

16 Enforcement

16.1 The Standards Committee has responsibility for dealing with any breach of this Code.

16.2 Allegations of any breach must be made in writing to the Monitoring Officer.

16.3 Breach of the rules applying to officers may be the subject of disciplinary action.

17 Training in the Planning Process for Planning Members

17.1 All full and alternate members of the area planning panels or the Regulatory and Appeals Committee must undertake initial training on how the planning system operates as provided by the Council in a seminar and/or workshop programme, or individual training sessions with Members, within 8 weeks of appointment to their role.

17.2 Newly appointed planning members must not sit as members of the determining area planning panel or the Regulatory and Appeals Committee unless or until they have obtained a certificate issued by the Assistant Director Planning confirming that they have received such initial training; save that the Assistant Director Corporate Services (the City Solicitor) may, in consultation with the Chair of the Panel/Committee, grant a temporary dispensation allowing a member who has not yet received such initial training to participate in a meeting in the interests of efficient administration in order to ensure the meeting is quorate.

17.3 Where a temporary individual dispensation has been granted to a planning member in accordance with 17.2 above; where practicable the member concerned should receive a detailed briefing on the material planning issues by officers prior to the meeting and be subsequently required to receive initial training as soon as reasonably practicable thereafter.

17.4 All Members with a role within the planning process must take reasonable steps to attend or participate in relevant update and

refresher training/briefing initiatives as and when such initiatives are made available by the Council.

18 Annual Review of Planning Decisions

- 18.1 Officers will make arrangements to provide for an annual review of planning decisions, including decisions to take enforcement action, made by its committees, officers, by the Planning Inspectorate on appeal and of cases considered by the local government ombudsman. The review will be reported to the Regulatory and Appeals Committee for consideration.**
- 18.2 The review will provide for the selection of sample decisions and will include examples from each area of the district and of both major and minor applications. If deemed appropriate by the Chair of the Regulatory and Appeals Committee site visits will also be arranged to view some of the sample sites “as built”.**

The Audit Commission in its Building in Quality: A Study of Development Control (Local Government Report) (published 14th May 1992) recommended that planning members should be given the opportunity to revisit a sample of implemented planning permissions in order to assess the quality of decision-making. Such a review should act as an aid to improve the quality and consistency of decision making, strengthen public confidence in the planning system, and help identify areas that justify review of planning policies or procedures.

All full and alternate members of the Area Planning Panels and the Regulatory and Appeals Committee will be invited to the review meeting.

APPENDIX

Order of Business at the Regulatory and Appeals Committee and Area Planning Panels and the Briefing Arrangements

1. A short all party briefing restricted to members of the Committee or area planning panel and advising officers will take place prior to the Committee or area planning panel meetings to deal with any questions from members about legal and procedural issues such as obtaining advice about declarations of interest. Any member who intends to declare an interest on any item on the agenda should absent her or himself during substantive discussion of the item at the briefing.
2. The meeting will be opened and the officer report presented on each of the items on the agenda of the Committee or area planning panel. Ward members, developers, the public and other third parties will be heard at the discretion of the chair and in accordance with established protocol agreed by the chair in accordance with the Council's Constitution. Questions of clarification will be answered and at this point the meeting will have the discretion to either move to a decision or to defer a decision until later in the day because of the need for further information, legal advice or a site visit. Site visits will be agreed.
3. If site visits have been agreed these will take place.
4. On return from site visits the Committee or area planning panel may decide to meet as a whole for a further briefing in order to receive advice and discuss any issues which may have arisen from any requests for further information, legal advice arising from the meeting or from the site visits. Any member who has declared an interest (and the interest is a prejudicial interest on any item on the agenda) should absent her or himself during discussion of the item at the briefing.

This order of business will have the advantage of transparency in that no discussion on the merits of an application will have taken place before all parties have had the chance to have their say.