

# AGENDA SUPPLEMENT (1)

Meeting: Standards Committee

Place: Council Chamber - County Hall, Bythesea Road, Trowbridge, BA14 8JN

Date: Thursday 14 November 2019

Time: 12.00 pm

---

The Agenda for the above meeting was published on 6 November 2019. Additional documents are now available and are attached to this Agenda Supplement.

Please direct any enquiries on this Agenda to Kieran Elliott, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718504 or email [kieran.elliott@wiltshire.gov.uk](mailto:kieran.elliott@wiltshire.gov.uk)

Press enquiries to Communications on direct lines (01225)713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

---

7 **Recommendations from the Constitution Focus Group: Protocol 4 (Planning Code of Good Practice)** *(Pages 3 - 6)*

A supplementary report from the Focus Group is attached.

This page is intentionally left blank

## Wiltshire Council

### Standards Committee

14 November 2019

---

#### Public Participation – Protocol 4 of the Constitution

1. Following the referral of the proposed Protocol 4 revisions back to the Standards Committee by Full Council on 9 July 2019, officers received representations on 9 October 2019 from a member of the public, Mr Paul Jubbie.
2. Mr Jubbie's representation is attached at **Appendix A**. In summary, it noted that many elements of the proposed Protocol 4 had been adopted or adapted from a guidance document, "Probity in Planning for Councillors and Officers", which was itself referenced in the revised document.
3. Whilst Mr Jubbie initially identified confidentiality to his email he subsequently questioned why his concerns were not included in the standards report and Officers confirmed that they would be raised before the Standards Committee. This then sets out the legitimate purpose of sharing this information with the Standards Committee
4. The representation in particular noted an element within that guidance which was not adopted within the proposed Protocol 4, and that Mr Jubbie felt should be included. That element states:  
  
*'Officers and serving councillors must not act as agents for people pursuing planning matters within their authority, even if they are not involved in the decision making on it'*
5. The Constitution Focus Group had previously met to reconsider the proposed changes to Protocol 4 on 2 September 2019 as detailed in the main report. Therefore, all its members were emailed the representation from Mr Jubbie along with officer comment, to determine whether they believed further amendments should be made to their recommendation to the Standards Committee.
6. The Focus Group have since confirmed that they do not believe the detail referenced in paragraph 4 above should be included within Protocol 4 of the Constitution.
7. It was noted that the guidance note referenced was prepared by Trevor Roberts Associates for the Planning Advisory Service with the support of the Local Government Association. It is therefore one planning agent company's perception of best practice, and is not statutory guidance nor does it purport to be legal advice.
8. The statement referenced above, which is found on page 6 of the guidance, introduces the concept of a blanket provision against both officers and members to act as planning agents, but in the opinion of officers and the focus group this is not

supported by reference to any underlying statutory or legal requirements that would create such a prohibition.

9. Planning officers would face such a prohibition because of the terms and conditions of employment applied generally to all officers in accordance with Paragraphs 4.13-4.16 of Part 15 of the Constitution (Human Resources Code of Conduct). As those terms and conditions are agreed when taking up employment, there is no interference with an employee's human rights.
10. Elected Members, however, do not enter into an employment relationship with the Council but rather are elected by constituents to represent those constituents. It is recognised that the role of an elected member may not be full time, and that often members do have careers that run alongside their elected member role.
11. Elected members like all citizens have a right to pursue their chosen career and any interference with their private life must be necessary and proportionate. Should an application come before the Council in which they have a disclosable pecuniary interest (which includes a matter which they are directly involved as part of their employment) they would be obliged to not participate or vote on the matter and are at risk of prosecution should they choose to do so (Localism Act 2011). This is necessary and proportionate.
12. However, attempting to apply a blanket prohibition on elected members pursuing their chosen career when they are not involved in a decision-making role and when on occasions it may not create any perception of actual or perceived bias may not be justifiable as necessary and proportionate. If no such blanket prohibition is applied and the matter does not relate to an application they are involved with (a disclosable pecuniary interest) there would still be an obligation on the Councillor to consider on a case by case basis whether the interest amounted to a non-pecuniary interest such that a reasonably informed observer could still perceive apparent bias.
13. The Focus Group was advised that it is for Members to decide whether they would wish to restrict Members in their chosen field and should the Council decide to adopt a more stringent standard whether it would be justified would only be finally determined if a member likely to be affected by such a prohibition challenged the Council's right to do so to allow the Court to make a final determination. However, it was advised that the current position is justifiable notwithstanding the statement made in the guidance note prepared by Trevor Roberts Associates.
14. Accordingly, the Constitution Focus Group advises that it does not believe Standards Committee should amend Protocol 4 of the Constitution as requested in the public representation.

**Frank Cain, Deputy Monitoring Officer**

**From:** [REDACTED]  
**To:** Elliott, Kieran [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Protocol 4: Planning code of good practice.  
**Date:** 09 October 2019 13:49:03

---

Dear Sirs,

I have an enquiry, made in full confidence, which I hope that you might be able to resolve for me.

On Tuesday the 9th of July at full council, agenda item 49a, Wiltshire Council debated an amendment to Protocol 4; Planning code of good practice: <https://cms.wiltshire.gov.uk/mgAi.aspx?ID=85824>

The proposed amendments were detailed in [49a \(3\) Appendix 2a protocol 4 schedule of changes: https://cms.wiltshire.gov.uk/documents/s164481/03Appendix2aProtocol4\\_ScheduleofChanges.pdf](https://cms.wiltshire.gov.uk/documents/s164481/03Appendix2aProtocol4_ScheduleofChanges.pdf)

The amendments were not agreed, and were instead referred back to the standards committee for further scrutiny at the next standards committee meeting of 14th November 2019: Most of the proposed amendments, and the rest of protocol 4 itself, seem to have been adopted from the following government document; [Probity in Planning for Councillors and Officers, Local Government Association, April 2013: https://www.local.gov.uk/sites/default/files/documents/probity-planning-councill-d92](https://www.local.gov.uk/sites/default/files/documents/probity-planning-councill-d92)

However, i note that one particular item from this best practice document has not been adopted in Wiltshire Council's Protocol 4. The omitted item I am referring to is contained in the section entitled 'The General Role and Conduct of councillors and officers' where on page 6, at paragraph 6 it states:

***“Officers and serving councillors must not act as agents for people pursuing planning matters within their authority, even if they are not involved in the decision making on it”***

I was wondering whether this item was excluded from the protocol 4 in error, or whether it was excluded from the protocol 4 intentionally. If the latter was the case then i would seek some rationale or reasoning from the council for that decision.

For obvious reasons, I believe this item should be adopted, and included within the both the councils planning code, and the members code of conduct.

The reason(s) i raise this particular query is because:

- a) A local councillor is the owner and director of a Planning Consultancy company.
- b) This councillor/company acts as agent for people pursuing local planning matters.
- c) This councillor/company acts as agent for some of the council's planning matters.
- d) This councillor sits on a local council's Development Committee that is involved with making local planning decisions.

This arrangement appears to be contrary to the best practice guidance.

The document '[Probity in Planning for councillors and officers](#)' (LGA 2014) and the existing [Wiltshire Council Protocol 4](#) make it clear that councillors and officers must not do anything that would lead to members of the public thinking or believing that there might be any bias, conflict, influence, or predetermination of views; within the planning application process or planning policy process.

For the avoidance of any doubt, the councillor in question has declared the matter as a pecuniary interest in the register of members of interests, and the member of council does not appear to have taken part in any committee decisions that the planning agency has been involved with.

Nevertheless, the fact remains that the best practice guidance still does make it clear that...***councillors must not act as agents for people pursuing planning matters within their authority...even if they are not involved in the decision making on it”***

Therefore, I am concerned about the existence of such an arrangement with an elected councillor in local council. As a member of the general public it appears quite irregular to me. Such an arrangement directly contradicts the best practice guidance. Quite understandably, I can not comprehend how any councillor putting themself in such a position (councillor, agent, AND decision maker) could appear to be acting

impartially, unbiased, and with neutrality. It does not feel right morally or ethically correct to me.

My personal humble opinion, is that such a clause must be included within both the planning code of practice, and the members code of conduct. This would ensure that all planning matters are open, transparent, and above board; and that councillors are seen to be acting openly, fairly, and impartially, at all times.

I am sure that any sensible member of the public would agree that it is both reasonable and suitable that such a provision is included within the required standards protocols.

I hope that this omitted paragraph will be included in any amendments to the standards protocols.

I look forward to receiving your reply.

Yours sincerely,

[Redacted signature and name block]