



PLANNING AND DEVELOPMENT - CODE OF PRACTICE

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A guide to the protocol and procedures to be followed by Officers and MemberCouncillors in relation to Planning and Development matters including Planning Applications, Development Plan, and discussions with developers

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Status

The City Council, along with all other local authorities, has adopted a Code of Conduct, which specifies the obligations imposed on Member Councillors and defines pecuniary and non-pecuniary interests and how these will affect the way a Member Councillor behaves. That Code of Conduct, which every Member Councillor has signed up to, is the statutory base to which this Code of Practice is added. In some areas this Code of Practice will extend, or go further than the Code of Conduct. In the case of a conflict between the two the Code of Conduct will take precedence.

It is possible that breaches of this Code of Practice could be considered to be a breach of the Code of Conduct.

This Code of Practice forms part of the Council's Constitution, which sets out how the Council will operate, how decisions are made and the procedures to be followed in order to ensure that these are efficient, transparent and accountable to local people.

This Code of Practice supplements the Council's Councillor Code of Conduct and Employee Code of Conduct as set out in the Council's Constitution. Where appropriate, councillors and officers should refer to the relevant Code of Conduct. In some areas this Code of Practice will extend, or go further than the Codes of Conduct. In the case of a conflict between the two the Codes of Conduct will take precedence.

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Introduction

Gloucester City Council's Planning Committee makes statutory decisions on Planning planning and related applications. Officers decide most applications, in fact about 9095% of applications, under delegated powers ~~delegated to the Corporate Director of Regeneration~~. Applications determined under "delegated powers" tend to be minor and less contentious straightforward proposals. The Planning Committee deals with major and contentious applications where so their decisions are often significant, weighty and have a considerable effect on the value of land as well as the lives and amenities of people living near development sites. Furthermore, if the Committee acts inappropriately makes an wrong or reckless incorrect decision this- it may risk -mean that the Council has to pay substantial costs arising from appeals if it fights and loses an appeal, or if the its decision is the subject of a legal challenge from an aggrieved ~~third~~ party.

The principles upon which decisions must be made are set out in legislation in the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004. Both acts require decisions to be made in accordance with the provisions of the Development Plan unless material considerations indicate otherwise. Under the 1990 Act, the "Development Plan" comprises the County Structure Plan and any adopted Local Plan. Under the 2004 Act, the "Development Plan" comprises the Regional Spatial Strategy and the Development Plan.

Although this statutory duty is clear, planning decisions depend to a greater or lesser degree upon judgement and interpretation of policies and guidance. It is therefore essential that decisions are made having regard only to proper planning considerations, impartially and in a way that does not give rise to public suspicion or mistrust.

The same principles apply to decisions and recommendations that are made by Member Councillors councillors and Officers in relation to the development plan process, particularly decisions and recommendations which might involve the allocation and thus the value of land.

The purpose of this local Code of Practice is therefore to set out in detail how councillors ~~MemberCouncillors~~ and Officers should act and the procedures which should be followed to ensure that they not only act in a fair and proper manner, but are also seen to do so, whether serving on the Planning Committee or not.

~~Although of particular relevance to Councillors of Planning Committee it applies to all Councillors and officers who may become involved in planning and development matters.~~

~~This Code has been prepared with a particular emphasis on MemberCouncillors who serve on the Council's Planning Committee but its content is also relevant to all other MemberCouncillors and also to Officers both within Planning Services and in all other service units. In short, any MemberCouncillor or Officer who has any contact with, or input in to, the Planning process including the Development Plan and during discussions with landowners and developers has a probity responsibility. It should be noted that there are other rules and requirements in respect of Officers.~~

~~The City Council, along with all other local authorities, has adopted a Code of Conduct, which specifies the obligations imposed on MemberCouncillors and defines pecuniary and non pecuniary interests and how these will affect the way a MemberCouncillor behaves. That Code of Conduct, which every MemberCouncillor has signed up to, is the statutory base to which this Code of Practice is added. In some areas this Code of Practice will extend, or go further than the Code of Conduct. In the case of a conflict between the two the Code of Conduct will take precedence.~~

~~It is possible that breaches of this Code of Practice could be considered to be a breach of the Code of Conduct.~~

~~This Code of Practice forms part of the Council's Constitution, which sets out how the Council will operate, how decisions are made and the procedures to be followed in order to ensure that these are efficient, transparent and accountable to local people.~~

~~A copy of the Council's Constitution can be viewed online at:~~

PART A – GENERAL PRINCIPLES

Gifts and Hospitality

- A1. **Councillors and Officers must abide by the Council's requirement in respect of Gifts and Hospitality as set out in the Councillor Code of Conduct and Employee Code of Conduct. ~~Code of Conduct for MemberCouncillors and the Officer Code of Conduct which are part of this Council's Constitution.~~**

~~Councillors~~ MemberCouncillors and officers must be extremely careful in this respect to ensure that no question of bias can be raised. The general rule is that no gifts should be accepted and only modest hospitality connected with the work concerned should be accepted.

Declarations of Interest

- A2. **Councillors ~~MemberCouncillors~~ must always declare their interests in accordance with the Council's Councillor Code of Conduct.**

~~The Council adopted its Code of Conduct on 19 July 2012. The Code of Conduct is contained in the Council's Constitution and must be read in conjunction with this Code of Practice.~~

~~The Localism Act 2011 and the Council's Councillor Code of Conduct place requirements on Councillors to register and declare their interests on the registration and declaration of and how they should behave if an interest exists, their interests and the consequences for the Councillor's participation in consideration of a matter, in the light of those interests. Guidance on the registration and declaration of interests may be sought from the Council's Monitoring Officer. Ultimate responsibility for fulfilling the requirements rests individually with each Councillor.~~

~~Paragraph 15 of the Councillor Code of Conduct identifies disclosable pecuniary interests. Where the interest is a "Disclosable Pecuniary Interest" the councillor should take no part in the debate or vote on that item. It is a criminal offence to fail to comply with the requirements that relate to Disclosable Pecuniary Interests.~~

~~Paragraph 19 of the Code clarifies the need to declare interests that affect a councillor's well-being or financial position, or the well-being or financial position of a family Councillor or a close associate. If it is considered that the interest could be perceived as being so significant that it would be likely to **prejudice the councillor's judgement** of the public interest, the Councillor should take no part in the debate or vote on that item.~~

~~The Declaring Interests Flowchart provides further guidance on how to assess whether an interest impacts a councillor's ability to participate in the discussion or vote on a matter.~~

~~All interests must be disclosed at the start of the meeting, or when such interests become apparent, and these will be noted in the Committee minutes and an agenda item on this is included for every meeting. Councillors should be clear and specific in identifying the item on the Agenda in which they have an interest and the nature of the interest. (unless the Monitoring Officer considers that it is a sensitive interest because its disclosure could lead to you, or the person connected with you, being subject to violence or intimidation) and the nature of the interest.~~

~~Depending on the nature of the interest (disclosable pecuniary interest, non-disclosable pecuniary interest or personal interest), the MemberCouncillor may not be allowed to participate in the discussion or vote on the matter unless a dispensation has been granted. No Councillor or Officer should They must also not seek to improperly influence any decision in which they have an interest that matter.~~

The test MemberCouncillors should apply is not whether they themselves think they have an interest but whether others, knowing the relevant facts, would think they have. If a MemberCouncillor has any doubt advice can be taken, but if that doubt still remains it is best that an interest be declared. However, the responsibility for declaring an interest must lie on the MemberCouncillor.

~~There will however, be times when it only becomes apparent during the meeting that there is a declarable interest. Then the interest must be declared as soon as the MemberCouncillor becomes aware of it, even if it is during discussions on that particular item. The duty is on each MemberCouncillor to declare interests and these will be noted in the Committee minutes.~~

~~The Monitoring Officer should be informed of any declarable interests which should also be registered in the Register of MemberCouncillors' Interests. Councillors should notify the Monitoring Officer of any Disclosable Pecuniary Interest or other declarable interest not already entered into the Councillors Register of Interests within 28 days of that interest being created or becoming apparent.~~

Involvement with Agents, Developers and Landowners

- A3. Councillors and Officers who are involved in the planning process should not act as agents to other parties, or submit planning applications, objections and/or Development Plan representations on behalf of other parties or volunteer bodies.**

~~Officers and servicing councillors must not act as agents for people pursuing planning matters within their authority, even if they are not involved in the decision making on them.~~

~~Any close involvement, or even perception of close involvement, with a planning application or proposal can compromise the integrity of the planning process. A MemberCouncillor acting as a planning agent could give rise to suspicion that the MemberCouncillor was not impartial, or may influence other MemberCouncillors in the decision making process.~~

~~Where MemberCouncillors need to submit Planning applications or Development Plan representations on their own behalf, or on behalf of their employer as part of their job, they must declare an interest and take no part in the processing of the application or in the decision making process. Decisions on any proposals submitted by or relating to land owned or controlled by a servicing MemberCouncillor should only be determined by the Planning Committee (or Full Council).~~

~~The same rule applies if a MemberCouncillor's employer submits an application, irrespective of whether the MemberCouncillor is involved in the application, its preparation or submission.~~

~~There will be very rare occasions when planning decisions need to be made by Full Council, not Planning Committee. In such instances, any Councillor who has acted as an agent or submitted the application being considered whether personally or on behalf of another party should declare an interest and take no part in voting on the matter.~~

- A4. Any MemberCouncillor who is a planning or similar agent will not be appointed to either the Planning Committee or MemberCouncillor Working Group and should not be nominated as a substitute. ~~At Cabinet/Council meetings any Councillor who is acting as a planning agent should declare this role and withdraw from any discussion/decision where a clear conflict of interest can be seen to exist.~~**

Even if they do not practice in Gloucester, the MemberCouncillor will not be appointed to the Planning Committee. This is in view of the potential for memberCouncillors of the public to view their work as possibly affecting their consideration of planning applications and Development Plan matters. At Cabinet/Council meetings any Councillor who is acting as a planning agent should declare this role and withdraw from any discussion/decision where a clear conflict of interest can be seen to exist.

- A5. Councillors or Officers should not enter into a commercial agreement with a developer or landowner in respect of a particular development opportunity as to do so would bring into question the integrity of the planning process.**

Clearly, significant sums of money can be made through the development process and it is vital that ~~Councillors-councillors~~ and ~~Officers~~ do not seek to enter into any sort of agreement with a landowner/developer in relation to the promotion of a development site, as to do so would bring into question the integrity of the planning process.

- A6. ~~MemberCouncillors-Councillors~~ should not seek to advise applicants or agents about the likely acceptability of planning proposals including potential planning applications and land use proposals that are being promoted through the Development Plan process.**

Pre-application discussions should always be undertaken by the ~~Council's-council's~~ ~~Planning planning Officers-officers~~ to ensure that advice is given professionally, comprehensively, transparently and in a way that is clearly removed from the political forum. Planning Committee ~~MemberCouncillors-Councillors~~ should always advise prospective applicants to contact the appropriate Officer for advice on both merits and procedures.

~~If councillors do give an indication of their initial reaction to a proposal (e.g. this appears to accord with planning policy) they should make it clear that they will only be in a position to take a final view after considering the officer's report and representations and hearing any debate at the Committee meeting. If MemberCouncillors do give an indication of their initial reaction to a proposal they must make clear that any proposals will need to be formally considered by Officers and/or the Planning Committee. They should also make clear that Officers and/or the Planning Committee could only make a final decision after a full and formal consideration of the proposal.~~

Similarly with regard to negotiations and discussions in respect of submitted applications ~~MemberCouncillors~~ should not normally be involved. There may be exceptional circumstances in respect of major or contentious applications where there may be merit in ~~MemberCouncillor~~ involvement to explain a particular local viewpoint or issue. However, such discussions should take place only where at least one professional Planning Officer is present. Officers will make a written record of any such meetings held and will place a copy of this record on the office working file. Such a record will constitute a Background Paper for the purposes of the Access to Information Act and may be inspected by any ~~memberCouncillor~~ of the public.

The fact that Planning Committee ~~MemberCouncillors~~ have discussed any such proposal with the applicant or objectors must be made clear when the ~~application or Development Plan~~ matter is before the Committee/Cabinet for determination. Under no circumstances should ~~MemberCouncillors~~ put pressure on Officers to make, or change, any professional recommendations ~~on an application or Development Plan matter.~~

- A7. *Following the submission of a planning application or Development Plan representation, ~~MemberCouncillors~~ should not themselves, enter into negotiations with the applicant/objector but should leave any such negotiation to Planning Officers.***

The Council employs professional Planning Officers whose job is to deal with the applications and Development Plan representations received, ensure the necessary publicity requirements are dealt with, negotiate with the applicant and/or their agents, and then report to Committee with their recommendations.

The Officers do have pre-application discussions which will try to assist applicants to submit applications in accordance with Council policies and to assist with the smooth processing of the application or consideration of Development Plan representations.

The Officers ~~will always should~~ put forward their professional planning view to Committee and be available to answer ~~MemberCouncillors'~~ questions.

- A8. *Officers will not enter into negotiations concerning any land or proposal in which they have an direct or indirect interest.***

Clearly, such a situation would give rise to suspicion that the Officer in question was not necessarily acting in an entirely impartial manner and will therefore not be acceptable.

- A9. *Subject to the requirements of the Freedom of Information Act or any other relevant legislation, Councillors and Officers should seek to respect the wishes of landowners***

and developers who intend their proposals to remain confidential until such time as there is a legal obligation to make any such proposal known such as the submission of a planning application or the formal publication period in respect of the Development Plan.

There may be occasions when developers or landowners wish to seek the views of Councillors and/or Officers concerning particular development proposals, but wish to do so in an entirely confidential manner due to commercial or contractual requirements.

Councillors and Officers will respect such wishes and will only make the proposal known publicly either when the developer agrees or alternatively when there is a legal obligation to make such information available, for example where it has been requested by a third party under the Freedom of Information Act.

- A10. Officers and MemberCouncillors will exercise particular care in relation to telephone conversations concerning planning matters. ~~Where practical, a note should be completed and filed immediately after the conversation.~~**

In some instances, those involved in the same telephone conversation can come away with entirely different recollection of the issues discussed. Where practical, a note should be completed and filed immediately after the conversation. ~~For the avoidance of doubt, it is considered appropriate for Officers and MemberCouncillors to complete a short file note following any telephone conversation had with a developer, landowner or other interested party.~~

Meetings with Agents, Developers and Landowners

- A11. MemberCouncillors should try not to meet a developer or landowner alone. Where this is unavoidable, particular care should be exercised and where practical, the content of the meeting recorded as accurately as possible.**

In order to ensure the integrity of the planning process it is considered inappropriate for MemberCouncillors to meet a developer on their own. At least two representatives of the Council

should be in attendance (including at least one Officer) in order to ensure that an accurate record of the meeting may be made. This is to protect the Councillor and the Council in the event of a disputed account of the meeting.

- A12. Where Councillors and / or Officers are invited to attend meetings by landowners and developers, accurate and comprehensive records of any such meeting must be made and retained in accordance with the Council's document retention policies. kept for a reasonable period of time (i.e. at least 12 months after the completion of the Development Plan process or the determination of a planning application).**

In the event that a Councillor and Officer are invited to attend a meeting held by a landowner/developer, they should at all times act in an impartial manner and should keep a record of the meeting on an appropriate file. In the interests of transparency and accountability it is vital that detailed records of any meetings are kept until the completion of the Development Plan or planning application process and in accordance with the Council's document retention policies. This will ensure that any subsequent queries can be answered with certainty.

- A13. MemberCouncillors and officers meeting a developer must make it clear that any discussions held during meetings cannot bind the Council to any course of action.**

It is essential that any view expressed during a meeting is not taken to bind the Council or represent the final view of the City Council as a whole.

- A14. Similarly, in discussing specific developments/localities/topics with developers, MemberCouncillors and Officers must act without prejudice, taking into account and basing any opinions expressed, on relevant planning issues only. This principle must apply throughout the Council's decision-making process.**

It is vital that any opinions expressed about particular development proposals are made without prejudice, are based on the most appropriate use of a site in planning terms and MemberCouncillors in particular must avoid expressing a view on granting, or refusing, the application.

In cases where a 'Project Management Board' has been established under the Prince 2 project management system to deal with a development proposal, the following principles will apply to meetings with developers, agents and landowners:

A15. All meetings will be properly and accurately recorded and reported to the respective Project Boards.

A16. Appropriate ~~members~~members of the respective Project Board must normally be invited to attend. This would likely usually be the Project Manager ~~and/or Executive~~.

~~**A17. In the event of a project board member being unable to attend, advice on the current status of the project should be sought by the Member/officer concerned.**~~

A18. Senior MemberCouncillors/officers involved in the meeting must make themselves familiar with the Project Business Case, and at all times recognise the primacy of it in any discussions which should be complementary to the direction of the project.

A19. Records of all discussions and meetings should be provided for the specific Project Manager who will ensure it is placed on the file records.

For reasons such as policy formulation and access to project documentation and officer support, it is recognised that opposition MemberCouncillors may not be able to fully adhere to all of the

requirements set out in points A15 – A19 above. In these circumstances, the following general principles should be applied:

A20. The general spirit of propriety within the Code of Practice should be respected.

A21. The integrity of the Council must not be compromised.

A22. No promises or indications of positions which would, or may be adopted should be given which may lead a potential developer to believe that, at some future date, the policy of the Council would favour any development scheme or developer.

A23. MemberCouncillors must not negotiate with developers or landowners on planning policy and must adhere to Council policies.

Independence and Impartiality of Planning Officers

A24. Officers must always act impartially and advise the Council of their professional opinion.

The City Council's Planning Officers must always act impartially to give advice based upon a professional assessment of the Planning planning merits of each case taking into account the relevant planning policies and other relevant material considerations. If they do not, or even if it appears that they are not, the integrity of the Planning process is severely compromised. Chartered Town Planners must abide by the Royal Town Planning Institute's Code of Professional Conduct.

Chartered Town Planners may only advocate their own professional view and cannot be required to attend or advise party political meetings except with the prior permission of their Head of Service. Whilst Chartered Town Planners may appear as the Council's expert witnesses to present the Council's case at Planning Inquiries they must, if asked, give their own professional view in accordance with the Royal Town Planning Institute's Code of Professional Conduct. This is particularly pertinent where an appeal has been made against a decision made against Officer recommendation although Officers will always present the Council's case to the best of their ability.

Submission of Planning Applications and Development Plan Representations by Officers and Councillors

A25. If an Officer or Councillor submits a planning application, an objection to a planning application or a representation in response to the Development Plan, he or she shall not deal directly or indirectly with that application or representation.

Any ~~close~~ involvement, or even perception of ~~close~~ involvement could compromise the integrity of the planning process and may give rise to suspicion that the Officer or ~~Member~~Councillor in question was not necessarily acting in an impartial manner.

A26. ~~Representations In considering planning applications, objections and Development Plan representations submitted by Councillors and or other Officers on planning applications, objections and Development Plan proposals shall be given no greater weight than those of the general public, landowners or developers. Planning Officers will make no distinction between these and any other cases.~~

Clearly, no distinction should be made between a representation or planning application received from a Councillor or Officer of the Council and one which has been received from a ~~member~~Councillor of the public or landowner.

Any decision will therefore be based solely on relevant planning issues with no regard had to any indirect or direct connection between the applicant/objector and the City Council.

A27. Applications by Councillors, Officers or ~~their Relatives or Friends~~Immediate Relative shall only be determined by the Planning Committee

These applications must be dealt with, and be seen to be dealt with, openly, fairly and without any bias. Accordingly despite the scheme of delegation to officers to decide certain application, all such applications will be reported to and determined by the Planning Committee.

PART B – THE DECISION MAKING PROCESS

Lobbying of Councillors

B1. Any lobbying of MemberCouncillors must be dealt with carefully to minimise any perception of influence

~~Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, a site allocation in a development plan or an emerging policy, will often seek to influence it through an approach to their ward Councillor or to a Councillor of the planning committee. This is a complex area and one that requires special care. Lobbying is an attempt to influence a MemberCouncillor's view by way of letter, telephone call, meetings or documents in order to achieve a particular decision. It can be by applicants, or their agents, objectors or other Councillors. It is a normal part of the political process but where MemberCouncillors are making statutory decisions, such as planning decisions it can result in decisions being made improperly.~~

~~Lobbying, however, can lead to the impartiality and integrity of a councillor being called into question, and so care and common sense must be exercised by all parties involved.~~

~~Planning decisions must be made strictly on the basis of the facts, policies and material circumstances relating to each case. Councillors must not only act in a way that is fair to all parties but must be seen to do so. In particular, Councillors must not prejudge or pre-determine proposals before they have read the Officer's reports and considered all the evidence at the Committee meeting.~~

~~Lobbying can take many forms, including the most common:~~

- ~~(a) Lobbying of Councillors by applicants, agents, objectors or supporters.~~
- ~~(b) Lobbying by other Councillors.~~

~~Lobbying may be verbal or by the circulation of messages, letters or documents to all or some Councillors physically or digitally. On occasions applications/agents/owners may wish to meet Councillors at the site.~~

~~Where a Councillor is asked for support by an applicant or agent, supporter or objector in respect of a planning application or related matter then the Councillor must state that he/she will not indicate support or otherwise until they are in possession of all the facts and have had heard the Committee debate. Such contact (lobbying) must be declared at the Committee meeting.~~

~~Councillors on the Planning Committee who receive representationscorrespondence from people seeking to persuade them to vote in a particular way shall, where those representations are that correspondence is not referred to in either the Officers' report to Committee, or on the late Representations Sheet circulated at Committee, shall supply full details and copies (where applicable) copy it to the Planning Manager and the Case Officer for the application.~~

~~Councillors who receive representationscorrespondence from people seeking to persuade them to vote in a particular way in respect of a Development Plan matter shall, where those representationsat arecorrespondence is not referred to in the Officers' report to Council, supply full details and copies (where applicable) copy it to the Planning Policy Team Leader.~~

~~Developers often arrange presentations in respect of their development proposals, and, provided these are within a public forum, Councillors of the Planning Committee may attend and listen to such presentations and ask questions for the purposes of clarifying their understanding of the proposals but only where the presentation is provided within a public forum. However, it is important to be aware that a presentation is a form of lobbying and bear in mind the need to avoid pre-determination. Any attendance at developer presentations must be declared at the Planning Committee meeting.~~

~~MemberCouncillors should treat lobbying with care and should ensure that 'unofficial' views, promises or documents do not unduly influence them. MemberCouncillors should advise lobbyists to present their views in writing to the relevant Planning Officer. Alternatively, MemberCouncillors may choose to pass on the views and or submissions of lobbyists to the relevant Planning Officer but in doing so should make it clear that they are not giving their own views as this is a matter for formal consideration by MemberCouncillors.~~

~~MemberCouncillors should take particular care when attending public meetings and should remain impartial without expressing a view one way or the other. Where the view of a MemberCouncillor on a particular development proposal has been expressed in public, this must be declared by that MemberCouncillor when the matter is next considered by Planning Committee, Cabinet or Council.~~

~~Planning decisions must be made strictly on the basis of the facts and policies relating to each case. MemberCouncillors must not only act in a way that is fair to all parties but must be seen to do so. In particular, MemberCouncillors must not prejudge proposals before they have read the officer's reports and considered all the evidence.~~

~~It can cause particular problems if MemberCouncillors are given information or assurances by applicants that are not part of the formal application or proposal and which are not therefore enforceable. Problems can also arise if MemberCouncillors are given information by objectors which may be misleading untrue or irrelevant. It is also problematical if officers are unaware of submissions by applicants and objectors and are therefore unable to consider them and advise the Committee about their relevance or enforceability.~~

~~This would cause particular problems if the Committee based a refusal on those matters which officers had not had an opportunity to consider and comment upon.~~

~~Circulation of unofficial papers at a Committee meeting also constitutes lobbying. Planning applications must be determined on the basis of the documents and information formally submitted. Only submissions from applicants, agents or objectors, which are formally received by Planning Officers, can properly be taken into account in making a decision. The Committee could be materially misled if MemberCouncillors or other parties circulated 'unofficial' documents or introduced new information on behalf of an applicant or objector, or expressed what they believed to be an applicant's intention, if this did not form part of the application documents and correspondence which had been submitted to Development Control. In all circumstances copies of any letters, documents or correspondence should be given to the Planning Officer to consider and comment on.~~

B2. Planning Committee MemberCouncillors should not organise support for or against a planning application and should not lobby other Councillors.

Planning Committee MemberCouncillors should not place themselves in a position where they may give the impression that they had made up their mind before hearing the evidence. Each Councillor should make up his or her own mind on the evidence and facts presented to the Committee. With regard to other Councillors, they must not seek to influence Planning Committee MemberCouncillors or act in a way which could reasonably give that impression.

~~B3. Councillors or Officers within the Council must not instruct or put pressure on Planning Officers to make or not to make a particular recommendation on a planning application or matter relating to the Development Plan including in particular the allocation of land.~~

~~— The City Council's Planning Officers must always act impartially to give advice based upon a professional assessment of the planning merits of each proposal taking into account relevant planning policies and other material considerations. If they do not, or even if it appears that they are not, the integrity of the planning process is severely compromised.~~

~~— Chartered Town Planners may only advocate their own professional view and cannot be required to attend or advise party political meetings.~~

B4. Where a MemberCouncillor has been actively lobbied through the submission of written correspondence, any such correspondence should be reported to other MemberCouncillors and Officers when the matter is discussed at Planning Committee, Cabinet, Council and any other relevant meeting.

Where lobbying has occurred, the Councillor who has been lobbied should make other Councillors involved in the decision making process, aware of such an approach as well as Officers who may be responsible for making recommendations in respect of the proposal in question.

Reports to Planning Committee/Cabinet/Council

B5. Officers will, with the exception of matters of urgency, provide written reports for all matters to be considered by the Planning Committee, Cabinet and Council and where appropriate for any MemberCouncillor Working Group.

The Council will comply with the Local Government (Access to Information) Act 1985 (as amended) in supplying agendas and reports to the Planning Committee and dealing with matters of urgency.

~~There will be occasions when matters arise after the committee papers have been prepared and sent out, but a decision of Committee will be required. If possible a written report will be tabled, or if this is not possible the Development Control Services/Planning Manager will provide a detailed verbal report on the issue, explaining why it is urgent and providing recommendations. This shall be minuted.~~

~~MemberCouncillors are also permitted to raise matters of urgency under the Local Government Act 1972. However if they do intend to do this, the Planning Officers should be informed prior to the meeting of the nature and content of the matter. Officers will attempt to answer any questions, but depending on the length of notice of the matter of urgency this may not be possible at that meeting.~~

~~Any matters of urgency can only be raised with the agreement of the Chair of Planning Committee who must give reasons as to why it is considered to be an urgent item.~~

~~B6. Officer reports will always be accurate and cover all relevant considerations and issues including where relevant, the views of consultees and objectors.~~

B7. Reports to Planning Committee will ~~each give include~~ a clear recommendation that will normally be that of the ~~Development Control Services Manager~~.

~~Planning reports should be accurate and should include the substance of any objections and other responses received to the consultation. Relevant information should include a clear assessment against the relevant development plan policies, relevant planning law and guidance parts of the NPPF, any local finance considerations, and any other material planning considerations. Reports should contain, where relevant, technical appraisals which clearly justify the recommendation. If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated.~~

~~Reports should include a have a written recommendation on the for a decision to be made.~~

~~Reports should contain, where relevant, technical appraisals which clearly justify the recommendation. If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated.~~

~~Any oral updates or changes to the report should be fully minuted.~~

~~*In exceptional circumstances where, at the time of publication of the report, negotiations are still ongoing or an essential consultation or other response is awaited, Officers will give an oral recommendation and this will be minuted.*~~

~~*If the report is not by the Development Control Services Manager the reason for this will be included in the report.*~~

B8. ~~Member Councillors~~ must read and carefully consider the content of Officer reports before the relevant meeting and must have regard to the content of the report in reaching a decision. ~~Where a Member Councillor or Member Councillors require further clarification on any particular matter, this should be raised with the Development Control Services Manager in advance of the Planning Committee meeting so that an informed response may be prepared and in order to avoid any unnecessary delay in the consideration of the application.~~

~~Officers will therefore prepare written reports on all planning matters being considered by Planning Committee, Cabinet and Council.~~

~~Where a Councillor or Councillors require further clarification on any particular matter, where possible, this should be raised with the Planning Manager in advance of the Planning Committee meeting so that an informed response may be prepared and in order to avoid any unnecessary delay in the consideration of the application. Written reports are a cornerstone of probity in the modern Planning system. The Audit Commission and a number of reports in respect of Planning malpractice have made quite clear that written reports are essential.~~

~~Officers will therefore prepare written reports on all planning matters being considered by Planning Committee, Cabinet and Council.~~

Matters to be discussed by ~~Member Councillors~~ at a Working Group will generally be supported by a written report, however, on occasions, for the sake of expediency, it may be necessary to provide ~~Member Councillors~~ of the Working Group with an oral report.

Voting and Impartiality

B9. Planning Committee MemberCouncillors must make decisions based on the planning policies and material planning considerations relevant to a case ~~vote in the planning interests of the City as a whole and must not vote on the basis of local ward interests that may be contrary to a balanced planning assessment in the light of wider planning policies and planning guidance.~~ The same principle applies to MemberCouncillors who are required to make decisions on matters relating to the Development Plan including Cabinet, Council and any MemberCouncillor Working Group.

Whilst Councillors have a special duty to their ward constituents, including those who did not vote for them, their overriding duty is to the whole community. This is particularly pertinent to Councillors involved in making a planning decision. A key role of the planning system is the consideration of development proposals against the wider public interest

If the planning system is to work properly it is essential that in voting on all planning matters, MemberCouncillors do so based on the advice set out in the Officer report and not in the pursuit of their own personal or ward interests or even someone known to them. This is likely to be a breach of the National Code of Conduct and can lead to disqualification or other sanction.

B10. MemberCouncillors of the Planning Committee must not declare which way they intend to vote in advance of the consideration of an application by the Planning Committee.

This can be a difficult issue for MemberCouncillors as they may be exposed to pressure from residents or the media to express a particular viewpoint. Councillors should avoid expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have considered all the application materials and arguments for and against the development proposal.~~However it is essential that MemberCouncillors are measured and circumspect in the comments they make.~~ If a MemberCouncillor declares which way they intend to vote it would in effect be pre-judging (or pre-determining) the application without having considered all of the relevant information. This could expose the Council to the possibility of legal challenge or charges of maladministration. MemberCouncillors must not make up their minds up until they have read the relevant committee reports and heard the evidence and arguments on both sides, at committee.

B11. If a MemberCouncillor of the Planning Committee (including a substitute MemberCouncillor) does declare his or her OUTRIGHT support or opposition for a proposal before the matter has been put before the Planning Committee, he or she must make an open declaration of their view to the Planning Committee and take no part in the voting on that particular item.

This rule follows on from Rule B10 above. It does not mean that MemberCouncillors of the Planning Committee cannot reflect local concerns about a proposal before the Planning Committee considers it. However, the view or comment must not pre-determine or be seen to pre-determine the way that MemberCouncillor will vote.

~~**B12. Councillors who may also be MemberCouncillors of either a Parishor Town Council or Gloucestershire County Council must exercise particular care in reconciling their two roles in making decisions on planning applications and Development Plan matters.**~~

~~Any MemberCouncillor serving a 'dual-function' must exercise great caution. They may, for example, be required to express a view or vote on a particular proposal at a Parish, Town or County Council meeting and should in any such case, abstain from the debate/vote. This is not inconsistency, but the consequence of having to fulfil two totally separate roles.~~

~~If a MemberCouncillor does declare his or her outright support or opposition to a proposal through another forum such as a Parish Town or County Council meeting, they must make an open declaration when the matter is discussed at the City Council Planning Committee, Cabinet or Council meeting and take no part in voting on that matter.~~

~~The Code of Conduct must be carefully considered here. The interest is likely to be a disclosable pecuniary interest and could affect the MemberCouncillor's ability to participate in the decision.~~

~~Some Councillors will be Councillors of the County or Parish/Town Councils as well as City Councillors. Such interests may mean that a Councillor is involved with a planning application before the matter comes before the Planning Committee. Any involvement shall be declared at the meeting with reference to the relevant agenda item. Such involvement need not on its own debar a Councillor from participating in making the planning decision when the matter is considered by Planning Committee providing that the Councillor has not already decided how they will vote on the matter before the Committee.~~

~~Councillors should, however, always consider carefully whether in any particular case they could reasonably be seen to approach the planning merits of the application with an open mind. If the Councillor considers that this is not possible, the Councillor should withdraw from consideration of that item.~~

B13. All Councillors must not favour or show, or appear to favour or show, bias towards any particular person, company or group, or any particular site or locality in the exercise of any planning function.

Decisions Involving Council-Owned Land

B14. In making decisions in relation to Council-owned land, Officers and MemberCouncillors will base their assessment on relevant planning issues only and will have no regard to financial or any other benefits that might accrue as a result. (This principle applies to both the determination of planning applications and the allocation of land through the Development Plan process).

The Council's own proposals, or those of others on Council owned land, must be dealt with on exactly the same basis as applications and representations submitted by any other applicant/landowner, particularly as there are special Regulations under which to consider them.

MemberCouncillors must not have any regard to any other benefit, financial or otherwise, which may accrue to the Council as a result of any particular decision on a planning proposal. All planning applications and representations, irrespective of the applicant, must be considered and dealt with on the planning merits, not any extraneous gain or loss that might accrue to the Council.

B15. In particular, Officers and **MemberCouncillors will ensure that decisions to allocate Council-owned land are based on the most appropriate use or mix of uses and not on the basis of which use or uses would yield the highest land value.**

Clearly certain land uses such as residential and retail in particular have a higher land value than others and as such it is important that in seeking to allocate land that is owned by the City Council, Officers and **MemberCouncillors** make any such recommendation and decision on the use that is most appropriate for the site given its location and surrounding uses and not with regard to which use will yield the highest land value.

B16. Other proposals that may have an impact on a Council land holding or proposal must also be dealt with strictly on their planning merits. (This principle applies to both the determination of planning applications and the allocation of land through the Development Plan process).

These circumstances present special challenges to ensure that the planning system operates, and is seen to operate, fairly.

Political Decisions

B17. Decisions on planning applications and Development Plan matters or the establishment of 'party lines' cannot be made in political group meetings prior to a Planning Committee or Cabinet/Council meeting.

The view of the Ombudsman is that 'the use of political whips at group meetings is contrary to the National Code and amounts to maladministration'. It could also give rise to a legal challenge to any decision by judicial review.

Deferrals and Committee Site Visits

B18. To ensure that Committee applications are dealt with as effectively and quickly as possible, site visits may be held prior to Committee for significant major applications

The Chair of Planning Committee, in consultation with the Planning Manager, will identify any significant major applications on the agenda where there are would benefit from an advance site visit. The criteria to be considered will include whether there are significant design, highway, heritage or residential amenity issues to be assessed that would benefit from a site visit or where. An advance visit will be particularly relevant for applications where the planning issues are finely balanced.

Where Members propose to defer the consideration of a planning application they must set out clear planning reasons for doing so and these will be minuted.

B19. Where Councillors propose to defer the consideration of a planning application for a site visit they must set out the reasons for doing so and these will be minuted

The reason for deferring for a site visit must be clearly set out by the proposer and recorded in the minutes. Planning reasons for Councillors requesting a site may include helping Councillors of Planning Committee to understand more fully:

- the details of a development proposal in the context of the application site,
- the surrounding land and buildings,
- issues raised by interested parties.

B20. All site visits-inspections will be conducted in a strictly ‘fact-finding’ manner **and**

~~there~~ There shall be no on-site debate about the merits of the proposal or any negotiations or discussions with the applicant, agent or residents. All site visits shall be conducted in accordance with Protocol for Site Visits attached at Appendix A.

B20B21. *In the event that a site visit is considered necessary to assist MemberCouncillors in deciding on a matter relating to the Development Plan, the same principles will apply.*

Deferrals

B22. A proposal to defer an application must be made on clear planning grounds. ~~A proposal to defer an application must be made on clear planning grounds.~~ Justification for deferring a decision might be to ensure that all the proper consultation procedures have been followed or to secure amendments without which the application would have to be refused. ~~The reason for deferring for a site visit must be clearly set out by the proposer and recorded in the minutes.~~ Political expediency such as deferring a contentious application until after elections is never an acceptable course of action.

Committee Process

B21B23. *The Council’s Constitution and Procedure Rules ~~Standing Orders~~ will apply to the conduct of business.*

There are also some good practice rules to assist the smooth operation of the Committee and promote probity. These are:

- MemberCouncillors should not report new information at the Planning Committee that they may have been given by applicants or third parties, which has not been submitted to Officers for formal consideration and comment. If new information comes to light it should be reported to officers in advance of the meeting and in good time to properly consider the information.
- MemberCouncillors should seek any necessary clarification from Officers on key issues **before** the meeting as this enables fuller and better-researched answers to be given.
- MemberCouncillors should not introduce non-planning related matters to the debate.
- MemberCouncillors should not speak at length on items where they are in full agreement with the Officer report or to repeat points already made by other contributors to the debate.
- The Chair will always afford Officers the opportunity to respond to questions and points made by MemberCouncillors.

- At the discretion of the Chair of the Planning Committee, Ward Councillors may be allowed to speak at Planning Committee to express their own views or those of their constituents.

B22B24. Speaking at Planning Committee

The Council permits applicants and objectors the right to address the Committee for up to 5 minutes prior to the consideration of an application by the Committee.

Speakers must have made written representations on the matter under discussion and must provide their name to the Chair in advance of the meeting.

~~Only Generally speaking, only one person for, and one person against, the application may speak. Only individuals who have made written representations will be eligible to speak, and only on planning considerations and matters raised with officers beforehand. Occasionally, In exceptional cases, and only at at the discretion of the Chair, more than two speakers may be permitted but the Chair will ensure that there is equity between the number of speakers or the amount of time allowed, for and against the matter, although an equal amount of time for speakers for and against will be allowed.~~

~~If there are a large number of supporters, or objectors, then generally only one representative of each may address the Committee unless otherwise agreed by the Chair to speak. Their names must be provided to the Chair prior to the Committee starting.~~ Ward Councillors will be allowed to speak on an application at Planning Committee provided that they do not have a declarable prejudicial interest. The Council has prepared a separate guidance note on the procedures to be followed in speaking at Planning Committee. This is available ~~from the Planning Department and is also~~ online.

Planning Committee Decisions which differ from the officer recommendation

B23B25. Where MemberCouncillors propose to make a decision contrary to the Officer recommendation, clear planning reasons must be established and these must be seconded and minuted.

The MemberCouncillor, or MemberCouncillors, proposing the decision contrary to the report recommendations, must give clear and relevant planning reasons for their proposal to either refuse or permit an application, before any vote is taken. ~~Their reasons must be relevant and material planning considerations.~~

B24B26. In cases where MemberCouncillors propose to make a decision contrary to an Officer recommendation, the Chair will allow the Development Control Services Planning Manager to comment before a vote is taken.

~~It is a requirement of t~~The Town and Country Planning Act 1990 and the 2004 Planning and Compulsory Purchase Act require that decisions must be in accordance with the provisions of the Development Plan unless material considerations indicate otherwise. However, decision-making often requires assessment and judgement of the weight to be attached to certain policies and issues and no Development Plan no matter how current will ever provide an answer for all, or even most, applications. Any decision contrary to the provisions of the Development Plan must be clearly justified and recorded. The personal circumstances of an applicant will hardly ever provide such grounds.

These principles do not apply directly to decisions pertaining to the drafting of the Development Plan. However, there will be occasions when MemberCouncillors make

decisions that are not in accordance with the recommendations of Officers. In such cases, the general principles set out above will apply, in particular, the reason for the decision must be justified and minuted.

Public Attendance

~~**B25. All planning matters on Planning Committee, Cabinet and Council agenda will be considered in public session.**~~

~~Open debate is a fundamental pre-requisite of probity in the planning system.~~

~~Applicants, agents, supporters or objectors to an application do have a right to address the Planning Committee, but this is limited to one in support and one in opposition. Other than this no other person shall be allowed to speak or make recommendations at the Committee. Any ~~member~~Councillor of the public who disrupts the meeting in any way will not be allowed to remain in the room.~~

~~**B26**~~**B27. Great care should be taken by MemberCouncillors mingling or speaking to applicants or objectors.**

~~MemberCouncillors should be extremely careful in meeting with and talking to applicants or objectors either before or after the meeting. This could give the impression that MemberCouncillors had either prejudged a particular application, or had supported a particular view without looking at, and taking into account all the facts presented by the Planning Officers. This could be seen as seeking to influence that Councillor improperly and will create a perception of bias that will be difficult to overcome.~~

~~In addition, over familiarity, joking, and other forms of informal behaviour before, during or after the meeting can be open to misunderstanding and misinterpretation by memberCouncillors of the public or the press attending meetings, for whom the business of the Planning Committee is viewed with genuine seriousness.~~

PART C – ADMINISTRATIVE MATTERS

MemberCouncillor and Officer Training

- C1. Any MemberCouncillor who is on the Planning Committee must take part in regular training.**

~~MemberCouncillors who are exercising powers to grant or refuse planning applications are exercising a quasi-judicial function in an area where there is considerable Government advice and law. The determination of a planning application is a formal administrative process based on balancing competing interests and making an informed judgement against a local and national policy framework in the wider public interest. Relevant planning legislation, case law and rules of procedure must also be considered.~~

~~MemberCouncillors must ensure they are~~be adequately trained ~~to carry out the task.~~ Accordingly any MemberCouncillor who is on the Planning Committee must take part in training organised by the ~~Development Control~~planning Service service either before the first meeting of the Committee or within 3 months after being nominated to serve on the Committee, whichever is the later. If they do not, or cannot, participate in the training they must step down.

All MemberCouncillors (including substitute MemberCouncillors) who sit on the Planning Committee must attend refresher training at least once every 3 years. Any MemberCouncillor of the Planning Committee who has not undergone refresher training in accordance with this Code of Practice will not be permitted to vote on any planning applications. Accurate records of MemberCouncillor training will be kept by Planning Officers.

- C2. Planning Officers will undertake training and provide advice to ensure that MemberCouncillors are sufficiently well informed on the implications of the Development Plan system prior to their consideration of Development Plan matters.**
- C3. Councillors will in return undertake to keep themselves informed and up to date educate themselves on the implications of the Development Plan system including carrying out appropriate research from independent sources such as the Government's 'Planning Portal' website.**
- C4. Councillors are encouraged to attend any training sessions that are organised each year. MemberCouncillors are also encouraged to research pertinent issues by reference to the ~~Development Control Services~~planning Manager manager who can arrange access to publications, legislation, policy documents and practice notes.**
- C5. MemberCouncillors will be given regular updates to keep them informed of important changes in legislation, procedures or practices, either verbally, at meetings, or as briefing notes.**

Record Keeping

- C6. Officers will ensure that planning application files contain sufficient information itemising events so that the reason for the ultimate decision can be understood by anyone who reads the file without a detailed knowledge of the application.**

Complaints

C7. Any complaints received in writing about the way in which a planning matter has been dealt with in terms of procedure and fairness will be investigated under the Council's Complaints Procedure.

C8. Where a complaint is not considered to warrant a full investigation under the Council's Complaints Procedure, Officers will in any case endeavour to explain the reasons for the Council's decision.

The fact that someone may disagree with the decision the Council has reached is not a complaint which will necessitate investigation as such, although officers will ~~endeavor~~endeavour to explain the reasons for the Council's decision in any particular case.

Where any complaint about a Council decision made contrary to the officer's recommendation is received, a copy will be forwarded to the Chair of the Committee. ~~Complaints can also be made to the Local Government Ombudsman regarding administrative maladministration, or the Audit and Governance Committee regarding breaches of the Code of Conduct.~~

APPENDIX A: Planning Committee Site Visit Protocol

1.0 Background

1.1 This protocol is intended to guide Councillors of the Planning Committee when considering planning applications in deciding on whether site visits are appropriate and the procedure for arranging and carrying out site visits.

1.2 Site visits by the Committee are part of the formal committee process and therefore should be dealt with in a consistent and organised manner.

2.0 The Purpose of a Site Visit

2.1 Site visits help in enabling Councillors of Planning Committee to understand more fully:

- the details of a development proposal in the context of the application site,
- the surrounding land and buildings,
- issues raised by interested parties.

2.2 The merits of the proposal are not discussed nor is a decision reached. The discussion on the merits of the application will take place at the next Planning Committee meeting.

2.3 The Chair of Planning Committee, in consultation with the Planning Manager, will identify any significant major applications on the agenda that would benefit from an advance site visit. The criteria to be considered will include whether there are significant design, highway, heritage or residential amenity issues to be assessed that would benefit from a site visit. An advance visit will be particularly relevant for applications where the planning issues are finely balanced.

2.4 Where Planning Committee is requested to defer a determination to enable a site visit to take place sound planning reasons should be given for the site visit and they should be recorded in the minutes.

2.5 Site visits are part of the meeting of Planning Committee. Councillors intending to declare a personal interest should make this known to the Chair and the planning officer on site. If the interest is not prejudicial the Councillor may attend the site visit. Councillors intending to declare a prejudicial interest and withdraw from the meeting on the matter, should not attend the site visit.

3.0 Arranging Site Visits

3.1 Where a site visit is necessary Democratic Services will make the necessary arrangements.

3.2 The following will be invited to the site visit:

- All Councillors of the Planning Committee
- Ward Councillors and adjacent wards Councillors if affected by the proposal

The agent (or, in the absence of an agent, the applicant) will be informed about the site visit in order to secure permission to access the site and make arrangements to access the site.

3.3 A link to the copy of the committee report and the Planning Committee Site Visit Protocol will be sent to all those notified of the visit.

3.4 While officers will attempt to arrange the visit in advance with relevant parties, there is no right to enter on private land without permission of the owner. Where appropriate officers will obtain prior permission from land owner or his agent for those invited to attend the site visit to enter the land. If permission is not given for Councillors and officers to enter, the site will be viewed from the public highway.

4.0 Procedure at Site Visits

4.1 The Chair of Planning Committee will oversee the conduct of site visits. The visit will start promptly at the time notified to Councillors and interested persons. The planning officer will note the names of all Councillors, officers and invitees present and record any interests declared. The planning officer will ensure that all those entering the site as part of the inspection have the applicant's permission to do so.

4.2 If present at the site before the visit begins, Councillors should take particular care to ensure that they maintain their objectivity and Councillors must not engage in discussion individually or in small groups with any other parties who maybe present. Similarly, hospitality or lifts should not be accepted from an applicant or objectors/supporters as this could be seen to show favour.

4.3 Councillors and officers should ensure that mobile phones are turned off or are on silent during the site visit.

4.4 At the request of the Chair, the planning officer will describe the proposal to councillors and will display plans for the proposal. If available, it is expected that Councillors will already be familiar with the planning officer's report. The planning officer will indicate matters of fact in relation to the proposal and surrounding land which Councillors should take into account.

4.5 Councillors of the Planning Committee may ask the planning officer for factual clarification of any planning matter relating to the proposal or surrounding land, for example, distances to adjoining or objectors' properties or the location of parking

spaces. Councillor questions should be addressed to the planning officer through the Chair. At no time during the site visit should Councillors debate or comment on the planning merits or otherwise of a proposal. The proper time for the consideration of the merits of the proposal is at the subsequent committee meeting.

4.6 The public right to address Planning Committee does not arise until the application is considered at the Planning Committee. At no time during the site visit will the applicant, their agent, any objector/supporter or any other Councillor of the public be allowed to address Councillors. The site visit is not for further representations to be made, however occasionally it may be appropriate for interested parties at the site visit to be asked, through the Chair, to point out important or relevant site features.

4.7 In order to assist in ensuring that Councillors receive the same information, they should keep together in one group with the chair and the planning officer and not break away into small groups.

4.8 At the end of the site visit the Councillors should leave the site promptly. If necessary they will drive or be transported to the next site visit where the same procedures as above will apply.

4.10 The planning officer's record of Councillors' attendance at the site visit will be given to the democratic services officer for minute purposes.

4.11 When the application is reported to Committee for consideration and debate the planning officer will briefly describe during the presentation of the item, the purpose of the site visit and the main aspects viewed.

#

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