

Hastings Borough Council

Constitution of the Council

Part 5

Codes and Protocols

The Constitution, Part 5
Codes and Protocols

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Hastings Borough Council

**To be revised following implementation of the Localism Act
2011 and regulations made thereunder.**

Members' Code of Conduct

Hastings Borough Council Members' Code of Conduct

(adopted by Council on 25 July 2007, revised 22 December 2010)

Part 1

General provisions

Introduction and interpretation

- 1.(1) This Code applies to **you** as a member of an authority.
- (2) You should read this Code together with the general principles prescribed by the Secretary of State.
- (3) It is your responsibility to comply with the provisions of this Code.
- (4) In this Code
 - "meeting" means any meeting of
 - a. the authority
 - b. the executive of the authority;
 - c. any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;
 - "member" includes a co-opted member and an appointed member.
- (5) In relation to a parish council, references to an authority's monitoring officer and an authority's standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

Scope

- 2.(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you
 - a. conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
 - b. act, claim to act or give the impression you are acting as a representative of your authority,and references to your official capacity are construed accordingly.
- (2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.
- (3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.
- (4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).
- (5) Where you act as a representative of your authority
 - a. on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or

- b. on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

- 3.(1) You must treat others with respect.
- (2) You must not
 - a. do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006)
 - b. bully any person;
 - c. intimidate or attempt to intimidate any person who is or is likely to be
 - i. a complainant,
 - ii. a witness, or
 - iii. involved in the administration of any investigation or proceedings,in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
 - d. do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.
- (3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.
- 4. You must not
 - a. disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where
 - i. you have the consent of a person authorised to give it;
 - ii. you are required by law to do so;
 - iii. the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - iv. the disclosure is
 - aa. reasonable and in the public interest, and
 - bb. made in good faith and in compliance with the reasonable requirements of the authority; or
 - b. prevent another person from gaining access to information to which that person is entitled by law.
- 5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.
- 6. You
 - a. must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
 - b. must, when using or authorising the use by others of the resources of your authority
 - i. act in accordance with your authority's reasonable requirements;

- ii. ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - c. must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- 7.(1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by
 - a. your authority's chief finance officer; or
 - b. your authority's monitoring officer,where that officer is acting pursuant to his or her statutory duties.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Part 2

Interests

Personal interests

- 8.(1) You have a personal interest in any business of your authority where either
- a. it relates to or is likely to affect
 - i. any body of which you are member or in a position of general control or management and to which you are appointed or nominated by your authority;
 - ii. any body
 - aa. exercising functions of a public nature;
 - bb. directed to charitable purposes; or
 - cc. one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;
 - iii. any employment or business carried out by you;
 - iv. any person or body who employs or has appointed you;
 - v. any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
 - vi. any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
 - vii. any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph vi;
 - viii. the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
 - ix. any land in your authority's area in which you have a beneficial interest;
 - x. any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
 - xi. any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
 - b. a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of
 - i. (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

- ii. (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or
 - iii. (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.
- (2) In sub-paragraph (1)(b), a relevant person is
 - a. a member of your family or any person with whom you have a close association; or
 - b. any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
 - c. any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
 - d. any body of a type described in sub-paragraph (1)(a)(i) or (ii).
- (3) If you are a member of Charity Committee, which is the committee of Cabinet that makes decisions on behalf of the Council as charity trustee, you have a personal, and where appropriate prejudicial interest when sitting on Cabinet, Council or any other committee of Cabinet or Council, except the Charity Committee, and there is a consideration of a matter or matters relating to or affecting the Hastings and St Leonards Foreshore Charitable Trust.

Disclosure of personal interests

- 9.(1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- (2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
- (3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- (4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- (5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
- (6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- (7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

Prejudicial interest generally

- 10.(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is
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one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

- (2) You do not have a prejudicial interest in any business of the authority where that business
- a. does not affect your financial position or the financial position of a person or body described in paragraph 8;
 - b. does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
 - c. relates to the functions of your authority in respect of
 - i. housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - ii. school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - iii. statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - iv. an allowance, payment or indemnity given to members;
 - v. any ceremonial honour given to members; and
 - vi. setting council tax or a precept under the Local Government Finance Act 1992.

Prejudicial interests arising in relation to overview and scrutiny committees

11. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where
- a. that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another authority's committees sub-committees, joint committees or joint sub-committees; and
 - b. at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

Effect of prejudicial interests on participation

- 12.(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority
- a. you must withdraw from the room or chamber where a meeting considering the business is being held
 - i. in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
 - ii. in any other case, whenever it becomes apparent that the business is being considered at that meeting;
- unless you have obtained a dispensation from your authority's standards committee;
- b. you must not exercise executive functions in relation to that business; and
 - c. you must not seek improperly to influence a decision about that business.

- (2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Part 3

Registration of Members' Interests

Registration of Members' Interests

- 13.(1) Subject to paragraph 14, you must, within 28 days of
- a. this code being adopted by or applied to your authority; or
 - b. your election or appointment to office (where that is later),
- register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.
- (2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

Sensitive information

- 14.(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.
- (2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is not longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.
- (3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

Hastings Borough Council

Written Undertaking

I having become a member/co-opted member (delete as appropriate) of Hastings Borough Council, declare that I will duly and faithfully fulfil the requirements of this role according to the best of my judgement and ability.

I undertake to observe the code as to the conduct which is expected of members/co-opted members (delete as appropriate) of Hastings Borough Council.

Signed:

Date:.....

This undertaking was made and signed before me

Signed:

Date:.....

Proper Officer of the authority*

*Where the declaration is made before another person authorised by section 83(3) of the above Act, state instead the capacity in which that person takes the declaration.

Hastings Borough Council

Protocol for Relationships Between Members and Officers

Hastings Borough Council Protocol for Relationships between Members and Officers

“Every local authority should have its own written statement or protocol governing relations between members and officers”. (Third report of the Committee on Standards in Public Life – the Nolan Committee)

Preamble

1. Mutual trust and respect between members and officers is at the heart of a council's good governance. They are essential if the partnership necessary for the effective running of a local authority is to succeed.
2. This may seem obvious, but what happens when relationships go awry? Where can members and officers turn for guidance? What mechanisms exist for addressing concerns? How can matters be improved?
3. Such questions point to the need for a written guide to the basic elements of the relationship between members and officers – a protocol:
 - to promote trust, openness, fairness and honesty by establishing some ground rules;
 - to define roles so as:
 - to clarify responsibilities (i.e. who does what),
 - to avoid conflict, and
 - to prevent duplication or omission;
 - to secure compliance with the law, codes of conduct and a council's own practices; and
 - to lay down procedures for dealing with concerns by members or officers.
4. A protocol should be recognised both as a central element of a council's corporate governance, and as a commitment to upholding standards of conduct in public life. It's one way of demonstrating to the public at large that local government is serious about protecting and enhancing its integrity and reputation.
5. This document is intended to be a model. It does not seek to be prescriptive or exhaustive. Rather, it sets out the issues which are likely to be common to most councils.

Definitions

6. Unless the context indicates otherwise, references to the term Council include the Executive, overview and scrutiny committees, and other committees and sub-committees.
7. For the purposes of this protocol, the term Executive refers to the Leader and Cabinet.
8. Unless the context indicates otherwise, the terms **member and members** include non-elected (i.e. co-opted) members as well as elected councillors.
9. **Officers and staff** mean all persons employed by the Council.
10. **Senior officer** means the Directors, Heads of Service and senior managers, except where otherwise stated.
11. **Designated Finance Officer** means the officer exercising the duties prescribed by law for the financial administration of the Council.

Principles

12. Members and officers must at all times observe the protocol.
13. The protocol has been approved by the Council's Standards Committee?? who will monitor its operation.
14. The protocol seeks to maintain and enhance the integrity (real and perceived) of local government which demands the highest standards of personal conduct.
15. Members and officers must always respect the roles and duties of each other. They must show respect in all their dealings by observing reasonable standards of courtesy, and by not seeking to take unfair advantage by virtue of their position.
16. Whilst members and officers are indispensable to one another, their responsibilities are distinct. Members are accountable to the electorate and serve only as long as their term of office lasts. Officers are accountable to the Council as a whole. Their job is to give advice to members (individually and collectively) and to carry out the Council's work under the direction of the Council.
17. The Council has adopted codes of conduct for both members and officers. Both represent best practice. The members' code follows the national code which in turn is based on the general principles governing members' conduct enshrined in law, viz:
 - selflessness – serving only the public interest.
 - honesty and integrity – not allowing these to be questioned; not behaving improperly.
 - objectivity – taking decisions on merit.
 - accountability – to the public; being open to scrutiny.
 - openness – giving reasons for decisions.
 - personal judgement – reaching one's own conclusions and acting accordingly.
 - respect for others – promoting equal opportunity, avoiding unfair discrimination; respecting others (member/member, as well as member/officer).
 - duty to uphold the law – not acting unlawfully.
 - stewardship – ensuring the prudent use of a council's resources.
 - leadership – acting in a way which has public confidence.
18. These principles underpin this protocol. They will also be reflected in a new national code of conduct for employees.
19. Until such time as a new national code appears, officers are bound by the Council's own code of conduct for staff and, in some cases, by the codes of their professional associations.
20. Breaches of this protocol by a member may result in a complaint to the Standards Committee whether or not it appears the members' code has also been breached. Breaches by an officer may lead to disciplinary action.

The Role of Members

21. Members have a number of roles and need to be alert to the potential for conflicts of interest which may arise between the roles. Where such conflicts are likely, members may wish to seek the advice of senior colleagues, the relevant senior officer(s), and/or the Monitoring Officer.
22. Collectively, members are the ultimate policy-makers determining the core values of the Council and approving the authority's policy framework, strategic plans and budget.

23. Members represent the community, act as community leaders and promote the social, economic and environmental well-being of the community often in partnership with other agencies.
24. Every elected-member represents the interests of, and is an advocate for, his/her ward and individual constituents. He/she represents the Council in the ward, responds to the concerns of constituents, meets with partner agencies, and often serves on local bodies.
25. Some members have roles relating to their position as members of the Executive, overview and scrutiny committees or other committees and sub-committees of the Council.
26. Members of the executive can have individual delegated powers, though this has not yet been implemented in Hastings Borough Council, except in cases of urgency. They may determine matters within their portfolios but implementation of their decisions is the responsibility of officers.
27. Members serving on overview and scrutiny committees monitor the effectiveness of the Council's policies and services, develop policy proposals and examine community issues. They may also monitor other public sector service provision eg local health service.
28. Members who serve on other committees and sub-committees collectively have delegated responsibilities, e.g. deciding quasi-judicial matters which by law are excluded from the remit of the Executive.
29. Some members may be appointed to represent the Council on local, regional or national bodies.
30. As politicians, members may express the values and aspirations of the party political groups to which they belong, recognising that in their role as members they have a duty always to act in the public interest.
31. Members are not authorised to instruct officers other than:
 - through the formal decision-making process;
 - to request the provision of consumable resources provided by the Council for members' use;
 - where staff have been specifically allocated to give support to a member or group of members.
32. Members are not authorised to initiate or certify financial transactions, or to enter into a contract on behalf of the Council.
33. Members must avoid taking actions which are unlawful, financially improper or likely to amount to maladministration. Members have an obligation under their code of conduct to have regard, when reaching decisions, to any advice provided by the Monitoring Officer or the designated Finance Officer or their nominees.
34. Members must respect the impartiality of officers and do nothing to compromise it, e.g. by insisting that an officer change his/her professional advice or by seeking to involve an officer in the pursuit of a personal or political dispute with others.
35. Members have a duty under their code of conduct:
 - to promote equality by not discriminating unlawfully against any person, and
 - to treat others with respect.
36. Under the code, a member must not when acting as a member or in any other capacity:
 - bring the Council or his/her position as a member into disrepute, or

- use his/her position as a member improperly to gain an advantage or disadvantage for him/herself or any other person.

The Role of Officers

37. Officers are responsible for giving advice to members to enable them to fulfil their roles. In doing so, officers will take into account all available relevant factors.
38. Under the direction and control of the Council (including, as appropriate, the executive, committees and sub-committees), officers manage and provide the Council's services within the framework of responsibilities delegated to them. This includes the effective management of employees and operational issues.
39. Officers have a duty to implement decisions of the Council, the executive, committees and sub-committees which are lawful, and which have been properly approved in accordance with the requirements of the law and the Council's constitution, and duly minuted.
40. Officers have a contractual and legal duty to be impartial. They must not allow their professional judgement and advice to be influenced by their own personal views.
41. Officers must assist and advise all parts of the Council. They must always act to the best of their abilities in the best interests of the authority as expressed in the Council's formal decisions.
42. Officers must be alert to issues which are, or are likely to be, contentious or politically sensitive, and be aware of the implications for members, the media or other sections of the public.
43. Officers have the right not to support members in any role other than that of member, and not to engage in actions incompatible with this protocol. In particular, there is a statutory limitation for certain officers concerning involvement in political activities.

The Relationship between Members and Officer: General

44. The conduct of members and officers should be such as to instil mutual confidence and trust.
45. The key elements are a recognition of and a respect for each other's roles and responsibilities. These should be reflected in the behaviour and attitude of each to the other, both publicly and privately.
46. Informal and collaborative two-way contact between members and officers is encouraged, but personal familiarity can damage the relationship, as might a family or business connection.
47. Members and officers should inform the Monitoring Officer of any relationship which might be seen as unduly influencing their work in their respective roles.
48. It is not enough to avoid actual impropriety. Members and officers should always be open about their relationships to avoid any reason for suspicion and any appearance of improper conduct. Where a personal relationship has been disclosed, those concerned should avoid a situation where conflict could be perceived. Specifically, a member should not sit on a body or participate in any decision which directly affects the officer on a personal basis.
49. Officers serve the Council as a whole. They have a duty to implement the properly authorised decisions of the Council.
50. Officers work to the instructions of their senior officers, not individual members. It follows that, whilst such officers will always seek to assist a member, they must not be asked to exceed the bounds of authority they have been given by their managers.

Except when the purpose of an enquiry is purely to seek minor factual information, members should normally direct their requests and concerns to a senior officer, at least in the first instance.

51. Officers will do their best to give timely responses to members' enquiries and will endeavour to observe the standards stated in the Council's Contact Charter. However, officers should not have unreasonable requests placed on them. Their work priorities are set and managed by senior managers. Overall priorities are agreed between the Leader, Lead members, and the chief officers on the basis of policies, strategies and plans agreed by the full Council or Cabinet in accordance with the Constitution. Members should avoid disrupting officers' work by imposing their own priorities.
52. Members will endeavour to give timely responses to enquiries from officers.
53. Members and officers should respect each others free (i.e. non-Council) time.

The Council as Employer

54. Officers are employed by the Council as a whole.
55. Members' roles are limited to:
 - the appointment of the head of paid service and chief officers,
 - determining human resources policies and conditions of employment, and
 - hearing and determining appeals of the head of paid service and chief officers..
56. In light of the nature of the members' role, an officer should not discuss with a member personal employment matters concerning him/herself or another individual employee. The Council has established procedures should the personal matter be in the nature of a grievance (see Grievance Policy and Procedure). This does not, of course, prevent an officer raising on a personal basis, and in his/her own time, a matter with his/her ward member.
57. Members shall not act outside these roles.
58. If participating in the appointment of officers, members should:
 - remember that the sole criterion is merit,
 - never canvass support for a particular candidate,
 - not take part where one of the candidates is a close friend or relative,
 - not be influenced by personal preferences, and
 - not favour a candidate by giving him/her information not available to the other candidates.
59. A member should not sit on an appeal hearing if the appellant is a friend, a relative, or an officer with whom the member has had a close working relationship.

Mayor and Officers

60. Officers will respect the position of Mayor and provide appropriate support.

Executive Members and Officers

61. Executive members will take decisions in accordance with the constitution and will not otherwise direct staff. Senior officers will be responsible for instructing staff to implement the executive's decisions.
62. Senior officers and executive members shall agree mutually convenient methods of regular contact. Before taking any formal decisions, the executive will seek appropriate

professional advice including, without exception, the Monitoring Officer and designated Finance Officer, and will not direct officers in the framing of recommendations.

63. Before any formal decisions with a financial implication are taken by the Executive, the Finance Officer and the senior officer(s) for the service(s) concerned must be consulted. This is to ensure that those officers who are budget holders:
- are aware of the proposed decision,
 - have the opportunity to offer advice, and
 - are subsequently able properly to authorise the financial transactions needed to implement decisions.
64. Executive members when making decisions (whether collectively or individually) must state the reasons for those decisions. The written record of the decisions must include the reasons.
65. Officers taking decisions under their delegated powers must consider the advisability of informing the relevant Lead member/s of their intentions in advance when the matter to which the decisions relates is likely to be sensitive or contentious, or has wider policy implications.

Overview and Scrutiny Members and Officers

66. Chairs and other leading overview and scrutiny members shall maintain regular contact with the officer(s) providing the principal support to the overview and scrutiny function. In consultation with chairs, it shall be the responsibility of the latter to ensure that those who need to know of matters being considered or for possible future consideration are so informed.
67. An overview and scrutiny committee or its chair acting on its behalf may require officers to attend overview and scrutiny meetings. Members should not expect junior officers to give evidence, although they may agree to do so with the approval and support of their managers. All requests should be made to senior officers in the first instance.
68. When making requests for officer attendance, overview and scrutiny members shall have regard to the workload of officers.
69. It is recognised that officers required to appear before an overview and scrutiny committee may often be those who have advised the Executive or another part of the Council on the matter under investigation. In these circumstances, an officer may have a conflict of interest. Both members and officers need to consider the severity of the conflict. In case of such conflict, provision may be made for managing the conflict eg by means of advice from an outside source.
70. Subject to 69 above, officers should be prepared to justify advice given to the Council, the executive, or other committees and sub-committees even when the advice was not accepted.
71. Officers must also be prepared to justify decisions they have taken under delegated powers.
72. In giving evidence, officers must not be asked to give political views.
73. Officers should show respect to members in the way they respond to members' questions.
74. Members should not question officers in a way which could be interpreted as harassment or as challenging the officer's integrity or honesty. Neither should they ask about matters of a disciplinary nature.
75. Overview and scrutiny proceedings must not be used to question the capability or competence of officers. Chairs and members need to make a distinction between

reviewing the policies and performance of the Council and its services, and appraising the personal performance of staff. The latter is not an overview and scrutiny function.

76. In exercising the right to call-in a decision of the Executive, overview and scrutiny members must seek officer advice if they consider the decision is contrary to the Council's approved plans, policies or frameworks, or is unlawful.

Members of Other Committees or Sub-Committees and Officers

77. The appropriate senior officers will offer to arrange regular informal meetings with chairs, vice-chairs, and spokesmen of committees and sub-committees.
78. Senior officers (including the Monitoring Officer and the designated Finance Officer) have the right to present reports and give advice to committees and sub-committees.
79. Members of a committee or sub-committee shall take decisions within the remit of that committee or sub-committee, and will not otherwise instruct officers to act.
80. At some committee or sub-committee meetings, a resolution may be passed which authorises the Directors or their nominee to take action between meetings in consultation with the chair. In these circumstances, it is the officer, not the member, who takes the action and is responsible for it. A member has no legal power to take decisions on behalf of a committee or sub-committee, neither should he/she apply inappropriate pressure on the officer. It may be that in such circumstances it would be appropriate to take the matter back to committee for decision, though this will not always be possible due to urgency. In relation to executive decision-making, at present the Council does not operate individual executive member decision-making and so delegation will be to a senior officer in consultation with the Leader or Lead Member and sometimes with the leader of the opposition group or groups.

Party Groups and Officers

81. Senior officers may properly be asked to contribute to deliberations of matters concerning Council business by party groups.
82. Officers have the right to refuse such requests, and will normally not attend a meeting of a party group where some of those attending are not members of the Council.
83. Officer support will not extend beyond providing factual information or professional advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business, and therefore should not be expected to be present at meetings or parts of meetings when such matters are to be discussed.
84. Party group meetings are not empowered to make decisions on behalf of the Council, and conclusions reached at such meetings do not rank as formal decisions. The presence of an officer confers no formal status on such meetings in terms of Council business and must not be interpreted as doing so.
85. Where officers provide factual information and advice to a party group in relation to a matter of Council business, this is not a substitute for providing all the necessary information and advice when the matter in question is formally considered by the relevant part of the Council.
86. It must not be assumed that an officer is supportive of a particular policy or view considered at a party group meeting simply because he/she has attended or provided information to the meeting.
87. Officers will respect the confidentiality of any party group discussions at which they are present and, unless requested to do so by that party group, will not relay the content of such discussions to another party group or to any other members. This shall not prevent an officer providing feedback to other senior officers on a need-to-know basis.

88. In their dealings with party groups, officers must treat each group in a fair and even-handed manner.
89. Members must not do anything which comprises or is likely to compromise officers' impartiality.
90. The duration of an officer's attendance at a party group meetings will be at the discretion of the group, but an officer may leave at any time if he/she feels it is no longer appropriate to be there.
91. An officer accepting an invitation to the meeting of one party group shall not decline an invitation to advise another group about the same matter. He/she must give substantially the same advice to each.
92. An officer who is not a Director shall not be invited to attend a party group meeting, but these officers may nominate other officers to attend on their behalf.
93. An officer should be given the opportunity of verifying comments and advice attributed to him/her in any written record of a party group meeting.
94. No member will refer in public or at meetings of the Council to advice or information given by officers to a party group meeting.
95. At party group meetings where some of those present are not members of the Council, care must be taken by members and officers not to divulge confidential information relating to Council business. Persons who are not members are not bound by the members' code of conduct. They do not have the same rights to Council information as members.
96. Any particular cases of difficulty or uncertainty in relation to this part of the protocol should be raised with one of the Directors and the relevant party group leader.

Local Members and Officers

97. To enable them to carry out their ward role effectively, members need to be fully informed about matters affecting their ward. Senior officers must ensure that all relevant staff are aware of the requirement to keep local members informed, thus allowing members to contribute to the decision making process and develop their representative role.
98. This requirement is particularly important:
 - a. during the formative stages of policy development, where practicable,
 - b. in relation to significant or sensitive operational matters,
 - c. whenever any form of public consultation exercise is undertaken, and
 - d. during an overview and scrutiny investigation.
99. Issues may affect a single ward. Where they have a wider impact, a number of local members will need to be kept informed.
100. Whenever a public meeting is organised by the Council to consider a local issue, all the members representing the wards affected should be invited to attend the meeting as a matter of course.
101. If a local member intends to arrange a public meeting on a matter concerning some aspect of the Council's work, he/she should inform the relevant senior officer. Provided the meeting has not been arranged on a party political basis:
 - an officer may attend but is not obliged to do so, and
 - the meeting may be held in Council-owned premises, subject to availability.

102. No such meetings should be arranged or held in the immediate run-up to Council elections i.e. from the time when notice of election is published.
103. Whilst support for members' ward work is legitimate, an officer should never, in his/her capacity as officer, be invited to or to accompany a member to a ward surgery or a ward or constituency political party meeting.
104. It is acknowledged that some Council staff (e.g. those providing dedicated support to executive members) may receive and handle messages for members on topics unrelated to the Council. Whilst these will often concern diary management, care should be taken to avoid Council resources being used for private or party political purposes.
105. In seeking to deal with constituents' queries or concerns, members should not seek to jump the queue, but should respect the Council's procedures. Officers have many pressures on their time. They may not be able to carry out the work required by members in the requested timescale, and may need to seek instructions from their managers.

Members' Access to Documents and Information

106. This part of the protocol should be read in conjunction with the Access to Information Rules in the Council's constitution. Members of the Council have the same rights as any other member of the public to information under the Freedom of Information Act 2000 and are subject to the same requirements and exemptions.
107. As Councillors, Members may request senior officers to provide them with such information, explanation and advice as they may reasonably need to assist them to discharge their roles as members. This is generally known as the "need to know" principle. This may range from general information about some aspect of the Council's services to specific information on behalf of a constituent. It is not, however, a licence to a "roving commission to go and examine the books or documents of a corporation". Where information is requested on behalf of a third party, it will only be provided if:
 - it is in the public domain, and
 - it is not barred by the Data Protection Act from being given.
108. Every member of the Executive, an overview and scrutiny committee, and/or any other committee or sub-committee has a right to inspect documents about the business of that overview and scrutiny committee, other committee or sub-committee or the Executive.
109. A member who is not a member of a specific overview and scrutiny committee, other committee or sub-committee, or the Executive may have access to any document about the business of those committees, except certain categories of exempt or Part II information.
110. Disputes as to the validity of a member's request to see a document on a need to know basis will be determined by the Monitoring Officer. Officers should seek his/her advice if in any doubt about the reasonableness of a member's request.
111. A member should obtain advice from the Monitoring Officer in circumstances where he/she wishes to have access to documents or information:
 - where to do so is likely to be in breach of the Data Protection Act, or
 - where the subject matter is one in which he/she has a personal or prejudicial interest as defined in the members' code of conduct.
112. Information given to a member must only be used for the purpose for which it was requested.

113. It is an accepted convention that a member of one party group will not have a need to know and therefore a right to inspect a document which forms part of the internal workings of another party group.
114. Members and officers must not disclose information given to them in confidence without the consent of a person authorised to give it, or unless required by law to do so. This does not, however, in general prevent an officer disclosing such information to his or her line manager.
115. When requested to do so, officers will keep confidential from other members advice requested by a member.
116. Members and officers must not prevent another person from gaining access to information to which that person is entitled by law.

Media Relations

117. All Council relations with the media must be conducted in accordance with the Council's agreed procedures and the law on local authority publicity. All officer communications with the press must be made through the Head of Marketing and Communications or his/her nominee.
118. Press releases or statements made by officers must promote or give information on Council policy or services. They will be factual and consistent with Council policy. They cannot be used to promote a party group.
119. Officers will keep relevant members informed of media interest in the Council's activities, especially regarding strategic or contentious matters.
120. Before responding to enquiries from the media, officers shall ensure they are authorised to do so. Likewise, officers will inform the Head of Marketing and Communications or his/her nominee of issues likely to be of media interest, since he/she is often the media's first point of contact.
121. If a member is contacted by, or contacts, the media on an issue, he/she should:
 - indicate in what capacity he/she is speaking (e.g. as ward member, in a personal capacity, as an Executive member, on behalf of the Council, or on behalf of a party group);
 - if necessary, and always when he/she would like a press release to be issued, seek assistance from the Council's Head of Marketing and Communications or his/her nominee and/or relevant senior officer, except in relation to a statement which is party political in nature;
 - consider the likely consequences for the Council of his/her statement (e.g. commitment to a particular course of action, image, allegations of jumping to conclusions);
 - never give a commitment in relation to matters which may be subject to claims from third parties and/or are likely to be an insurance matter;
 - consider whether to consult other relevant members.

Correspondence

122. Correspondence between an individual member and an officer should not be copied to another member unless the author expressly intends and states that this is the case or consents. Where correspondence is copied, this should always be made explicit, i.e. there should be no 'blind' copies. Correspondence between an officer and a member should not be copied to a member of the public except with the express consent of the

author or in circumstances where the author understood that it was intended to provide copies to others.

123. Official letters written on behalf of the Council should normally be in the name of the relevant officer. It may be appropriate in some circumstances (e.g. representations to a Government Minister) for letters to appear in the name of an Executive member or the chair of a Council committee.
124. The Mayor may initiate correspondence in his/her own name.
125. Letters which create legally enforceable obligations or which give instructions on behalf of the Council should never be sent in the name of a member.
126. When writing in an individual capacity as a ward member, a member must make clear that fact.

Access to Premises

127. Officers have the right to enter Council land and premises to carry out their work. Some officers have the legal power to enter property in the ownership of others.
128. Members have a reasonable right of access to Council land and premises to fulfil their duties.
129. When making visits as individual members, members should:
 - whenever practicable, notify and make advance arrangements with the appropriate manager or officer in charge;
 - comply with health and safety, security and other workplace rules;
 - not interfere with the services or activities being provided at the time of the visit.

Use of Council Resources

130. The Council provides all members with services such as typing, printing and photocopying, and goods such as stationery and computer equipment, to assist them in discharging their roles as members of the Council. These goods and services are paid for from the public purse. They should not be used for private purposes or in connection with party political or campaigning activities.
131. Members should ensure they understand and comply with the Council's own rules about the use of such resources, particularly:
 - where facilities are provided in members' homes at the Council's expense;
 - in relation to any locally-agreed arrangements e.g. payment for private photocopying; and
 - regarding ICT security.
132. Members should not put pressure on staff to provide resources or support which officers are not permitted to give. Examples are:
 - business which is solely to do with a political party;
 - work in connection with a ward or constituency party political meeting;
 - electioneering;
 - work associated with an event attended by a member in a capacity other than as a member of the Council;
 - private personal correspondence;

- work in connection with another body or organisation where a member's involvement is other than as a member of the Council; and
- support to a member in his/her capacity as a councillor of another local authority.

Interpretation, Complaints and Allegations of Breaches

133. This part of the protocol should be read in conjunction with any "whistle-blowing" policy the Council may have.
134. Members or officers with questions about the implementation or interpretation of any part of this protocol should seek the guidance of the Monitoring Officer.
135. A member who is unhappy about the actions take by, or conduct of, an officer should:
 - avoid personal attacks on, or abuse of, the officer at all times,
 - ensure that any criticism is well founded and constructive,
 - never make a criticism in public, and
 - take up the concern with the officer privately.
136. It is not appropriate for a member to continue to pursue a matter with the officer concerned, to avoid any cause for complaint of harassment or bullying of the officer concerned (see Council's Harassment Policy). It is inappropriate for a member to impugn an officer's impartiality or integrity by addressing this repeatedly to the officer concerned, without raising it with a more senior officer.
137. If direct discussion with the officer is inappropriate (e.g. because of the seriousness of the concern or because the officer is a junior member of staff) or fails to resolve the matter, the member should raise the issue with the officer's manager or the relevant senior officer.
138. A serious breach of this protocol by an officer may lead to an investigation under the Council's disciplinary procedure.
139. Members should consult with the relevant senior officer or manager to seek an explanation before raising any question of failure by a particular part of the Council or group of officers in public. Officers do not have the same freedom to respond in a public meeting as members.
140. An officer who believes a member may have acted other than in accordance with this protocol should raise his/her concern with the Monitoring Officer. He/she will consider how the complaint or allegation should be dealt with. At a minor level, this may be no more than informally referring the matter to the leader of the relevant party group. More serious complaints may result in reference to the Council's Committee with responsibility for member standards.

Hastings Borough Council

Planning Protocol

Hastings Borough Council Planning Protocol (adopted by Council on 20 April 2011)

Introduction

1. This Protocol replaces and updates that which was adopted by Council on 18 April 2007.
2. Planning has a positive and proactive role to play at the heart of local government. The planning system works best when Councillors, officers and all other parties essential to its effective operation clearly understand their roles and responsibilities and the context and constraints in which they operate. The purpose of this Protocol is to give clear guidance to Councillors about how they should carry out their duties in relation to planning and development proposals. This Protocol seeks to ensure openness, transparency, fairness and consistency in planning decisions and to ensure that the planning process operates properly, legally and effectively. Planning decisions should be made openly, impartially, with sound judgement and for justifiable reasons. The process should leave no grounds for suggesting that a decision has been partial, biased or not well-founded in any way.
3. Planning decisions involve balancing:
 - a. the needs and interests of individual constituents and the community, with
 - b. the need to maintain an ethic of impartial decision making on what can be highly controversial proposals.

This Protocol provides guidance on achieving this balance. It reflects the enhanced role for Councillors as champions of their local communities and recognises their ability to participate in discussions prior to the receipt of a planning application on behalf of their communities. This Protocol provides guidance on how to avoid predetermination or bias in decision making.

4. This Protocol applies to Councillors at all times when involved in the planning process. This includes taking part in decision making meetings of the Planning Committee, or when involved on less formal occasions, such as meetings with officers or the public. It applies equally to planning enforcement matters or to policy issues relating to a specific site as well as to planning applications.
5. If in any doubt about the application of this Protocol, take immediate advice from the Monitoring Officer or Solicitor to the Planning Committee, preferably well before any meeting takes place.

The Relationship to the Council's Code of Conduct for Councillors

6. This Protocol is a Council Protocol under Part 5 of the Constitution of the Council. Breach of this Protocol could lead to a complaint being made to the Council's Standards Committee.
7. This Protocol supplements the Council's Code of Conduct for Councillors (the Code). It is unlikely that there will be any conflict between the two but, if there is, the provisions of the general Code of Conduct will take precedence.
8. Councillors must apply both the general Code of Conduct and this Protocol in dealing with all planning issues. Failure to do so may place the Council at risk of legal challenge or a finding of maladministration by the Local Government Ombudsman. Individual Councillors may also be at risk of a complaint to Standards for England.

Hastings Borough Council, The Constitution, Part 5 (Draft for Cabinet and Council March 2012)

The General Role and Conduct of Councillors and Officers

9. Councillors and Officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate, whilst officers are responsible to the Council as a whole. Officers advise Councillors and the Council and carry out the Council's work. They are employed by the Council, not by individual Councillors. It follows that instructions may only be given to officers through a decision of the Council or its Cabinet or a Committee. A successful relationship between Councillors and officers can only be based upon mutual trust and understanding of each others positions. This relationship, and the trust which it underpins, must never be abused or compromised.
10. The Code sets out the requirements on Councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to Council business, including the need to register and declare interests, as well as appropriate relationships with other Councillors, staff and the public.
11. In planning terms there is a presumption in favour of development which must be balanced with that of the wider interest. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst Councillors should take account of these views, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.
12. Councillors shall not accept gifts or hospitality from developers or from any person involved in or affected by a planning proposal, including pre-application proposals. A gift or hospitality might be considered to influence a Councillor's judgment and it is important that there can be no justifiable grounds for suggesting a decision either has been, or appears to have been, influenced or biased in any way. The Code, in any event, requires that the Councillor must within 28 days of receiving any gift or hospitality over the value of £25, provide written notification to the Monitoring Officer of the existence and nature of that gift or hospitality. A gift over £25 will constitute a personal interest and be registerable as such. All details will go on the register of gifts and hospitality, which is open to public inspection and will remain on the register for 3 years. Councillors must consider whether any gift or hospitality over the value of £25 constitutes a prejudicial interest.
13. Planning legislation and guidance can be complex and planning decisions differ in nature from some of the other decisions taken by the Council. It is crucial that planning decisions are based on legitimate planning grounds. For this reason, Councillors shall not sit on the Planning Committee or act as a substitute on the Committee without having previously undertaken training in planning law and procedures.

Registration and Declaration of Interests

14. The Local Government Act 2000 and the national code place requirements on Councillors on the registration and declaration of their interests, as well as the consequences for the Councillor's participation in consideration of an issue, in the light of those interests.
15. Both Councillors and Officers are required to observe codes of conduct and statutory provisions; the aim of which is to ensure the integrity of the Council and individual Councillors. These require the open disclosure of any personal and/or prejudicial interests in issues being considered by the Council, its Cabinet or any of its Committees. The Code requires that Councillors register their financial or other interests in the Register of Members' Interests held by the Monitoring Officer. This is in addition to the requirement for Councillors to declare any personal interests as defined in the Code. If a Councillor has a personal interest, they should consider whether that interest is prejudicial as defined in the Code.

16. The Council's Monitoring Officer has provided all Members with detailed guidance on the Code and in particular, declaration of interests. This is regularly updated. Members of the Planning Committee must ensure they are familiar with the Code. The requirements must be followed scrupulously and Councillors should review their situation regularly. It is the personal responsibility of individual Members to ensure they comply with the Code and make all appropriate declarations at Planning Committee meetings. Members should take advice early, from the Monitoring Officer or the Solicitor to the Planning Committee, and preferably well before any meeting takes place, if they are in any doubt as to their position.
17. The provisions of the Code are an attempt to separate out interests arising from the personal and private interests of the Councillor and those arising from the Councillor's wider public life.
18. The Register of Members' Interests is maintained by the Monitoring Officer and is available for public inspection. An interest can either be personal or personal and prejudicial. The Code defines these terms and should be referred to for the appropriate detail. If Councillors have a personal interest in any matter, they must disclose the existence and nature of their interest at any relevant meeting, including informal meetings or discussions with Officers and other Councillors. Councillors are advised to disclose their interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter. Councillors can still declare an interest which only comes to mind or light after declarations of interest have been considered on the agenda at any point prior to discussion of that particular matter. The obligation to disclose the existence and nature of an interest applies to **all Councillors** attending the meeting, whether sitting as a Member of the Planning Committee or as an observer. The responsibility rests with individual Councillors to ensure that they indicate to the Chair that they have an interest to declare.
19. Where a Councillor has a personal interest in a matter they must always declare the existence and nature of their interest. They can participate in the discussion and be involved in making the decision.
20. If a Councillor has both a personal and prejudicial interest in a matter they must always declare the existence and nature of their interest. They cannot participate in any discussion or be involved in making the decision, either formally or informally and must not seek to influence the decision in any way. They must withdraw from the room during discussion of the matter and cannot remain even as a member of the public. This applies to all Members with a prejudicial interest regardless of whether they are members of the Planning Committee, which is making the decision. A prejudicial interest would require withdrawal of the Councillor from the Committee during consideration of that item.
21. The only exception is where a Councillor who has a prejudicial interest may attend committee but only for the purpose of making representations, answering questions and giving evidence, where a member of the public would be permitted to do so. This would apply if a Councillor presented a petition in accordance with the rules on public speaking at Planning Committee and is their nominated spokesperson. If the Councillor is the applicant there would be a right of reply to a petition against the application. Once the Councillor has completed making representations, answering questions and giving evidence, he or she is required to leave the room in the usual way. This is to ensure that members of the Committee do not, by their presence, influence or seek to influence the Committee during the debate and decision making process.
22. If in any doubt about Registration and Declaration of Interests, take immediate advice from the Monitoring Officer or Solicitor to the Planning Committee.

Predetermination, Predisposition or Bias

In addition to declaring personal or prejudicial interests, members of a Planning Committee need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application. A useful test to determine whether a position or view could be considered to be biased is to think about whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias. Predetermination goes beyond predisposition and essentially evades the process of weighing and balancing relevant factors and taking into account other viewpoints.

The Localism Act 2011 clarifies the rules on 'predetermination' to reflect case law (so there is no change in practice). Section 25 introduces provisions for dealing with allegations of bias or pre-determination or matters that otherwise raise an issue about the validity of a decision, where the decision-maker(s) had or appeared to have a closed mind (to any extent) when making the decision. It provides that the decision maker(s) is not to be taken to have had a closed mind "just because" (sic) the decision-maker(s) had previously done anything relevant to the decision, that directly or indirectly, indicated what view the decision-maker took, or would or might take, in relation to a matter. Councillors will still need to be open minded in determining planning applications. The only difference is that the fact that they may have campaigned against a proposal will not be taken as proof that they are not open minded. Councillors will need to be careful to consider, and ensure that it is apparent that they have considered, all relevant considerations and made their decision in accordance with their statutory duty. Councillors must be prepared to change their view right up to the point of making the decision. Councillors can listen to applicants and objectors, and indicate their view, but must not be biased in their consideration of the issues. Councillors can support or oppose an application and represent the views of their constituents in their role as a Ward Councillor. To do so as a Planning Committee Member MIGHT compromise their role on the Committee and Councillors are advised to seek advice from the Monitoring Officer or Solicitor to the Planning Committee.

23. A distinction is drawn by the Courts between a Councillor having clearly expressed an intention to vote in a particular way before a meeting (pre-determination) and a predisposition to an initial view. Where the Councillor is clear they are willing to listen to all the material considerations presented at the Committee before deciding on how to exercise their vote on behalf of the community, there is no predetermination.
24. If the Planning Committee Member has been lobbied by friends or others and wishes to promote or oppose a planning application, they will need to consider whether this has become a personal interest or not. In addition, they also need to consider if their view is likely to be regarded as predetermined. If they have predetermined their position they should avoid being part of the decision making body for that application.
25. Ward Councillors can address the Planning Committee in accordance with the rules on public speaking at Planning Committee (see paragraph 63). A Ward Councillor who is also a member of the Planning Committee who wishes to represent their constituents views at Planning Committee should first approach the other Ward Councillor to speak on behalf of their constituents. If this is not possible, the Ward Councillor may speak at the Planning Committee on behalf of their constituents as the nominated spokesperson for a petition. However, they should declare their position and after making their representations, sit back and make it clear that are not taking part in the debate or vote to avoid accusations of bias and predetermination. Ward Councillors who are also members of the Planning Committee who wish to address the Committee in this manner should give notice to the Chairman and Chief Legal Officer prior to the Committee meeting. This would need to be made clear to members of the public and recorded in the minutes when the item is called for consideration.

See also paragraph 33.

26. Councillors do not have to have a personal interest in order to come within the definition of bias. There may not be specific consequences for the Councillor who has failed to acknowledge and respond to their bias, as opposed to failing to declare a personal or prejudicial interest under the Code. Councillors must be aware that in failing to consider the issue of bias there are consequences for the decision, which may be challenged on the grounds of bias in the High Court.
27. Regular training will be held for Councillors on the issues of declaration of interests, predetermination, predisposition and bias as well as on the planning process generally.
28. If in any doubt about the issue of bias, take immediate advice from the Monitoring Officer or Solicitor to the Planning Committee.

Development Proposals Submitted by Councillors and Council Development

29. Planning applications submitted by Councillors, their relatives, close associates and employers (see Paragraph 8(2) of the Members' Code of Conduct) can easily give rise to suspicions of impropriety. Proposals submitted by the Council itself are, for this reason, considered by the Planning Committee in a public meeting rather than by officers under delegated authority.
30. Whilst it is perfectly legitimate for such proposals to be submitted it is vital to ensure they are handled in such a way that gives no grounds for accusations of favouritism. Therefore:
 - a. Current Councillors who submit their own proposals or act as agents for people pursuing planning matters, should not play any part in the decision making process for those proposals.
 - b. The Monitoring Officer should be informed of such proposals when submitted.
 - c. Proposals should be reported to the Planning Committee for determination and not be referred to Officers under delegated powers.
31. The consideration of a proposal from a Councillor in such circumstances would be considered as a prejudicial interest under the Code, and as such the Councillor would be required to withdraw from any consideration of the matter. The Code also provides that the Councillor should "not seek improperly to influence a decision about the matter". It is important to emphasise that "improperly" does not imply that a Councillor should have any fewer rights than a member of the public seeking to explain and justify their proposal to an officer in advance of consideration by a Committee.
32. A Councillor submitting a planning application with a prejudicial interest may now address the Committee where members of the public enjoy the same rights i.e. as the applicant. The Councillor should consider whether it would be wise to do so in all the circumstances of the case, which could include the nature of the prejudicial interest and the relationship of the Councillor with the remainder of the Planning Committee.
33. Proposals for a Council's own development should be treated with the same transparency and impartiality as those of private developers.

Lobbying of and by Councillors

34. Lobbying of Councillors for or against proposals is a normal part of the planning process. Those who may be affected by a planning decision will often seek to influence it by approaching their elected Ward Councillor or a Member of the Planning Committee. Lobbying can lead to the impartiality and integrity of a Councillor being called into question, unless care and common sense is exercised by all the parties involved.
35. It is important in maintaining the integrity of individual Councillors and the Council as a whole that Members of the Planning Committee (or Members who may end up acting as substitutes on the Planning Committee) should take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such situations, Councillors should:-
- a. If lobbied, explain that, whilst they can listen to/receive viewpoints from residents or other interested parties, they cannot decide or indicate before the relevant Planning Committee meeting which way they intend to vote as it would prejudice their impartiality. They should also explain that it is necessary for them to hear all the arguments both for and against the proposal before making up their mind.
 - b. Avoid giving members of the public planning advice except in relation to general planning procedures and often it may be wise to direct any such request to an appropriate Planning Officer.
 - c. If approached by residents or other interested parties, they should be referred to the appropriate Planning Officer in order that advice can be given and their opinions can be included in the Officers report to the Planning Committee. Copies of any correspondence or other written material received by a Member should be forwarded to the Planning Officer without delay.
36. Councillors should be aware of the essential need to act fairly and without bias towards every application. Councillors should not fetter their discretion in relation to decisions in which they participate. Councillors must keep an open mind upon an issue upon which they will be asked to vote, up until the moment that they vote upon it. Failure to keep an open mind may result in an application for judicial review of the decision reached. Any interested party may apply for judicial review of a planning decision. One of the grounds being that a Councillor who voted in favour of the decision to approve or refuse the application had approached the issue with a closed mind, and so had failed to take all relevant considerations into account. Failure to maintain an open mind may invalidate the entire decision-making process.
37. Councillors should not participate in the consideration of a planning application if to do so would give the appearance of bias. The test for bias is: "Would the fair-minded observer, knowing the background, consider that there was a real possibility of bias?" It is not the Councillor's view of whether they are biased that is relevant here but the view of the independent observer. Perception is important and can lead to judicial challenge in the High Court. If a Councillor believes that their participation would lead a fair-minded observer to consider that there is a real possibility of bias, they should not participate in making the decision and should withdraw from the room. The Courts have held that it is primarily a matter for the Councillor in question to judge whether to withdraw, but given the scope for challenge the Councillor should always err on the side of caution. Whilst not every application will raise the question of bias, there will be occasions when a member of the public in possession of all the facts might consider that there is a real risk of bias. In these circumstances, the Councillor should seek the advice of the Monitoring Officer or the Solicitor to the Planning Committee.

Pre-application Discussions

38. Discussions between a potential applicant and Hastings Borough Council prior to the submission of an application can be of considerable benefit to both parties.
39. With the recognition of the need to allow and encourage Councillors to be champions of their local communities it is now accepted that Lead Councillor and Ward Councillor engagement in pre-application discussions on major development is necessary to allow Councillors to fulfill this role. Councils have not previously involved Councillors in pre-application discussions for fear of them being accused of predetermination when the subsequent planning application came before the Committee for determination. In order to avoid perceptions that Councillors might have fettered their discretion in any pre-application discussions, such discussions should take place within clear guidelines, and include:
 - a. Clarity at the outset that any discussions will not bind the Council to make a particular decision and that any views expressed are personal and provisional.
 - b. Advice given by Officers should be consistent and based on the Development Plan and material considerations. Officers should always be present when Councillors attend any pre-application discussions. All officers taking part in such discussions should make clear whether or not they are the decision maker. Councillors should not become drawn into any negotiations and should ask Officers to deal with any necessary negotiations to ensure that the Council's position is co-ordinated.
 - c. Pre-application discussions should be arranged by Officers. A written note should be made by Officers of all meetings and the matters discussed should be confirmed by letter which should be placed on the file as a matter of public record. If there is a legitimate reason for confidentiality regarding the proposal, a note of the non-confidentiality issued raised, or advice given, should be recorded on the file in the normal manner.
40. If Councillors are invited to, or asked to arrange, a formal meeting with applicants, developers or groups of objectors (for instance, residents' associations) or supporters, they should inform the case officer dealing with the application. This applies to meetings at all stages of the planning process, including the pre-application stage.
41. The Local Government Association has produced a leaflet entitled "Positive Engagement – A Guide for Planning Councillors" which gives practical advice to Councillors anticipating involvement in discussions with developers, their constituents and others about planning matters. This leaflet is set out in full in Appendix 1 and forms part of the Planning Protocol. Pre-application discussions should take place only in accordance with the advice in the leaflet and other guidance issued to assist Councillors and Officers. Although the term "pre-application" has been used, the same considerations should apply to any discussions which take place before a decision is taken.
42. The Council does, on occasion, allow presentations of development proposals. Presentations are to keep Councillors informed generally on matters, which appear to have or are likely to have strategic importance for the Borough. Presentations will not be allowed in relation to any matter which is the subject of a current planning application to the Council. At such presentations Councillors must try to maintain an impartial role, listening to what is said and asking appropriate questions but not expressing a fixed opinion, and keeping an open mind on the issues at all times. This applies to pre-application public consultation meetings arranged by Developers in accordance with the Council's Statement of Community Involvement.

Pre-Application Consultation Forum

43. The Council has introduced a Pre-Application Consultation Forum to consider significant major developments, prior to them being submitted as planning applications. Significant development proposals are defined as residential schemes of 30 units or more, employment/industrial scheme of 5,000 m² or more, retail schemes of 2,500 m² or more and leisure schemes of 1,000 m² or more. The Council reserves the right to seek wider community involvement on other applications which do not fall within these thresholds if they consider that they are likely to be particularly sensitive or will have a very significant impact on the local community.
44. A Forum is a meeting held in public where a developer is able to explain proposals directly to Councillors, the public and key stakeholders at an early stage about a development site. The purpose of the Forum is to:-
- a. enable the developer to explain development proposals directly to Councillors, the public and key stakeholders at an early stage.
 - b. identify any issues that may be considered in any formal application.
 - c. inform Councillors and the public of a development proposal at an early stage in the pre-application process.
 - d. inform officer pre-application discussions with the developer.
 - e. enable the developer to shape an application to address community issues.
45. Forum meetings will be held in public, but only those invited to speak on behalf of recognised key stakeholder groups will be able to raise issues at the Forum. Groups invited to ask questions and express their views at the Forum will be restricted to properly constituted residents' groups covering the area of the proposed development, traders' groups for the immediate area, local campaign groups that have emerged specifically to comment on the development (only one of this type of group will be allowed to ask questions although more than one representation may be received) and properly constituted Borough wide bodies which could include business organisations.
46. Properly constituted is defined as those groups with a published constitution, has an open membership and a democratic election of officers. In addition, registered social landlords will be allowed to ask questions. Individuals do not have an automatic right to speak at the Forum unless invited to do so. Attendees can then make written comments to officers who will forward any comments received to developers. The Forum will not affect any rights to make representations when a formal planning application is submitted. All Councillors are invited to attend the Forum, including those who are on the Planning Committee.
47. The Chair of the Forum is the Lead Member on Regeneration and Planning or their nominated substitute, who is not a member of the Planning Committee, who will introduce the Forum and explain who is going to speak. The planning officer will provide a background to the proposal. The developer explains the proposal (this may involve contributions from several people). Those persons specified in paragraph 47 above, then have the opportunity to speak and raise any issues, observations and comments. The developer has an opportunity to respond to what has been said by invited speakers. Councillors present at the Forum may ask questions of the developer. The planning officer summarises the main points raised during the Forum, which is then closed by the Chair.
48. After the Forum, the main points will be recorded and passed to the developer for their consideration during further pre-application discussions with officers and in putting the

application together. A copy will be passed to all interested parties and placed on the planning application file. The Planning Committee will in due course consider an application based on the facts, issues and advice and nothing said at the Forum will prejudice that consideration.

Chair's Briefings

49. The rules of natural justice mean that planning decisions should be determined in an open and fair manner and taking account of all relevant information and arguments. It is only at Planning Committee meetings that Councillors will have, and be able to consider, **all** the relevant information and arguments about an application. Councillors must take account of the information and advice given by Officers, and take account of any other relevant matters that arise before making a decision.
50. The purpose of Chair's Briefings will be to brief the Chair and Vice Chair on applications to be brought to the next meeting of the Planning Committee. Officers present may include the Borough Planning Officer (and/or their representative), the Solicitor to the Planning Committee (and/or their representative) and the Committee Administrator. The purpose of the Briefing is for Officers to explain the forthcoming agenda, consider whether a site visit is required in respect of a particular application and consider administrative arrangements. Chair's Briefings are not to discuss the planning merits of the application or to make decisions. It is not to debate the merits of the application or the Officers' recommendation or ask for additional conditions to be included within the Officer's Report.

Officer Reports to Committee

51. All matters requiring a decision by the Planning Committee should be the subject of a written report from Officers, which should be accurate and cover all relevant planning issues. In particular, it should include a clear outline of the site history, the relevant development plan policies, the response of consultees and the nature of objections (full copies of objection letters will be provided to Councillors prior to the Committee Meeting). The report shall include a clear recommendation with a technical appraisal justifying it. Any objections or other relevant issues arising after the report is printed shall be reported verbally to the Committee at its meeting. Councillors shall not put improper pressure on Officers to make a particular recommendation and should not do anything which compromises, or is likely to compromise, the officers' impartiality.
52. The Courts and Ombudsman have advised that officer reports on planning applications must have regard to the following points:
 - a. Reports should be accurate and cover the substance of any objections and the views of those consulted.
 - b. Relevant information should include a clear exposition of the Development Plan; site or related history; and any other material considerations.
 - c. Reports should have a written recommendation of action. Oral reporting (except to update a report) should be avoided and carefully minuted when it does occur.
 - d. Reports should contain technical appraisal which clearly justify a recommendation.
 - e. 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.
53. It is important that the report covers these points, not only as a matter of good practice, but because failure may constitute maladministration or give rise to judicial review on the

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grounds that the decision was not taken in accordance with the Development Plan and the Council's statutory duty under Section 38A of the Planning and Compulsory Purchase Act 2004 (see paragraph 66 below).

54. Officers must always act openly and impartially and provide consistent professional advice, in accordance with the rules of their professional body, based on planning policies and procedures, ensuring Councillors are aware of all relevant material planning considerations before decisions are made.
55. Councillors shall give due regard to recommendations and professional advice given by Officers. Councillors are not bound to follow recommendations or advice received, but may depart from this where there is good reason to do so, based on clear and legitimate planning grounds which must be recorded in full when making the decision.

Public Speaking at Planning Committee

56. Members of the Planning Committee shall not allow members of the public to discuss specific planning applications with them during the course of the Meeting itself other than through the procedure for public speaking. The procedure for public speaking set out below does not apply to the Development Consultation Forum.
57. All planning matters will be considered in public session, unless there are specific reasons for dealing with an item as exempt under the provisions of the Local Government Act 1972 (as amended) in which case the public will be asked to leave the room. Whilst this will be rarely exercised it may be necessary for example in consideration of enforcement matters
58. Applicants and/or their agents and members of the public who have made written representations on an application may be allowed to speak at Planning Committee meetings, but only in accordance with the agreed Council procedures set out below.
59. The procedures for public speaking allow members of the public to address the Planning Committee where a petition of objection against the recommendation of the planning officer is received **at least two clear working days** before the Planning Committee considering the item is due to sit. A standard form of petition is available to view on the Council's website. The Chair (or Vice Chair in his/her absence) may exercise discretion to permit a petition to be heard that has not been submitted in time due to good reason, provided that there is no prejudice to the applicant. Petitions must contain a minimum of ten signatories supporting the motion as set out in the petition. Each page of the petition must clearly state the application to which it is referring and also give the reasons for the objection. Petitions must contain original signatures, photocopies are not accepted.
60. The person presenting the petition is invited to attend the meeting. Once a petition has been presented, a petitioner will only be allowed to speak at the Chair's discretion (or Vice Chair in his/her absence). In general, this will only be exercised where the petition is against the proposed development and the Officer's report to the Planning Committee recommends approval. The applicant or their agent has a right to speak in response. Each person making representations may be allowed to speak for up to a maximum of five minutes and may be asked questions by Members of the Planning Committee. Those speaking should be asked to direct their presentation to reinforcing or amplifying representations already made to the Council in writing.
61. The procedure allows for one person to speak against the application and one in support of the application. If two petitions against an application are received and petitioners are making similar points, the Chair (or Vice Chair in his/her absence) will exercise his discretion and preference will be given to petitions from the immediate locality of the neighbourhood. Where there are two petitioners speaking against the application, each

person may be allowed to speak for up to a maximum of five minutes. The applicant may be allowed to speak for up to a maximum of ten minutes in the interests of natural justice.

62. Where Councillors who are not members of the Planning Committee have indicated to the Chair (or Vice Chair in his/her absence), prior to a Committee meeting, their wish to speak on a matter in their ward being considered at the Committee, they will be entitled to speak immediately after the objectors and applicant have addressed the Committee. Such non-members of the Committee should comply with the procedure for declaration of interests if they speak at a Committee meeting in the same way as members of the Committee. Ward Councillors may address the Planning Committee up to a maximum of five minutes but may not be asked questions by Members.
63. Documents must be submitted **at least five clear working days** before the Planning Committee considering the item is due to sit. Any documents not previously submitted should not be circulated to the Committee as all parties may not have time to react to the submissions, and Councillors may not be able to give proper consideration to the matter. Officers may not be able to provide considered advice on any material considerations arising. This must be made clear to those who intend to speak. The acceptance of circulated material could imply a willingness to take the necessary time to investigate any issues raised and lead to the need to defer the application or risk a complaint about the way the material has been considered. For similar reasons messages passed to members sitting in Planning Committees must not be accepted. This care needs to be taken to avoid the perception of external influence or bias.

Decision Making

64. A decision on a planning application must not be made before the Formal Planning Committee Meeting scheduled to determine the application. Political group meetings shall not be held prior to a Committee Meeting, as Group Meetings can give the appearance of bias. The fair-minded observer may perceive that Group Meetings behind closed doors are likely to affect the decisions of those Members attending. The holding of Group Meetings may therefore give rise to judicial challenge. The use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration by the Local Government Ombudsman. Councillors will be seated alphabetically and shall not sit according to their political groups in order to avoid the appearance of group decision-making.
65. Section 38A of the Planning and Compulsory Purchase Act 2004 requires that decisions are made in accordance with the Development Plan unless material considerations indicate otherwise. If the Officer's report recommends a departure from the Development Plan the justification for this must be contained in the report. Such applications must be advertised in the local paper in advance of consideration by the Committee.
66. Decisions must be made on planning merits and the reasons for making a decision should be clear and supported by material planning considerations. The reasons for refusing an application shall always be minuted, as should any conditions attached to an approval. If the Committee wishes to refuse an application or impose additional conditions the reasons for doing either must be clearly stated when this is proposed.
67. Where Councillors are predisposed (not predetermined) to make a decision contrary to officers' recommendations, they should if possible discuss their views with planning officers before the Planning Committee to encourage the formation of tentative reasons for their decision. If at the meeting, there is a very strong objection from officers regarding the validity of the reasons, Councillors should consider deferring or adjourning the matter to another meeting to have the putative reasons tested and discussed.

68. If any Member of the Planning Committee expresses a view contrary to Officer recommendations or the development plan, they should identify clearly the planning reasons. Where Councillors are proposing to vote against the Officer recommendations, the Chair (or Vice Chair in his/her absence) shall make sure that their reasons are apparent before a vote is taken. These reasons must be recorded in the minutes if the officer recommendations are not agreed and a copy placed on the application file. The reasons given by Councillors should be clear, observe the principles of reasonableness, take into account all relevant information (i.e. material considerations) and ignore all irrelevant information (i.e. non material matters). The officer should be given the opportunity to explain the implications of the decision.
69. Part 8 of the Constitution sets out the Scheme of Delegation to Officers and this will usually govern decision making in planning matters. However, the Chair of the Planning Committee (or Vice Chair in his/her absence), or a ward member (where there is an application concerning their particular ward) may refer an application to the Planning Committee by giving written notice to the Borough Planning Officer (clearly stating a planning concern(s) in support) within 28 days following the registration of the application.
70. Any member of the Council can make a reference to the Planning Committee if they have the support of the Chair of the Planning Committee (or the Vice-chair in the Chair's absence) or the appropriate ward member. Councillors requiring planning applications, that would normally be determined under delegated authority to be called in for determination by the Planning Committee, should provide the reasons for call in to be expressed in writing so there is a record of the decision and should refer solely to matters of material planning concern.
71. Any planning application made by a Councillor, Officer of the Planning Department, Head of Service or above, or the Council itself shall be determined by the Planning Committee and not under delegated powers. The Council's own proposals for development must be dealt with on exactly the same basis as applications submitted by members of the public.
72. Councillors must attend meetings with an open mind and shall demonstrate through their conduct at the meeting that they are giving careful, fair and balanced consideration to the applications under discussion. Councillors shall make a decision only after they have considered all the relevant information needed to make a decision.
73. Councillors shall not vote or take part in the meeting's discussion on a proposal unless they have been present to hear the entire debate, including any petition, representations made by the applicant and the officers' introduction to the matter. Councillors who leave the room will be advised by the Chair (or Vice Chair in his/her absence) that they cannot vote or take any further part in the discussion. The rules of natural justice mean that planning applications should be determined in an open and fair manner taking account of relevant information and arguments. It is only at Planning Committee meetings that Councillors will have, and be able to consider, all the relevant information and arguments about an application. Failure to take account of relevant considerations or to take account of irrelevant considerations, is a ground for judicial review in the High Court.

Site Visits

74. This Planning Protocol applies whenever a Councillor is conducting official business which will include site visits.
75. Formal site visits by Members of the Planning Committee should be made only in exceptional circumstances. A record should be kept by the Committee Administrator of the reason for the site visit and who attended. Site visits can cause delay and additional costs and should only occur where there is a clear and substantial benefit to Councillors. For

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example, where the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by Officers, where the proposal is particularly contentious and where the site cannot adequately be viewed from the road. Officers will have visited the site and identified material considerations on behalf of the Council.

76. Site visits shall be organised by Officers of the Planning Department. All Members of the Planning Committee will be invited to attend the site visit. The site visit will be guided by the Planning Officer who will point out matters of material relevance to the application and answer Councillors' questions.
77. A site visit is not a meeting to discuss the planning merits of the application or to make decisions. The purpose of the inspection is to gather factual information about the site and visually assess the likely or actual impact of the proposal. It is not to debate the merits of the application or the Officers' recommendation. During the formal site visit detailed discussions and/or negotiations must not be conducted with the applicant or third parties by either Councillors or Officers. All discussion and debate should be undertaken at the Planning Committee itself when the application is presented for formal consideration. Any arguments applicants or third parties wish to put forward can be heard at that stage through the public speaking arrangements. Councillors should be aware of the appearance of bias should they be seen in conversation with an applicant or objector.
78. Councillors are expected to attend the organised site visit unless there are special reasons why they cannot do so in any particular case. Such Councillors should indicate that they have not attended at the time the application comes up for consideration at the committee and this should be recorded in the minutes.
79. Councillors not attending a site visit relating to an application are expected to sit back from the table and not take part in debate and voting on the matter when it comes up for consideration, unless the member can confirm that they have sufficient relevant knowledge of the site (from other sources) to form the basis for a decision. The basis of such knowledge shall be announced to the committee and recorded in the minutes. Councillors unable to attend the organised site visit should consult with the relevant case officer in advance of the meeting regarding alternative means of acquiring sufficient knowledge to participate in the decision.

Deferred Applications

80. Applications which have been deferred from a previous meeting must be treated carefully. Consideration must be given to the procedures for public speaking where petitioners and the applicant have addressed the Committee at the previous meeting. There may be occasions when there are a number of petitioners raising different objections to the application and the applicant must have the chance to respond. A judgement has to be made whether it is in the interests of good decision making to re-hear all oral representations again or to restrict the Committee to its constitution at the earlier meeting. That is a decision for the Chair at the Chairman's Briefing (or Vice Chair in his/her absence) in consultation with the Borough Planning Officer and Solicitor to the Planning Committee.

Substitutions

81. Substitutions have implications where applications are deferred from a previous meeting. Where petitioners and the applicant are heard at the earlier meeting but not at the second, any substituted Councillors attending on the deferred application will not have heard the representations which, assuming that they are relevant to the application, will form some part of the basis for the decision. Where the petitioners and applicant are given the opportunity to address the Committee a second time, there is not a problem with

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substitutes since the matter is heard afresh. Where applications are not deferred but a continuation of the earlier meeting no substitutions are permitted. Group Leaders/authorised persons should be informed where substitutions are not to be permitted on a particular item as soon as practicable after the Chair's Briefing.

Regular Review of Decisions

82. On an annual basis, arrangements will be made for Councillors to review a sample of implemented planning permissions to assess the quality of the decisions. The review should include examples from a range of categories and may include site visits.
83. The Planning Committee will formally consider the review and decide whether it gave rise to the need to reconsider any policies or practices. Such a review should improve the quality and consistency of decision making, strengthening public confidence in the planning system and can help with reviews of planning policy. It will also assist Planning Committee members to refine their understanding of the impact of their decisions from the visiting of completed developments.

Complaints and Record Keeping

84. The Council has its own complaints procedure which should be referred to in the first instance.
85. In order that complaints may be fully investigated and as a matter of general good practice, record keeping should be complete and accurate. Every planning application and enforcement file should contain an accurate account of events throughout its life. Applications determined under officers' delegated powers will be as well documented and recorded as those taken by Councillors.

Training of Members in Planning Law and Procedure

86. Planning decisions are often complex and differ in nature from some of the other decisions taken by the Council. It is crucial that planning decisions are based on legitimate planning grounds. For this reason, Members shall not sit on the Planning Committee or act as a substitute on the Committee without having previously undertaken training in planning law and procedures.
87. The Head of Housing and Planning Services and Solicitor to the Planning Committee will arrange suitable training opportunities at regular intervals and will supplement this with written guidance. All Members of the Planning Committee must attend training sessions provided. The Committee Administrator will maintain a register of attendance which will be copied to political group leaders annually.

Appendix 1 - Positive Engagement - A Guide for Planning Councillors

Extract from a simple guide which has been produced by a number of organisations who have a shared interest in maximising the effectiveness of councillor involvement in planning. They include: the Local Government Association, Association of Council Secretaries and Solicitors, the Standards Board for England, Planning Advisory Service and The Department of Communities and Local Government and Planning Officers Society. A copy of the guide can be downloaded at: www.lga.gov.uk/lga/publications/publication-display.do?id=769611

See also paragraph 42 of the Planning Protocol.

Positive Engagement – A Guide for Planning Councillors (updated version):-

‘The engagement of local councillors as leaders and representative of the community is vital in the delivery of positive outcomes from the planning process.’

A message from Iain Wright MP Parliamentary Under Secretary of State, DCLG and Paul Bettison, Environment Board Chairman, LGA:-

There have been some considerable changes over the last few years in how the planning process is delivered within England with a move away from an often adversarial, reactive and conflict based system towards a more pro-active, inclusive and creative approach.

As a local councillor involved in planning matters, whether as a ward councillor representing your area’s constituents as a councillor responsible for drawing up the spatial plan for your area, or as a councillor responsible for deciding upon application you have a crucial role to play in both making the planning system work and ensuring the best possible outcomes for your community for both now and in the future. The engagement of local councillors as leaders and representatives of the community is vital in the delivery of positive outcomes from the planning process.

However, concerns are sometimes expressed about the compatibility of councillors meeting developers and interest groups and then taking decisions on an impartial basis.

This leaflet is an updated version of the positive engagement for elected members launched in 2005. It is intended to summarise the principles that should be observed to enable you to both participate in and lead the system.’

Signed by

Paul Bettison and Iain Wright

In broad terms, the success of the planning system will depend on:

- establishing and taking forward a clear spatial vision for the area based on the sustainable community strategy
- effective dialogue between applicants, local authority, local people and other interests to help define and realise the vision
- ensuring that the spatial plan for an area embodies the aspirations of the community
- effective communication and ownership of policy between executive and planning committee
- the planning service being focused on outcomes

- early and effective community engagement in discussions on plans and development proposals
- in accordance with the authority's Statement of Community involvement.
- Upholding the ACSeS Model Members Planning Code

As a community leader and local representative you will want to be involved in relevant public meetings, pre-application discussions and policy production. However, this may create some risks for councillors, particularly those who are members of the planning committee, and for the integrity of the decision making process. You should familiarise yourself with guidance found in the LGA guide *Probity in Planning* (update) – the role of councillors and officers, guidance from the Standards Board for England which provides an overview of the Model Code of Conduct which applies to all members and co-opted members of local authorities and the ACSeS Model Members Planning Code.

Councillors can involve themselves in discussions with developers, their constituents and others about planning matters. However, difficulties can be avoided if you follow these useful general hints:

Do:-

- always involve officers and structure discussions with developers
- inform officers about any approaches made to you and seek advice
- familiarise yourself with your authority's Code of Conduct and follow it when you are representing your authority
- keep your register of interests up to date
- follow your local authority's planning code
- be aware of what predisposition, predetermination and bias mean in your role – ask your monitoring or planning officer and refer to the Standards Board Occasional Paper on Predetermination, Predisposition and Bias if unsure
- be prepared to hold discussions with an applicant and your officers before a planning application is made, not just after it has been submitted to your authority
- preface any discussion with disclaimers; keep a note of meetings and calls; and make clear at the outset that discussions are not binding
- be aware of what personal and prejudicial interests are – refer to your monitoring officer and the Standards Board's website if you are unsure
- recognise the distinction between giving advice and engaging in negotiation and when this is appropriate in your role
- stick to policies included in adopted plans, but also pay heed to any other considerations relevant to planning
- use meetings to show leadership and vision
- encourage positive outcomes
- ask for training from your authority in probity matters
- recognise that you can lobby and campaign but that this may remove you from the decision making process
- feed in both your own and your local community's concerns and issues
- be aware that you can engage in discussions but you must have and be seen to have an open mind at the point of decision making.

Do not:-

- use your position improperly for personal gain or to advantage your friends or close associates
- meet developers alone or put yourself in a position where you appear to favour a person, company or group – even a 'friendly' private discussion with a developer could cause others to mistrust your impartiality

- attend meetings or be involved in decision-making where you have a prejudicial interest under the Model Code of Conduct – except when speaking when the general public are also allowed to do so
- accept gifts or hospitality
- prejudge or be seen to prejudge an issue if you want to be a decision maker on a proposal
- seek to influence officers or put pressure on them to support a particular course of action in relation to a planning application
- compromise the impartiality of people who work for your authority
- invent local guides on probity in planning which are incompatible with current guidance – look for commonly held and common sense parallels in other authorities or the principles set out in national guidance.