

STANDARDS COMMITTEE

MINUTES OF THE STANDARDS COMMITTEE MEETING HELD ON 10 JULY 2013 AT ALAMEIN SUITE - CITY HALL, MALTHOUSE LANE, SALISBURY, SP2 7TU.

Present:

Cllr Desna Allen, Cllr Allison Bucknell, Cllr Trevor Carbin, Mr Philip Gill, Cllr Howard Greenman, Cllr Julian Johnson (Chairman), Mr Paul Neale, Cllr John Noeken (Vice Chairman), Cllr Paul Oatway, Mr John Scragg, Cllr Ian Tomes, Miss Pam Turner and Cllr Christopher Williams

26 **Apologies for Absence**

An apology for absence was received from Councillor Howard Marshall.

27 **Minutes of the Previous Meeting**

The minutes of the meeting held on 24 October 2013 were presented for consideration. It was,

Resolved:

To approve as a true and correct record and sign the minutes.

28 **Dispensation Sub-Committee Minutes**

The minutes of the Dispensation Sub-Committee minutes from 24 January 2013 were presented. It was,

Resolved:

To note the minutes of the Dispensation Sub-Committee.

29 **Declarations of Interest**

There were no declarations.

30 **Chairman's Announcements**

- 1) The Chair announced that the longstanding Democratic Services Officer for the Standards Committee, Pam Denton, had retired from the Council. The Chair thanked Ms Denton for all her work and assistance over the years, and would send a letter of appreciation on behalf of the Committee.

- 2) Following the Council meeting on 09 July 2013, Councillor Pip Ridout was added to the Committee as a substitute.

31 Public Participation and Questions

There were no questions or statements submitted.

32 Appointment of Focus Group on the Constitution

The report on the appointment of those members of the Focus Group on the Constitution to be appointed by the Standards Committee was received and noted.

It was also noted that the Focus Group was not well balanced with regards to gender, and though the appointment of other members was not within the gift of the Standards Committee, it was felt a more balanced membership would be beneficial.

It was,

Resolved:

To re-appoint Mr Paul Neale and Miss Pam Turner as the two co-opted non-voting members of the Standards Committee to serve on the Focus Group on the Constitution.

33 Minutes and Recommendations of the Focus Group on the Constitution

The Committee noted the minutes of the Focus Group on the Constitution meeting held on 12 March 2013 and debated the suggested changes to Protocols 2, 3, 4 and 12 of the Constitution, as detailed in the agenda pack.

For Protocol 2, *Councillor-Officer Relations*, the suggested changes were accepted, subject to amendments in paragraph 9.1, 15.1 and the retention of paragraph 15.5

For Protocol 3, *Guidance to Members on Outside Bodies*, the Committee agreed the revised document, subject to amendments to paragraph 15 to provide an explanation of the meaning 'dual-hatted' members, paragraphs 17 and 18, and 22.

For Protocol 4, *Planning Code of Good Practice*, the Committee agreed the changes as set out in the document attached to the report, subject to revisions to paragraphs 5.3 and 6 to be drafted by the Monitoring Officer to bring these paragraphs in line with the rest of the document.

For Protocol 12, *Code of Conduct*, the Committee noted the suggested changes and deferred a decision until concluding discussion of the item under Minute 34 below.

In relation to Protocols 2, 3 and 4 the Committee, therefore,

Resolved:

To recommend Council to adopt the revised documents as attached to these minutes.

34 Code of Conduct: Registration and Disclosure of Additional Interests

The Monitoring Officer presented a report on whether the Council's Code of Conduct should be amended to provide for the registration and disclosure of additional interests in accordance with the Council's power under the Localism Act 2011. Parish, Town and City Councils had been consulted on the issue and their responses were summarised in the report.

It was noted that many of these councils had adopted the same Code as Wiltshire Council, as the principal authority, and therefore any changes to Wiltshire Council's Code might impact upon these councils; they could decide to go with the changes, stay as they are or do something different. It was preferable from the point of view of consistency and enforcement for most councils to have the same Code of Conduct, but this was ultimately a matter for each council.

Members were minded to adopt an advisory approach rather than a mandatory one involving amendment of the Code of Conduct. The DCLG's revised guide for councillors 'Openness and transparency on personal interests' in Appendix D to the report would assist with this and should be drawn to the attention of parish, town and city councils.

The Committee were also advised by the Monitoring Officer that Wiltshire Council's Code of Conduct at paragraph 6 in any event requires councillors to 'declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties, and must take steps to resolve any conflicts arising in a way that protects the public interest'

The Committee went on to consider whether the Council's Constitution should be amended to include a requirement for councillors with a disclosable pecuniary interest to withdraw from a meeting when business relating to their interest is being considered. Opinion was divided on this issue but overall the Committee were minded to support the introduction of such a requirement.

Finally, the Committee considered whether the Code of Conduct should include more specific provisions on gifts and hospitality, as suggested in one of the consultation responses. However, they felt that this was already sufficiently covered by the existing Code, at paragraph 2, 'you must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.'

The Committee, therefore,

Resolved:

To recommend Council:

(1) Not to amend the Code of Conduct to impose a requirement to register additional interests over and above the statutory disclosable pecuniary interests, but to rely on the existing provisions of the Code, in particular, paragraph 6, and guidance from the DCLG 'Openness and transparency on personal interests' and to draw this guidance to the attention of parish, town and city councils.

(2) To amend the Council's Constitution to require councillors with a disclosable pecuniary interest to withdraw from a meeting when business relating to their interest is being considered.

(3) Not to make any changes to the Code of Conduct on gifts and hospitality on the basis that the existing provision is adequate.

35 Status Report on Complaints

The Monitoring Officer introduced a report on Complaints received and processed since the last meeting of the Standards Committee.

It was noted that fewer complaints had been brought under the new regime and so far no complaints had been referred for investigation. The Committee considered the reasons for this, including the extent to which this was attributable to the absence of specific provisions on behaviour in the Code of Conduct. The Committee felt that a review of the operation of the council's arrangements under the new standards regime was now appropriate as these had been in place for 12 months. The Committee, therefore,

Resolved:

To note the contents of the complaints status report and ask the Monitoring Officer to review the operation and effectiveness of the Code of Conduct and Complaints Procedure in the light of the first year of operation of the new arrangements and to report back to the Committee at its next meeting in October.

36 Draft Annual Governance Statement 2012/13

The Monitoring Officer presented the draft Annual Governance Statement for 2012/13, which had been considered by the Audit Committee on 18 June 2013 and was due to be considered by Cabinet on 23 July. The draft had been sent to the council's external auditors, KPMG, for consideration and comment, and would be referred back to the Audit Committee for final approval on 4 September 2013.

The Committee had particular regard to the relevant ethical governance sections of the draft Statement, with which they were satisfied. They noted that the draft was consistent with guidance from CIPFA.

The Committee

Resolved:

To confirm that the Standards Committee were content with the draft document and noted that this would go back to the Audit Committee with any further changes on 4 September 2013 for approval and publication with the Statement of Accounts.

37 Forward Plan

The Forward Work Plan was received and noted. A request for the Committee to consider an item on councillors being added to the staff benefits scheme was referred to the Monitoring Officer to consider if it was a matter for the Standards Committee. It was,

Resolved:

To approve the Forward Work Plan, subject to the addition of an item requesting the Monitoring Officer to update the Committee on the position regarding dispensations for voting on the setting of council tax and the budget.

38 Urgent Items

There were no urgent items.

(Duration of meeting: 2.00 - 3.45 pm)

The Officer who has produced these minutes is Kieran Elliott of Democratic Services, direct line 01225 718504, e-mail kieran.elliott@wiltshire.gov.uk

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Protocol 2

Councillor / Officer Relations

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1. Introduction

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Context

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1.1 Mutual trust and respect between councillors and officers is at the heart of the council's governance arrangements. An effective partnership between councillors, and officers is a key element of a successful and high performing council.

Purpose of Protocol

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1.2 The purpose of this protocol is to:

- ~~to~~ outline the essential elements of the relationship between councillors and officers;
- promote the highest standards of conduct;
- clarify roles and responsibilities;
- ensure consistency with the law, codes of conduct and the council's values and practices; and
- identify ways of dealing with concerns by ~~members~~ councillors or officers.

1.3 This protocol is for the guidance and assistance of councillors and officers. Any queries about its content or application should be referred to the monitoring officer.

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2. Principles

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2.1 Councillors (including co-opted members) and officers shall observe this protocol at all times.

2.2 There shall be mutual courtesy and respect between councillors and officers with regard to their respective roles as set out below.

2.3 Councillors and officers shall each carry out their respective responsibilities in the best interests of the council, ~~and in accordance with the key values set out in appendix 1 [One Council One Culture – What will we be like?].~~

2.4 The roles and responsibilities of councillors and officers are distinct yet complementary. Councillors are accountable to the electorate for the performance of the council's statutory functions. Officers are accountable to the council as a whole. Their job is to give advice to ~~members~~ councillors (individually and collectively) and to carry out the council's work under the direction of the council.

2.5 This protocol supports the council's codes of conduct for ~~councillors~~ members and officers. The council's 'Code of Conduct for Members of Wiltshire Council' ~~is set out in Part 13 of the constitution, adopts the statutory code and includes in its preamble the 10 general principles governing councillors' conduct.~~ The Human Resources 'Code of Conduct for Officers' ~~is set out in Part 16 of the constitution and~~ forms part of an officer's contract of employment. ~~Both Codes are set out in the constitution.~~

2.6 Breach of this protocol may result:

Protocol 2 v.2
March 2013~~01~~

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- in the case of a councillor / co-opted member, in a complaint to Wiltshire Council's Standards Committee under the members' Code of Conduct for Members;
- in disciplinary action in the case of an officer.

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3. **The role of councillors**

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3.1 Councillors have a number of specific roles, which are set out in detail in Part 12 of the constitution - Roles and Responsibilities of Councillors ~~the councillors' job description. A copy is included in the council's constitution.~~

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3.2 Collectively, councillors are the ultimate policy-makers, determining the core values of the council and approving the council's policy framework, strategic plans and budget.

3.3 Councillors represent the community and its constituents, act as community leaders and as the link between them and the council. This includes performing a key role as a member of their local area board.

3.4 Some councillors will have additional roles specific to their position as members of the cCabinet, or overview and scrutiny or other committees of the council.

3.5 Some councillors may be appointed to represent the council on local, regional or national bodies- see further at section 13 below.

3.6 Councillors must respect the impartiality of officers.

3.7 Councillors must promote the highest standards of conduct and will have regard to the council's Behaviours Framework in carrying out their role.

3.8 Councillors act collectively as the employer of officers.

3.9 Councillors must seek the advice of the monitoring officer and the chief finance officer if they have any concerns about whether the council is acting outside its statutory powers, maladministration, financial impropriety and probity, or whether any decision is or is likely to be contrary to the budget and policy framework.

4. **The role of officers**

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4.1 Officers are employed by the council. They are therefore accountable to the council as a whole - not to individual councillors. There will, however, need to be special relationships between individual councillors and individual officers and these are dealt with specifically under section 6 of this protocol.

4.2 Officers are responsible for giving professional advice to members and for implementing lawful decisions of the council.

4.3 Officers must act impartially at all times and must not allow their professional judgement and advice to be influenced by their own personal views.

4.4 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~~ councillors, the media or other sections of the public.

4.5 Officers must act in accordance with the Officers' Human Resources Code of Conduct and the Council's Behaviours Framework.

5. **Relationship between councillors and officers - general**

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5.1 The relationship between councillors and officers should be characterised by mutual trust and respect.

5.2 Close personal familiarity between individual members and officers can harm professional relationships and prove embarrassing to other councillors and officers. Situations should be avoided that could give rise to suspicion and any appearance of improper conduct, or the perception that a member-councillor and officer treat each other differently from others due to the nature of the personal relationship between them.

5.3 Councillors should not raise matters relating to the conduct or capability of officers either individually or collectively at meetings held in public or in the press. Officers have no means of responding to criticism like this in public. If councillors feel that they have not been treated with proper respect, courtesy or have any concern about the conduct

or capability of an officer they should raise the matter with the service director ~~of the department~~ concerned if they are unable to resolve it through direct discussion with the officer – see further at section 15 below.

5.4 Councillors will not publish any material which is derogatory of officers generally, or specific individuals, whether directly or through their agents or political groups.

5.5 What can councillors expect from officers?

- a commitment to the council as a whole and not to individual political groups;
- a working partnership;
- a timely response to enquiries and complaints – (see Appendix 1.2)
- objective, professional advice not influenced by political views or preference;
- integrity, support and confidentiality appropriate to the situation;
- being kept up to date on local issues;
- compliance with the Human Resources 'Officers' Code of Conduct.

5.6 What can officers expect from councillors?

- political leadership and direction;
- a working partnership;
- compliance with the 'Code of Conduct for Members';
- distance from day to day management of the council;
- no improper influence or pressure to gain special treatment for themselves or others;
- recognition of the duty to promote the health, safety and well-being of officers.

6. Relationship between councillors and officers - specific

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6.1 Special relationships will exist between certain councillors and officers because of their specific roles. These relationships nevertheless remain subject to the obligations set down in this protocol.

6.2 Members of the cCabinet and the cCorporate Leadership Team will have a distinct and special relationship. In particular the relationship between the leader and the chief executive corporate directors will be key to the success and culture of the council.

6.3 Officers and councillors must ensure that appropriate consultations are undertaken before reports are prepared for decision, either by cabinet or by individual cabinet members under delegated powers.

6.4 Within overview and scrutiny there are two aspects of relationship between members-councillors and officers:

- the relationship between councillors and officers who support the overview and scrutiny function. Councillors lead the scrutiny function. Officers brief scrutiny members, but the decision to pursue any particular issue rests with councillors.
- officers who are asked to attend scrutiny committees or task groups as a witness or special adviser should be treated with respect. They may be expected to answer questions on the professional advice given to the Full cCouncil or cCabinet in relation to policies and decisions but must not be expected to give a political view. The arrangements for attendance of cabinet members and senior officers at overview and scrutiny meetings to give account are contained in the overview and scrutiny procedure rules within-in Part 8 of the constitution.

6.5 Officers may also be ~~called to give evidence~~ asked to speak at a meeting of an area board. Partner organisations such as the police, health and PCT, fire, are also likely to be ~~questioned on~~ asked about the provision of local services. In the spirit of partnership working it is important that both

officers and the representatives of partner organisations are treated with respect, and from a community perspective it is important that the relationship between ~~members~~councillors, officers and partners is seen to be constructive, with everybody working together and in the same direction.

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7. **General support to councillors**

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7.1 Appendix ~~two-1~~ summarises the support and facilities provided for councillors at Wiltshire Council and in their constituencies.

8. **Support to specific councillors**

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8.1 To recognise the full-time nature of the role of leader and cabinet members, PA support will be provided, to include diary management and research support in connection with cabinet business.

8.2 PA support will also be provided to the chairman and vice-chairman of the council in recognition of their civic responsibilities.

9. **Support to political groups**

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9.1 Political groups may request private and confidential briefings on matters of policy and factual evidence which are or may become the subject of discussions by the ~~f~~Full Council or ~~c~~Cabinet or any committee.

9.2 The request should be submitted to the chief executive corporate director designated as the liaison officer for the political groups, who will discuss it with the appropriate officer. Attendance must be authorised by ~~the chief executive a corporate director~~. If authorised the leaders of all political groups should be notified and a similar briefing offered.

9.3 The briefing should not extend beyond providing information and advice.

9.4 For the avoidance of doubt group meetings cannot make decisions on behalf of the council and it is essential that they are not acted upon as such. Nor does such a briefing negate the need to ensure that all necessary advice and information is provided to the decision-making body when the matter is formally considered.

9.5 Requests for briefings may be declined where these are to take place in premises which are not owned or controlled by the council or where persons who are not members of the council will be present.

9.6 Accommodation for use by political groups will be provided together with reasonable photocopying, postage and ICT facilities. Such use must be in connection with council business.

10. **Members' access to information**

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10.1 This part of the protocol should be read in conjunction with the access to information procedure rules in Part 5 of the constitution and any guidance issued by the monitoring officer.

10.2 Councillors are entitled to see copies of any agenda for meetings of the ~~c~~Cabinet, and of committees of which they are not appointed members. Councillors' rights to information are subject to legal rules and, if members have a legitimate interest in a matter in their role as a member of the council, officers should provide the relevant information (including confidential information) to them.

10.3 Councillors should seek advice from the monitoring officer in circumstances where they wish to inspect any document or have access to information about a matter:

- in which they may have ~~an~~ prejudicial interest; or
- where to do so would be in breach of the Data Protection Act 1998;

10.4 If councillors are not receiving, or are having difficulty in obtaining, information which they feel they need or to which they are entitled to carry out their duties as ~~members-councillors~~ they should contact the monitoring officer for advice.

10.5 Information given to a ~~member-councillor~~ must only be used for the purpose for which it was requested. Councillors 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. A councillor must seek the advice of the monitoring officer before disclosing information given in confidence, ~~in order that the councillor can be advised on whether such disclosure would be:~~

~~• reasonable and in the public interest~~

~~• made in good faith~~

~~• in accordance with the reasonable requirements of the council.~~

10.6 Councillors will be informed of local issues in accordance with Protocol 1 of the constitution - the Briefing and Information for Local Members Protocol, ~~annexed to the constitution.~~

11. Media relations

11.1 Councillors are referred to the Wiltshire Council ~~Media Relations Protocol~~ ~~annexed to at Protocol 7 of~~ the constitution.

12. Use of council resources

12.1 Councillors and officers must comply with the council's policies and requirements concerning the use of its resources, including in particular its ~~ICT Acceptable Usage Policy~~ ~~E-mail, Internet and Computer Use Policy~~.

12.2 Councillors must not use the council's resources improperly for political purposes (including party political purposes) and shall have regard to the local authority code of recommended practice on publicity annexed to the Media Relations Protocol. Councillors should seek advice from the monitoring officer where clarification is necessary.

13. Representation on external organisations

13.1 Councillors are referred to Protocol 3 – Guidance to Councillors on Outside Bodies.

13.2 A councillor appointed to represent the council on an external organisation shall take care to establish the legal status of the appointment and the potential liabilities that may be involved before confirming acceptance. Councillors should seek the advice of the monitoring officer if they have any concerns or are unclear about the nature of such appointments.

13.2 Councillors appointed to represent the council on external organisations shall establish relevant council policy on issues arising in those bodies and shall act in accordance with that policy when engaged in discussions and decision-making.

13.3 Where a councillor member acts as a representative of the council on another ~~relevant authority he or she must comply with the other authority's code of conduct.~~ ~~When acting as a representative of the council on another~~ body, the councillor must comply with the council's Code of Conduct for Members, ~~unless it conflicts with lawful obligations of the other body.~~

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14. Access to premises

14.1 If councillors wish to visit council establishments, other than ~~Bythesea Road and the main~~ area hub offices, they should contact the relevant director or head of the establishment in advance to make the necessary arrangements.

15. How to resolve issues

15.1 Councillors and officers are encouraged to work together and seek to resolve any differences informally, by discussing any concerns at the earliest opportunity.

15.2 If a councillor feels that they have not been treated with proper respect, courtesy or they have any concern about the conduct or capability of an officer, or that an officer has acted in breach of this protocol, they may raise the matter with the individual's service director. If the matter cannot be resolved informally, any such referral will be processed in accordance with the council's employment procedures and policies. The councillor and the officer will be kept informed of progress with the complaint and the action to be taken. An individual councillor does not have the power to discipline any officer.

15.3 If an officer feels that a councillor has acted in breach of this protocol, they should raise the matter with their service director. The service director should discuss the matter informally with the councillor. If the matter is not resolved the officer may refer the issue to the monitoring officer and the corporate director designated as the liaison officer for political groups for consideration and discussion with the appropriate group leader. The officer and councillor will be kept informed throughout.

15.4 In relation to the process in paragraph 15.3 above regard should be had to paragraph 3.1 of the council's arrangements for dealing with complaints under the code of conduct, which requires any complaint to be made within 20 working days of the date on which the complainant became aware of the matter giving rise to the complaint.

15.4 The use of mediation may be considered at any stage as a means of resolving the matter informally.

15.5 If the matter cannot be resolved informally the officer may bring a complaint against the councillor under the Members' Code of Conduct.

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~~15. Further advice and complaints~~

~~15.1 Any particular cases of difficulty or uncertainty arising under this protocol should be raised with the monitoring officer who will advise how to proceed.~~

~~15.2 Where a councillor or officer considers that there has been a breach of this protocol a complaint may be made to the monitoring officer who will determine how the complaint should be handled.~~

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Councillor - Officer Relations

Principles

The support to be provided to councillors must be subject to the following caveats:

- Officers are employed by the council and are responsible to the council as a whole
- Officers cannot be required and must not undertake work of a political nature
- Officers must respect the confidentiality of some information that they may be exposed to

Supporting councillors centrally

The Democratic Services team ~~based in Trowbridge~~ can offer/facilitate support in the following areas:

A. ICT

ICT training will be given as part of the induction programme and following on from that equipment will be issued. This equipment will include a lap top and docking station, the option of a printer and other essentials. A broadband connection, or a monthly allowance to provide the same, will be provided together with the means to gain secure remote access to the Council's Network.

B. Councillor development

Following the councillor induction programme a detailed councillor development programme will be implemented. Councillors will be offered a personal development discussion which will enable them to discuss their training needs and find out about what training and development is available.

C. Allowances

All councillors are entitled to a basic allowance to cover the costs of being a councillor. Expenses can also be claimed for travel and subsistence. Details of allowances and expenses are set out in the Members Allowances scheme within the Constitution.

D. Secretariat and information

- Keeping councillors up-to-date with diary changes
- Booking onto any sessions from the Councillor Development Programme
- All councillors' conference arrangements including booking of places, hotel reservations, train tickets and arrangements for other transport.
- Providing 'Councillor Websites'
- Monitoring and maintaining individual Councillors' ~~declaration of registered~~ interests-forms on the council's web-site.
- Councillors' briefings with key information and details of delegated decisions, links to minutes and agenda for forthcoming meetings
- A councillor's intranet page with links to committee dates, planning applications, highways works or training opportunities.

Councillors will also be provided with:

- an identity badge
- a pass card to gain entry to the main offices ~~in the Bythesea Road~~
- ~~a council diary~~
- a general retiring lounge known as 'the members' room' (arrangements to be finalised as part of the transformation programme)
- reasonable stationery requirements, including letterheads, business cards, envelopes, and pre-paid reply envelopes for correspondence with council departments
- car parking ~~at Bythesea Road~~ whilst attending official meetings. arrangements under review.

E. Accommodation

Each political group will have a group room and access to a docking station for a lap top, printer, telephone and photocopying facilities for use in connection with council business.

There will also be specific accommodation provided for the leader, the cabinet, scrutiny members and the chairman of the council.

F. Politicalgroupsupport

No dedicated support is provided to group leaders but photocopying can be provided in connection with group business at an agreed cost and correspondence/communications can be sent with official council communications.

G. Briefings/seminars

A detailed list of forthcoming seminars will be maintained.

H. ResponsetoCouncillorenquiries

e-mails and telephone calls

- will be acknowledged within two working days of receipt, giving details of an alternative contact if the officer concerned is absent from the office
- a substantive response will be provided within seven working days of receipt. If that is not possible an explanation will be given as to the reason for the delay, what action is being taken, and when a response will be sent.

Supporting Councillors locally

The democratic services staff based in the office hubs will, subject to resources being available, support councillors in their community leadership roles. This could include:-

- Assisting councillors in providing a two-way link between the council and the community
- Supporting the representational role of councillors
- Arranging for office facilities to be made available

Councillors will arrange any surgeries they wish to hold for their constituents, using libraries and area hub offices where appropriate.

PROTOCOL 3

GUIDANCE TO COUNCILLORS APPOINTED TO OUTSIDE BODIES

Introduction

1. This guidance sets out the main issues which councillors should consider when appointed by the Council to serve on outside bodies. It supplements the advice included in paragraph 13 of the Councillor / Officer Relations Protocol, which forms part of the Council's Constitution.
2. In the context of this guidance 'outside bodies' include trusts, companies, charities, school governing bodies, industrial and provident societies and community associations. Councillors may be involved as a director, trustee, governor or member (with or without voting powers).
3. Councillors who are involved in the management of outside bodies have responsibilities to that body that must be acted upon. Their role, responsibilities and potential liabilities will depend upon the legal nature of the organisation and the capacity in which they have been appointed. Failure to act in a proper manner may give rise to personal liability or liability for the Council.
4. With the increasing emphasis on partnership working, councillors, as community leaders, have an important role to fulfil in supporting and advising outside bodies. However, this can give rise to conflicts of interest, particularly where the organisation is seeking or receiving funding from the Council. Councillors always need to be clear about their roles and alert to potential conflicts of interest in order to ensure transparency and public confidence in local democracy.
5. This guidance seeks to help councillors discharge their responsibilities on outside bodies clearly and effectively. It covers, primarily, the position of councillors appointed by the Council to serve on outside bodies, though much of the advice applies equally to councillors who are involved with outside bodies in a private capacity. In those situations, however, the Council's insurances will not apply.
6. This guidance is general and councillors should contact the Monitoring Officer for further advice if they have any particular issues of concern.
7. The responsibilities of officers in relation to outside bodies is dealt with separately in the Code of Conduct for Officers.
8. The remainder of this guidance includes the following:
 - issues to consider before appointment;
 - application of the Code of Conduct for Councillors;
 - legal status of outside bodies, capacity of appointment, duties and liabilities;
 - insurance and indemnity.

Issues to consider before appointment

9. Before accepting an appointment to an outside body councillors should check:

- the legal status of the organisation e.g. company, trust, charity, unincorporated association;
 - the capacity in which the councillor is to be appointed e.g. director, trustee, member with voting rights or member with observer status;
 - the purpose of the organisation and how this relates to the Council's functions and objectives;
 - the relationship between the Council and the body and the likelihood and extent of any conflicts of interest;
 - the requirements of the organisation's governing instrument (eg constitution; trust deed; memorandum and articles of association), both as a member and generally;
 - the financial status of the organisation;
 - the governance and decision making arrangements, including the management of risk;
 - any code of conduct for members;
 - potential liabilities;
 - the extent of any insurance cover for members.
10. Having checked the above matters, councillors should consider carefully whether they should be appointed to participate formally in the management of the external organisation e.g. as a director, trustee or voting member, or whether their role as a representative of the Council may be more effectively discharged as a non-voting member with observer status only. Bearing in mind the potential liabilities that may be incurred through formal involvement in an organisation councillors are generally advised to seek appointment as members with observer status only, unless there are exceptional reasons for more formal participation.
11. Councillors are encouraged to seek advice from the Monitoring Officer where any of the above issues are unclear.

Application of the Code of Conduct for Members

12. The Council's Code of Conduct for Members in Part 13 of the Constitution places specific obligations on ~~councillors~~ councillors when acting in that capacity in relation to their dealings with outside organisations, ~~including the registration and declaration of interests.~~ The relevant provisions and guidance are covered in Appendix A. This includes guidance from Standards for England on the position of dual hatted members under the Code of Conduct. Further guidance on the Code of Conduct may be obtained from the Standards for England web site at <http://www.standardsforengland.gov.uk> The Code will, in particular, apply where a councillor is acting as a representative of the Council on an outside body.
13. Apart from the general duty to promote and support high standards of conduct the following duties of the Code are particularly relevant in this context:
- act solely in the public interest and never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate;
 - avoid placing yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties;
 - make all choices, such as making public appointments, awarding contracts or

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recommending individuals for rewards or benefits, on merit;

- declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and take steps to resolve any conflicts in a way that protects the public interest.
- comply with the statutory requirements on the registration and declaration of interests.

[Final position on registration and declaration of any additional interests - to be determined by Council]

14. Councillors who have a disclosable pecuniary interest in any business at a meeting of the Council e.g. award of a contract, must not participate in any discussion of the matter or vote on it unless a dispensation has been obtained. Failure to comply with these requirements without reasonable excuse may result in prosecution.

15. Councillors that serve on more than one body, in particular, need to be mindful of potential conflicts of interest and always act in an open and transparent manner in carrying out their respective roles. For example, where a councillor is at a council meeting considering an application for a grant or a community asset transfer request from a parish council or other public body of which they are a member they should declare the existence and nature of their interest. Having done so, they may, generally, take part in the discussion of that item and vote, unless there are particular reasons why this would not be appropriate. It is also advisable as a matter of transparency to include details of the interest in their register of interests.

16. The same principle will generally apply where councillors are appointed to serve as school governors, but it is always necessary to have regard to the nature and extent of any conflict of interest in deciding whether to participate or vote. Where the governing body is considering a matter which is likely to have a material effect on the councillor or a member of their family it would be advisable to declare an interest and take no further part in the proceedings.

17. Councillors appointed to serve on outside bodies should be mindful of their legal obligations regarding disclosure of confidential information and in case of doubt should seek advice from the Monitoring Officer.

Predetermination and Bias

18.13. Aside from the Code of Conduct, under the common law councillors must be careful to avoid any pre-determination or bias in their decision making. Guidance from Standards for England on this issue is included at Appendix B.

Predetermination occurs where someone has a closed mind so that they are unable to apply their judgment fully and properly to the issue requiring a decision. This can lead to legal challenges and decisions being set aside.

19. The Localism Act 2011 has clarified the rules on predetermination. It makes it clear that a councillor is not deemed to have had a closed mind on an issue just because they have indicated what view they have taken or may take before the issue is decided. A councillor is not, for example, prevented from participating in discussion of an issue or voting on it if they have campaigned on the issue or made public statements about their approach to it.

20. The general position, however, remains that, whatever their views, members must approach their decision-making with an open mind in the sense that they must have

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regard to all material considerations and must be prepared to change their views if persuaded that they should.

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21. Councillors need to be aware that decisions may be challenged and set aside on the grounds of bias. Under the common law bias involves some element of partiality or personal interest in the outcome of a case, as a result of a close connection with the parties, or the subject matter of the dispute, or because of a tendency towards a particular shared point of view.

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22. The relevant test for bias is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the decision maker was biased.

23. The risk of a successful challenge on these grounds may be overcome by proper observance of the requirements of the code of conduct and particularly the provisions set out in paragraph 13 above.

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Legal status, capacity, duties and liabilities

24.44. The specific responsibilities of councillors will depend upon the legal status of the outside body and the capacity in which they have been appointed. The position of councillors in relation to various types of outside body is summarised in the appendices to this note as follows:

Appendix [AC](#) - Director of Limited Liability Company

Appendix [BD](#) - Trustee of Trust or Charitable Trust

Appendix [CE](#) - Member of Unincorporated Association

Appendix [DF](#) - Member of Steering Group, Joint Committee or Partnership Body

[25.45](#). The key point to note is that where councillors are carrying out their duties as a trustee, director, or management committee member, they may take account of the wishes of the Council, but their primary duty is to act in the best interests of the organisation to which they have been appointed.

Liability, Insurance and Indemnity

[25.46](#). Councillors can incur personal civil and criminal liability from formal participation in outside bodies.

17. [However, u](#)nder section 265, Public Health Act 1875 (as applied by Section 39, Local Government (Miscellaneous Provisions) Act 1976), [c](#)ouncillors enjoy statutory immunity from civil liability where they act within the powers of the authority, in good faith and without negligence.

18. [However, But](#) this immunity does not apply where they act beyond the powers of the council or act in bad faith (i.e. with dishonest or malicious intent) or negligently, and it does not protect them from criminal liability, for example for fraud or for corporate killing where they exercise managerial responsibilities.

20. Wiltshire Council has a wide insurance provision to protect its assets and liabilities. Within these provisions the Council has extended its cover to protect its elected and co-opted members when carrying out duties in connection with the business of Wiltshire Council. Those afforded the protection are;

- elected Members of the Council or co-opted members of any Committee or Sub-Committee.
- members of committees, schemes or associations formed to assist in the activities of the Council.

21. A summary of those policies which incorporate these two extensions are listed below as follows;

Type	Employers Liability
Insurer	Zurich Municipal
Policy Number	QLA-11U010-0043
Sum Insured	£ 50 million any one event
Cover	This policy provides an indemnity in respect of legal liability to pay damages and claimants costs and expenses in respect of death of or bodily injury to or disease or illness contracted by any members or employees and arising out of and in the course of their official duties or employment in the business and caused during the period of insurance. Cover includes defence costs incurred with Insurer's written consent.

Type	Officials Indemnity
Insurer	Zurich Municipal
Policy Number	QLA-11U010-0043
Sum Insured	£ 5 million
Cover	<p>This policy provides indemnity in respect of legal liability for damages and claimant's costs and expenses for financial loss arising out of: negligent acts, accidental errors or omissions by members or employees arising out of their duties on Wiltshire Council business. This includes activities of employees and members approved by the Council in connection with outside organisations where the Council is legally entitled to approve such activities and indemnify employees and members in respect of them.</p> <p>Cover includes legal costs and expenses incurred with Insurer's written consent.</p>

Type	Libel and Slander
Insurer	Zurich Municipal
Policy Number	QLA-11U010-0043
Sum Insured	£ 5 million
Cover	<p>This policy provides indemnity in respect of legal liability for damages in respect of: libels appearing in normal business publications by members or employees; slanders by members or employees in the course of their official duties. These must be notified to the Insurers during the period of insurance and occurring during the period of insurance. Cover includes defence costs incurred with the Insurer's written consent.</p>

22. ~~As a 'belts and braces' measure it is proposed to extend the existing officers' indemnity to cover M~~members and co-opted members are indemnified by the Council as follows:

The council will, subject to the exceptions set out below, indemnify its members and former members against claims made against them (including costs awarded and reasonable costs incurred) and will not itself make claims against them for any loss or damage (other than

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claims falling within the cover provided to its members under any policy of insurance taken out by the Council or any motor vehicle insurance policy taken out by the members) occasioned by any neglect, act, error or omission committed by them in pursuit of their duties as they may from time to time undertake in the course of their duties with the Council whilst acting within the scope of their authority which shall include when they are acting for other persons or other bodies with the Council's consent.

Exceptions:

The indemnity will not extend to loss or damage directly or indirectly caused by or arising from:

- (a) fraud, dishonesty or a criminal offence on the part of the member;
- (b) any neglect, error or omission by the member otherwise than in the course of their duties;
- (c) liability in respect of losses certified by the Audit Commission as caused by wilful misconduct.

The indemnity will not apply if any member, without the written authority of the Council, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of this indemnity, or where there is evidence that the member had acted with reckless disregard for the consequences.

Further Advice

23. Further assistance on the issues covered in this guidance may be obtained from the Council's Monitoring Officer.

APPENDIX A

Code of Conduct for Members – Relevant Provisions and Guidance

1. ~~Where a councillor is acting as a representative of the Council on any other body (other than a relevant authority) they must comply with the Council's Code of Conduct except where it conflicts with any lawful obligations to which that body may be subject. (Paragraph 2 (5) of the Council's Code of Conduct for Members)~~
2. ~~Councillors appointed to serve on outside bodies must be mindful of their duties regarding disclosure of confidential information under paragraph 4 of the Code of Conduct.~~
3. ~~Councillors must not use or attempt to use their position as a councillor improperly to confer on or secure for themselves or any other person, an advantage or disadvantage – paragraph 6 (a) of the Code. In particular they must not use their position as a councillor improperly to secure benefits or advantages for the outside body to which they have been appointed.~~
4. ~~Paragraph 13 of the Code requires councillors to register any personal interests which fall within the categories set out in paragraph 8 of the Code of Conduct. Registration is by written notification to the monitoring officer within 28 days of taking up office, or within 28 days of becoming aware of any new interest or change of interest.~~
5. ~~The categories of interest which are most relevant in this context are:
 - ~~any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority; (paragraph 8(1)(a)(i))~~
 - ~~any body –
 - a ~~exercising functions of a public nature;~~
 - b ~~directed to charitable purposes;~~
 - c ~~one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union);~~~~
 - ~~of which the councillor is a member or in a position of general control or management – (paragraph 8(1)(a)(ii)).~~~~

Personal interest

6. ~~A councillor will have a personal interest in any business of the Council which relates to or is likely to affect any of their registrable interests. They will, therefore, have a personal interest in any business of the Council which relates to or is likely to affect an outside~~

body to which they have been appointed by the Council.

- ~~7. They may also have a personal interest where a decision in relation to the business under consideration might reasonably be regarded as affecting their well being or financial position, or the well being or financial position of a relevant person to a greater extent than the majority of council tax payers in the electoral division affected by the decision. A 'relevant person' includes a body which falls within the categories of interest described in paragraph 5 above. (paragraph 8(1)(b) of the Code)~~
- ~~8. Where a councillor has a personal interest in any business of the Council and attends a meeting of the Council at which the business is considered, they must disclose the existence and nature of their interest to the meeting when the matter begins to be considered or when the interest becomes apparent. (paragraph 9(1) of the Code). For example, if the councillor is attending a council debate on education policy and is also a council appointed governor, they would only need to declare an interest if and when they decided to speak during the debate.~~
- ~~9. In the case of a personal interest in any business which relates to or is likely to affect any body to which the councillor has been appointed, or a body exercising functions of a public nature, the councillor only needs to disclose the existence and nature of their interest when they address the meeting on that business. (paragraph 9(2) of the Code).~~

~~Prejudicial Interest~~

- ~~10. A councillor will also have a prejudicial interest in any business of the Council being considered where the personal interest is 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 their judgment of the public interest. (paragraph 10(1))~~
- ~~11. A prejudicial interest will only arise, however, where none of the exemptions in paragraph 10(2)(c) of the Code apply, and the business being considered~~
- ~~• affects the councillor's financial position or the financial position of a person or body included in their register of interests e.g. a body to which they have been appointed by the Council;~~
 - ~~• relates to the determination of a regulatory matter affecting them or any such person or body.~~
- ~~12. A councillor who is considering an application for grant or a planning application by a body to which they have been appointed by the Council will, therefore, have a prejudicial interest in that matter. This will apply equally to a councillor who is a member of one of~~

~~the other bodies mentioned in paragraph 5 above.~~

~~13. Where a councillor has a prejudicial interest they may make representations on the matter to the same extent as a member of the public, answer questions or give evidence, if required, but they must then leave the meeting and not take any further part in it or vote. They must not seek to influence the decision improperly in any way. (paragraph 12 of the Code)~~

~~14. A councillor who participates in decision making on business in which they have a prejudicial interest may invalidate the decision.~~

~~Standards for England Guidance on Dual-hatted Members and the Code of Conduct~~

~~What is a dual-hatted member?~~

~~Dual-hatted members are members who serve on two or more relevant authorities; for instance, a member who is both a district and parish council member.~~

~~When should a dual-hatted member declare an interest?~~

~~If a dual-hatted member is taking part in a council meeting and an issue is under discussion which affects that member's other authority, then provided that they do not have a prejudicial interest, under paragraph 9(2) of the Code of Conduct the dual-hatted member only needs to declare a personal interest if they intend to speak on the matter involving the other authority. If the member does speak on the matter then they must declare a personal interest, but they are still able to vote.~~

~~Members must consider carefully, however, if the nature of the matter under discussion means that their membership of another authority may also give rise to a prejudicial interest.~~

~~For dual-hatted members who would not otherwise have a prejudicial interest for any other reason, a prejudicial interest will arise as a result of membership of the other authority if all of the following conditions are met:~~

- ~~• the matter affects the other authority's financial position or is about a licensing or regulatory matter applied for by the other authority;~~
- ~~• the matter does not fall within one of the exempt categories of decisions under paragraph 10(2)(c) of the Code;~~
- ~~• a reasonable member of the public with knowledge of the relevant facts would believe that the member's ability to judge the public interest would be impaired~~

~~Standards for England takes the view that where a regulatory application, including a matter of consent or approval, is made by a body on a member's register of interests, or a matter is discussed that would impact upon the financial interests of a body on a member's register of interests, then a prejudicial interest will arise. For example if a parish council planning application was being considered at a district council meeting, a member of the planning committee who is also a parish council member would need to declare a personal and prejudicial interest when that matter is considered, leave the chamber and not vote.~~

~~Predetermination and dual-hatted members~~

- ~~• A dual hatted member does not automatically have an interest in an item just by virtue of having considered the issue at the meeting of a different authority. If the issue does not meet the normal criteria for needing to declare a personal interest, then an interest does not need to be declared. However, the issue of predetermination or bias may need to be considered where members sit on different bodies determining matters. Further information on this is set out in Appendix B.~~

~~Dual-hatted member scenarios~~

~~Standards for England have developed some scenarios covering dual-hatted member issues based on real queries that they have received and the advice they have given. These may be accessed using the following link:~~

~~<http://www.standardsforengland.gov.uk/Resources/ResourceLibrary/Trainingmaterials/Dual-hattedmembers-scenarios/>~~

APPENDIX B

~~Predisposition, Predetermination or Bias, and the Code — Guidance from Standards for England~~

~~Both predetermination and bias have proved to be difficult and controversial issues for many councillors and monitoring officers. Although they are judge-made, common law issues, and not part of the Code of Conduct, Standards for England is publishing this up-dated guide to help clarify the issues.~~

~~We originally published a paper on this issue in August 2007. It was based on advice from leading treasury counsel Philip Sales QC, which can also be [found on our website](#).~~

~~This new version of the paper aims to clarify the issues involved. It includes examples of where councillors are predisposed, and so can take part in a debate and vote, and where they are predetermined and their participation in a decision would risk it being ruled as invalid.~~

~~This area of law is constantly developing which is why the paper has been revised. However, members should refer to their monitoring officers for the most up-to-date position.~~

~~What is predisposition?~~

~~It is not a problem for councillors to be predisposed to a particular view. That predisposition can be strong and can be publicly voiced. They may even have been elected specifically because of their views on this particular issue. It might be in favour of or against a particular point of view, for example an application for planning permission.~~

~~However, the councillor must be open to the possibility that, however unlikely, they will hear arguments during the debate about the issue that will change their mind about how they intend to vote. As long as they are willing to keep an open mind about the issue they are entitled to take part in any vote on it.~~

~~What is predetermination or bias?~~

~~Predetermination is where a councillor's mind is closed to the merits of any arguments which differ from their own about a particular issue on which they are making a decision, such as an application for planning permission. The councillor makes a decision on the issue without taking them all into account.~~

~~If councillors are involved in making a decision they should avoid giving the appearance that they have conclusively decided how they will vote at the meeting, such that nothing will change their mind. This impression can be created in a number of different ways such as quotes given in the press, and what they have said at meetings or written in correspondence.~~

~~Rarely will membership of an organisation on its own, such as a national charity, amount to apparent bias. This is unless the organisation has a particular vested interest in the outcome~~

~~of a specific decision that a councillor is involved in making, or the decision is quasi-judicial in nature.~~

~~Making the decision~~

~~There is an important difference between those councillors who are involved in making a decision and those councillors who are seeking to influence it. This is because councillors who are not involved with making a decision are generally free to speak about how they want that decision to go.~~

~~When considering whether there is an appearance of predetermination or bias, councillors who are responsible for making the decision should apply the following test: would a fair-minded and informed observer, having considered the facts, decide there is a real possibility that the councillor had predetermined the issue or was biased?~~

~~However, when applying this test, they should remember that it is legitimate for a councillor to be predisposed towards a particular outcome as long as they are prepared to consider all the arguments and points made about the specific issue under consideration.~~

~~Also the importance of appearances is generally more limited when the context of the decision-making is not judicial or similar to judicial. Planning decisions are not similar to judicial decisions, they are administrative. Therefore councillors can appear strongly predisposed for or against a particular planning decision.~~

~~How can predetermination or bias arise?~~

~~The following are some of the potential situations in which predetermination or bias could arise.~~

~~Connection with someone affected by a decision~~

~~This sort of bias particularly concerns administrative decision-making, where the authority must take a decision which involves balancing the interests of people with opposing views. It is based on the belief that the decision-making body cannot make an unbiased decision, or a decision which objectively looks impartial, if a councillor serving on it is closely connected with one of the parties involved.~~

~~15. Example:~~

- ~~a. A district councillor also belongs to a parish council that has complained about the conduct of an officer of the district council. As a result of the complaint the officer has been disciplined. The officer has appealed to a councillor panel and the councillor seeks to sit on the panel hearing the appeal. The councillor should not participate.~~

~~Contrast this with:~~

~~b. The complaint about the officer described above is made by the local office of a national charity of which the councillor is an ordinary member and has no involvement with the local office. The councillor should be able to participate in this situation because the matter is not concerned with the promotion of the interests of the charity.~~

~~Improper involvement of someone with an interest in the outcome~~

~~This sort of bias involves someone who has, or appears to have, inappropriate influence in the decision being made by someone else. It is inappropriate because they have a vested interest in the decision.~~

Example:

~~A local authority receives an application to modify the Definitive Map of public rights of way.~~

~~A panel of councillors is given delegated authority to make the statutory modification Order. They have a private meeting with local representatives of a footpath organisation before deciding whether the Order should be made. However, they do not give the same opportunity to people with opposing interests.~~

~~Prior involvement~~

~~This sort of bias arises because someone is being asked to make a decision about an issue which they have previously been involved with. This may be a problem if the second decision is a formal appeal from the first decision, so that someone is hearing an appeal from their own decision. However, if it is just a case of the person in question being required to reconsider a matter in the light of new evidence or representations, it is unlikely to be unlawful for them to participate.~~

Example:

~~A councillor of a local highway authority, who is also a member of a parish council that has been consulted about a road closure, could take part in the discussion at both councils. The important thing is that the councillor must be prepared to reconsider the matter at county level in the light of the information and evidence presented there.~~

~~Commenting before a decision is made~~

~~Once a lobby group or advisory body has commented on a matter or application, it is likely that a councillor involved with that body will still be able to take part in making a decision about it. But this is as long as they do not give the appearance of being bound only by the views of that body. If the councillor makes comments which make it clear that they have already made up their mind, they may not take part in the decision.~~

~~If the councillor is merely seeking to lobby a public meeting at which the decision is taking place, but will not themselves be involved in making the decision, then they are not prevented by the principles of predetermination or bias from doing so. Unlike private~~

lobbying, there is no particular reason why the fact that councillors can address a public meeting in the same way as the public should lead to successful legal challenges.

Example 1:

A council appoints a barrister to hold a public inquiry into an application to register a village green. The barrister produces a report where he recommends that the application is rejected. A councillor attends a meeting in one of the affected wards and says publicly: "speaking for myself I am inclined to go along with the barrister's recommendation". He later participates in the council's decision to accept the barrister's recommendation. At the meeting the supporters of the application are given an opportunity to argue that the recommendation should not be accepted.

This is unlikely to give rise to a successful claim of predetermination or bias. The statement made by the councillor only suggests a predisposition to follow the recommendation of the barrister's report, and not that he has closed his mind to all possibilities. The subsequent conduct of the meeting, where supporters of the application could try and persuade councillors to disagree with the recommendation, would confirm this.

Example 2:

A developer has entered into negotiations to acquire some surplus local authority land for an incinerator. Planning permission for the incinerator has already been granted. Following local elections there is a change in the composition and political control of the council. After pressure from new councillors who have campaigned against the incinerator and a full debate, the council's executive decides to end the negotiations. This is on the grounds that the land is needed for housing and employment uses.

The council's decision is unlikely to be found to be biased, so long as the eventual decision was taken on proper grounds and after a full consideration of all the relevant issues.

Predetermination or Bias, and the Code

There is a difference between breaching the Code and being predetermined or biased. It is perfectly possible to act within the Code and still cause a decision you were involved in to be bad for predetermination or bias.

Example:

Under the Code, a councillor may take part in considering whether or not to grant a planning application which is recommended for refusal by planning officers and made by a colleague with whom they do not share a "close association". Nevertheless, because the councillor is the Chair of the planning committee, uses his casting vote to decide in favour of his colleague, and regularly shares a car with that colleague when coming to council meetings, this gives rise to an appearance of bias.

Conclusion

When making administrative decisions like whether or not to grant planning permission, councillors are entitled to have and express their own views. However, this is as long as they are prepared to reconsider their position in the light of all the evidence and arguments. They must not give the impression that their mind is closed.

Relationship to the Code of Conduct

The First tier Tribunal (Local Government Standards in England) in case reference 0352 has also looked at the relationship between the Code and predetermination and gave an indication that where such issues arise there is a potential paragraph 5 Code breach. The outcome is likely to depend on the individual circumstances of a case and any other Code issues and breaches. This is because a councillor who renders the decision of a council unlawful due to predetermination could reasonably be regarded as bringing that authority or his office into disrepute.

An important issue for members is that by and large predetermination will not amount to a personal or prejudicial interest. Therefore there is no specific requirement to declare an interest and leave the room under paragraphs 8 to 10 of the Code. Members may however find themselves the subject of a complaint under paragraph 5 on disrepute. This paragraph of the Code has no provision for declaring interests or leaving meetings.

For more information on the issue of predetermination or bias, councillors should talk to their monitoring officers or their political group.

Published on December 2009.

APPENDIX

AC

Councillors appointed as Directors of Limited Liability Companies

Legal Status

1. Upon incorporation a company becomes a separate legal entity, which can hold property in its own right, enter into contracts and sue and be sued in its own name. In the case of a limited liability company the liability of members of the company is limited to the amount they paid or agreed to pay when they joined the company. This can be as little as £ 1.
2. Companies limited by shares are those which have a share capital e.g., 1000 shares of £ 1 each. Each member holds shares and receives a share in the profits made by the company according to the value of the shares held. Shares can be sold. Liability in the event of a winding-up is limited to the amount unpaid on the shares held.
3. Companies limited by guarantee do not have shares. Instead, each member agrees that in the event of the company being wound up they will agree to pay an agreed amount eg £ 1. This is most common in the public and voluntary sector, particularly where charitable status is sought.

Directors' Duties

4. The role of a councillor who has been appointed as a director will depend upon the company's Memorandum and Articles of Association (its constitution). A company's constitution will vest most of its powers in the board of directors and the board will exercise these either directly or through managers appointed by the board. Directors must understand the requirements of the Memorandum and Articles of Association in order to fulfil their responsibilities properly.
5. Directors will need to be aware of the requirements of the "Combined Code on Corporate Governance" to the extent that this has been adopted by the company, including general management of the company, rules on directors' remuneration, internal financial and operational controls and risk management.
6. Directors, as agents of the company, must:
 - act in good faith in what they believe to be in the best interests of the company as a whole (not the Council).
 - act with reasonable care, diligence and skill;
 - exercise their powers reasonably and for the purpose for which they are given;
 - keep an open mind when making decisions on company business; in particular a councillor director must exercise independent judgment and not simply follow

Council policy when voting on company matters;

- avoid placing themselves in a position where their private interests or their position as a councillor conflict with their duties to the company;
- be aware of the company's financial position through attendance at board meetings and reading the accounts, agendas and minutes; it is not sufficient to assume that the other directors are doing a good job.

7. Some directors may be given special responsibilities under the company's constitution, for instance a managing director or finance director. Those with special roles will be expected to have the personal and technical skills to perform the duties associated with that role, which may be onerous.
8. The above duties apply to non-executive directors as well as executive directors.
9. There are other statutory requirements which may be relevant depending on the company's business. Directors will need to be familiar with these. For example, if the company is an investment vehicle which engages in fundraising activity, financial services legislation will apply.

Observer status

10. The position of observer has no specific legal status in company or local authority law. Any person appointed as an observer should ensure that their role is clearly defined and avoid involvement in the management of the Company. If an observer acts beyond their remit and exercises real influence over the company's affairs and decision making the observer may be deemed to be a shadow director, with all the duties of an ordinary director.
11. Observers and others, such as professional advisors, may attend board meetings. Generally the minutes of the meetings will note the names of observers and the fact that they are "in attendance". Persons "in attendance" have no specific legal status and in itself the phrase does not indicate any particular level of participation in the company's affairs. The extent of the participation of a councillor described in board minutes as "in attendance" is a question of fact. They should, however, take care to avoid involvement in the management of the company so as to avoid being treated as a shadow director.
12. A director (or shadow director) may incur personal liability if they are in breach of the above duties. This may arise where:
 - the company is found, in the course of winding up, to have been trading for fraudulent purposes. If a director has acted dishonestly this is also a criminal offence;
 - following liquidation, a director is found liable for wrongful trading, i.e. allowing the Company to continue to trade at a time when the director knew or ought

reasonably to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation;

- the company commits a breach of the criminal law, for example, health and safety legislation;
 - a director acts negligently or in breach of their duty to the company (including the duty to maintain confidential any confidential information relating to the company that comes into their possession).
 - a director knowingly causes the company to act beyond the activities authorised by its Memorandum of Association;
 - there is a breach of trust, such as the misappropriation of company funds or property;
 - a director uses their powers improperly or makes a personal profit from their position as director.
 - there is a failure to comply with the requirements of companies legislation, such as the making of returns to the Registrar of Companies.
- Insurance

13. Councillors appointed as directors should find out if the company maintains appropriate insurance cover against directors' liability. If this is not in place this should be requested, but this is a matter entirely for the board and the Council cannot insist upon this. It will be necessary to ensure that the company has the resources to maintain payment of the insurance premiums.

14. Further guidance on the responsibilities of company directors is available on the websites of the Institute of Directors and Companies House:

<https://www.iod.com/Home>

<http://www.companieshouse.gov.uk>

APPENDIX

BD

Appointment of a Trustee to a Trust or Charity

Legal Status

1. Trustees will be appointed under a Trust Deed. The role and responsibilities of a trustee will depend, therefore, upon the provisions of the trust deed and/or scheme (collectively referred to as its “governing documents”) and the general law relating to trusts and charities.
2. It is quite common for companies to be set up as trusts with charitable objects. In this case the trustees will also be directors of the company and will have the obligations set out in Appendix C above as well as the obligations set out in this section. Councillors involved with charitable companies should ensure that they understand the capacity in which they have been appointed.

Duties

3. The role of a trustee is generally to fulfil the objects of the trust and apply the income and, if appropriate, the capital of the trust in accordance with the provisions of its governing documents.
4. Trustees are subject to various duties, including the duty to:
 - act for the benefit of the charity and its beneficiaries;
 - preserve the capital of the charity (unless the trust deed gives the trustees the right to spend the capital or the charity is small and the trustees have resolved to spend the capital under the Charities Act 1993);
 - make sure income is spent only on the things authorised in the governing documents;
 - invest the capital only in authorised investments, having first taken professional advice;
 - produce annual accounts;
 - act with reasonable care and skill in administering the trust; and
 - to act unanimously (unless the trust deed allows majority decisions).
 - comply with the Charities Acts and other legislation affecting the charity.

5. The Charity Commission's website - www.charitycommission.gov.uk - contains useful guidance, in particular Publication CC3 - "Responsibilities of Charity Trustees" which outlines the basic principles that should guide trustees when administering their charity:
- the income and property of the charity must be applied for the purposes set out in the governing document and for no other purposes;
 - the trustees must act reasonably and prudently in all matters relating to the charity and must always bear in mind the interests of the charity. They should not let their personal views or prejudice affect their conduct as trustees;
 - trustees should exercise the same degree of care in dealing with the administration of their charity as a prudent businessman would exercise in managing his or her own affairs or those of somebody else for whom he or she was responsible; and
 - where trustees are required to make a decision which affects a personal interest of one of their members that person should not be present at any discussion or vote on the matter.

Liability

6. Trustees are jointly and severally liable to the charity for breaches of trust. They may incur personal liability for losses incurred if they:
- act outside the scope of the trust deed;
 - fall below the required standard of care;
 - make a personal profit from the trust assets;
7. Trustees will incur personal liabilities under contracts they enter into in the name of the charity. They are, however, entitled to be reimbursed from the charity's funds for all liabilities and expenses properly incurred by them, provided this is authorised by the trustees in accordance with the trust deed.

Insurance and Indemnity

8. An indemnity can be given from the trust fund provided the trustee has acted properly and within their powers. Trustees may take out insurance to protect themselves against personal liability except criminal liability. Payment of the premiums must be authorised by the trust deed if they are to be met from charitable funds.

APPENDIX

CE

Unincorporated Associations

Legal Status

1. Most societies, clubs and similar organisations (other than companies, industrial societies and trusts), are unincorporated associations. This is an informal organisation, which may arise where several people join together, with the intention of creating legal relations, to carry out a mutual purpose otherwise than for profit.
2. There is no statutory definition of an unincorporated association but it has been described by the court as “an association of persons bound together by identifiable rules and having an identifiable membership”. Unlike a company it does not have a separate legal status distinct from its members.
3. The rules of an unincorporated association are found in its constitution, which sets out the roles and responsibilities of its members.

Duties

4. An unincorporated association will typically have an executive or management committee with its powers and composition defined by the constitution. Key decisions will usually be made by the members at general meetings. The day to day administration of an association is usually undertaken by the officers and members of the executive or management committee.
5. Broadly executive or management committee members must act within the constitution and must take reasonable care in exercising their powers.
6. Where an unincorporated association is a registered charity the members of the executive or management committee may also be charity trustees. As such, their role and responsibilities will be determined not only by the association’s constitution but also by the general law relating to trusts and charities, as set out Appendix D.

Observer Status

7. The Council may appoint a councillor to the executive or management committee of an unincorporated association as an observer. A councillor acting as an observer should avoid exceeding this role by becoming directly involved in the management of the association as they may be deemed to be an ordinary member for the purposes of determining liability.

Liabilities

8. Members of the management committee are generally liable, jointly and severally, for the acts of the organisation, but are entitled to an indemnity from the funds of the

organisation if they have acted properly. If there are insufficient funds the members are personally liable for the shortfall

9. Particular care should also be taken when entering into contracts on behalf of the association. If the individual lacks the authority to do so, they may find themselves personally liable for the performance of the contract.

Insurance

10. Insurance may be available, but payment of the premiums must be authorised by the constitution if they are to be met from the association's funds.

APPENDIX

DF

SteeringGroups, JointCommitteesandPartnershipBodies.includingCommunity
AreaPartnerships

1. The responsibilities of a councillor who is appointed as a member of any of these bodies will be determined by the terms of reference, constitution or partnership agreement under which they are established and governed.
2. It is necessary to ensure that the councillor's role on the body is clear, and, in particular, whether they are acting as a delegate or representative of the Council to further the interests of the Council, or whether they are expected to exercise independent judgment in the best interests of the body concerned.
3. Liability will depend on the nature and functions of the body and the constitution or agreement under which it is established. Insurance may be available to cover certain liability.

Protocol 4

The Planning Code of Good Practice for Members of Wiltshire Council

1. Why a 'Code of Good Practice' is required

- 1.1. As a local councillor you will inevitably be involved in planning matters; as a councillor representing your division's constituents; as a councillor responsible for overseeing the planning framework for Wiltshire, or as a councillor responsible for deciding planning applications at an area or strategic planning committee. You will have a crucial role to play in both making the planning system work and ensuring the best possible outcomes for the community, both now and in the future.
- 1.2. The key purpose of planning is to manage development in the public interest. However, concerns are sometimes expressed about the probity of councillors meeting developers, applicants and interest groups and then taking decisions on an impartial basis. The aim of this code of good practice is to ensure that in the planning process in Wiltshire there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way. Your role as a member of the council is to make planning decisions openly, impartially, with **legally**-sound judgement and for justifiable reasons. This Code of Good Practice has been prepared to help **and guide** you in this task.

2. When the Code of Good Practice applies

- 2.1. This code applies to councillors at all times when involving themselves in the planning process. This includes not just the taking part in the planning committee meetings of the council, but on less formal occasions, such as meetings with officers, the public, parish/town/city councils and pre-application and consultation meetings. It applies equally to planning enforcement matters or site-specific policy issues as it does to planning applications.
- 2.2. If you have any doubts about the application of this Code **or Wiltshire Council's Code of Conduct for Members** to your own circumstances, **and in particular where you may have a disclosable pecuniary interest in any planning matter**, you should seek advice early, from the Monitoring Officer or one of his/her staff, and preferably well before any meeting takes place.
- 2.3. This code is based upon the 'Model Members Planning Code' adopted by the Association of Council Secretaries and Solicitors in 2003 (updated in 2007). The Model Code was produced following consultation with the Standards for England, the Local Government Ombudsman and the Audit Commission but has been updated to take account of the clarification of the predetermination rules **and the new standards regime introduced by ~~contained in~~** the Localism Act 2011.

3. Relationship to **Wiltshire Council's the 'Members'** Code of Conduct'

- 3.1. The Members' Code of Conduct must be complied with at all times **when you are acting in your capacity as a member or co-opted member**. This Planning Code of Good Practice seeks to explain and supplement the Members' Code of Conduct for the purposes of planning. It provides helpful guidance for members. However, you

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are advised that if you do not abide by this Code of Good Practice, you may put the council at risk of proceedings on the legality ~~or maladministration~~ of the related decision or a complaint of maladministration to the Local Government Ombudsman, and yourself at risk of ~~either being named in a report made to the Standards Committee or council or, if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Standards Committee under the Members' Code of Conduct~~.

3.2. In the event of a conflict between this Planning Code of Good Practice and the Members' Code of Conduct the latter will prevail.

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4. Development proposals and interests under the Members' Code of Conduct

4.1. It is a fundamental point of principle that those who have a significant interest in the outcome of a planning decision should not take part in the decision making process, for example, Members may wish to make their own planning proposals, such as extending their own property. Members should disclose the existence and nature of their interest at any relevant meeting, including informal meetings or discussions with officers and other members. Such interests should be declared at the start of the meeting.

4.2. The requirements for the registration and declaration of interests are set out in Wiltshire Council's Members' Code of Conduct and in the underlying legislation contained in the Localism Act 2011, and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. You should be aware that failure to comply with the requirements relating to disclosable pecuniary interests without reasonable excuse could result in prosecution.

4.3 If you have a disclosable pecuniary interest in any planning matter you must not participate in any discussion of the matter or vote on it at the meeting of the Committee unless you have obtained a dispensation from the Standards Dispensation Sub-Committee. In addition you should:

Where your interest is personal and prejudicial:

- ~~Notify the Monitoring Officer in writing or by e-mail of your interest, if at all possible no later than the submission of the proposal;~~
- Consider employing an agent to act on your behalf in dealing with officers and any public speaking at Committee (although you may participate as and to the same extent as a member of the public); - at any meeting, you must ensure that you leave the room whilst the meeting considers it;
- Ask another elected member to represent division views;¹
- ~~Do not~~ participate in the processing of the application or the making of any decision on the matter by the Council;
- ~~Do not~~ seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment because of your position as a councillor.

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~~Your proposal will not be dealt with by officers under delegated powers if a valid planning objection to it is received. Where this happens it will be reported to a committee for a decision.~~

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- ~~At the meeting of the committee you may speak on the application, but only to the extent permitted for members of the public (not as a local member) in accordance with paragraph 9.6 below. You must then leave the room.~~

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5. Bias and Predetermination

5.1 A planning decision may be challenged and ruled unlawful on the ground of bias.

The test is whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the member was biased. In particular, under the Council's Code of Conduct for Members, bias would occur if you place yourself under a financial or other obligation to third parties that might seek to influence you in the performance of your official duties.

5. Fettering discretion in the planning process

5.24. The integrity of and public support for the planning process relies on members of planning committees making decisions that are open, transparent and above board. To participate in decision-making on planning matters, it is essential that you do not have a closed mind and that you make your final decision only when you have seen and heard all the evidence and arguments presented, including the Officer's report and representations on both sides.

The Localism Act has helpfully clarified the rules on predetermination. Predetermination occurs where someone has a closed mind so that they are unable to apply their judgment fully and properly to the issue requiring a decision. This can lead to legal challenges and decisions being set aside.

The Act makes it clear that a member is not deemed to have had a closed mind on an issue just because they have indicated what view they have taken or may take

¹ It is perfectly acceptable for councillors to nominate a substitute(s) to undertake their planning responsibilities, including application 'call in', if they have a conflict of interest or during periods of absence such as holidays or illness. In the case of death, the Chairman will nominate a stand in.

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before the issue is decided. A member is not, for example, prevented from participating in discussion of an issue or voting on it if they have campaigned on the issue or made public statements about their approach to it.

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The general position, however, remains that, whatever their views, members must approach their decision-making with an open mind in the sense that they must have regard to all material considerations and must be prepared to change their views if persuaded that they should.

5.32 ~~Where I am a~~ If you are a member of a Wiltshire Council planning committee and also a member of a parish, town or city council, ~~can I still attend the parish/town/city council meetings where planning matters are discussed and still be a member of a Wiltshire Council planning committee?~~

yYou can still take part in debates on planning proposals at parish/town/city council meetings, provided that:

- ~~The proposal does not substantially affect the well being or financial standing of the city/town/parish council;~~
- You ~~must~~ make it clear to them at the meeting that any views you express are based on the limited information before you only and that you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Wiltshire Council Planning Committee;
- You make it clear that you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that parish, as and when it comes before the Committee and you hear all of the relevant information;
- When the development proposal comes up for consideration at a Wiltshire Council Planning Committee, ~~if you intend to speak or vote~~ you should disclose the personal your interest regarding your membership or role at the town/city or parish council.

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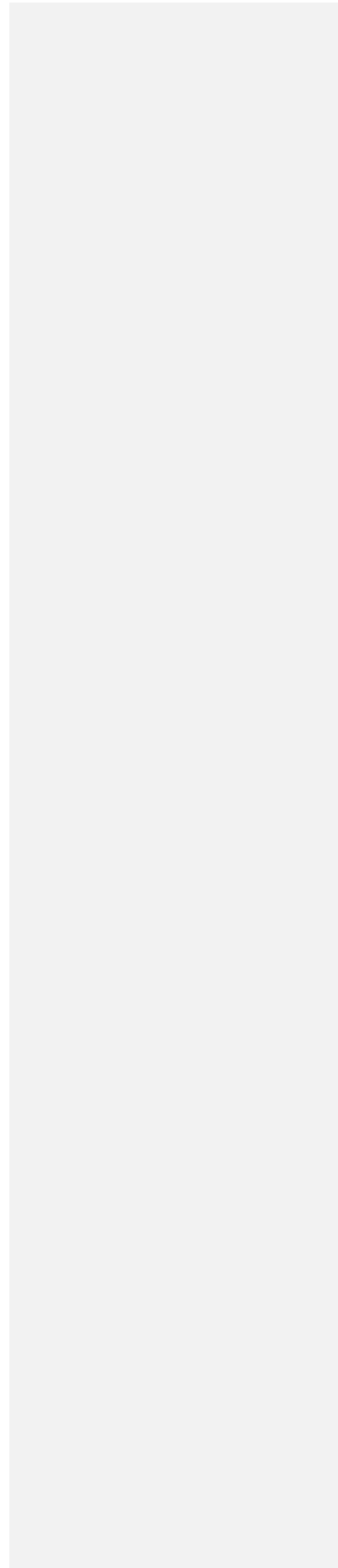
6. Contact with applicants, developers and objectors

6.1. As a community leader and local representative you will want to be involved in relevant public meetings, pre-application discussions and policy-~~production~~development. ~~You Councillors~~ can involve ~~themselves yourself as a~~ councillor in discussions with developers and others about planning matters provided you keep to the following guidelines:

- Where developers organise a public exhibition or display of their proposals, it is acceptable for you to visit to examine the proposals and ask questions of the developers to ensure that you are fully informed of the nature of the proposals. You may feed in your own and your local community's concerns and issues and engage in discussion. However, irrespective of any position adopted in advance of a planning meeting you must have and be seen to have an open mind at the point of decision-making and base your decision on the information available at that time.
- Pre-application meetings with developers or prospective applicants may be a positive way of engaging the developer to seek to ensure that community needs are met. However, if approached, you should refer any requests for such a

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| meeting to an officer of the Development Service. The officer(s) will then



organise the meeting and ensure that those present are advised from the start that the discussions will not bind the authority to any particular course of action and that the meeting is properly recorded.

- Refer those who approach you for planning, procedural or technical advice to officers;
- Advise those looking for policy guidance to examine the policies in adopted local plans and the Local Development Framework;
- Avoid meeting developers alone or putting yourself in a position where you appear to favour a person, company or group.

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7. Lobbying and councillors

7.1. Lobbying is recognised as a normal and proper part of the political process. However, it is important for members to protect their impartiality and integrity in planning matters. You will not breach this Code of Good Practice by listening to or

receiving viewpoints from residents or other interested parties provided that you make it clear that your final position will be determined at the end of the planning process when you are aware of all of the material considerations. Councillor's attention is drawn to the following advice: -

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- ~~Avoid accepting gifts or hospitality from~~ Do not place yourself under a financial or other obligation to any person involved or affected by a planning proposal. ~~If a degree of hospitality is entirely unavoidable, ensure that its acceptance is declared as soon as possible and enter it into the register of interests where its value exceeds £25 (twenty five pounds) in writing within 28 days of accepting such hospitality;~~
- Pass a copy of any lobbying correspondence that you receive to the relevant Development Control Area Team Manager or the case officer at the earliest opportunity;
- Do not pressurise or lobby officers for a particular recommendation;
- Promptly refer to the Development Control Area Team Manager any offers made to you of planning gain or constraint of development, through a Section 106 Planning Obligation or otherwise;
- Inform the Monitoring Officer where you feel that you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality) who will in turn advise the appropriate officers to follow the matter up.
- Political Groups should never dictate how Members should vote on a planning issue and members should not excessively lobby fellow councillors regarding concerns or views, nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.

7.2. Can I remain a member of an amenity society when it makes representations on planning matters?

There are many general interest groups who concentrate on issues beyond particular planning proposals. These include bodies such as the National Trust; CPRE; Wiltshire Archaeology and Natural History Society; Ramblers Association; local civic societies. It is acceptable to be members of these societies, provided that an ~~personal~~ interest is declared when that organisation has made representations on a particular proposal and you make it clear that you have reserved judgement and the independence to make up your own mind on each separate proposal.

However, if you become a member of or lead or represent an organisation whose

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purpose is to lobby to promote or oppose planning proposals, you will have to ensure that you still have an open mind and will again have regard to all material considerations at the time any decision is made.

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8. The role of officers

8.1. Officers and members work together to deliver the outcomes that seek to deliver the right development at the right place at the right time, whilst protecting the built and natural environment. It is therefore essential that there is mutual trust and understanding between officers and members. Officers will advise and assist members in their formulation of planning advice and the determination of applications and will provide:

- Impartial and professional advice;
- Committee reports that include a clear and accurate analysis of the issues in the context of the relevant development plan and other material considerations; the substance of the representations and views of those who have been consulted and a clear recommendation of action.

Officers will process and determine applications in accordance with the council's code of Conduct for Officers and the Royal Town Planning Institute's Code of Professional Conduct.

9. Decision making

9.1. ~~Planning decisions are made within the context of a national, regional and local planning framework and Inspectorate decisions.~~ By law, the council has to make decisions in accordance with the Development Plan unless material planning considerations indicate otherwise. The National Planning Policy Framework is a material planning consideration.

9.2. As a member, you can request that the relevant planning committee considers a planning application in your division and not be dealt with under delegated powers (although there are a few exceptions, such as tree applications, set out in the Scheme of Delegation). To call-in an application, you need to do this in writing, (an electronic proforma is available for electronic submission), and send it to the relevant area team manager or case officer handling the application. Requests must be received within 21 days of the circulation of the weekly list (but there are some exceptions set out in detail in the Scheme of Delegation to Officers – Part 3B of the Constitution). The proforma must record planning reasons why the committee should deal with the application. (It would be helpful if councillors would contact the case officer prior to call-in to discuss the planning issues involved and whether a call-in is necessary.) Following receipt of a request, officers will confirm the action to be taken and keep the member informed when they are ready to make a recommendation.

9.3. While there is a strong presumption that the Division Member's views on call in should prevail, if another Member (i.e. one from a neighbouring division which is affected by the development) thinks an application should go to committee and this is contrary to the view of the local Division Member, it will be open to that member to discuss the application with the Chairman of the committee. Having discussed the application and considered the possible impacts the Chairman will then have the ability to ask for the application to proceed to committee for determination. In the rare event that the application is in the Chairman's own division, the adjoining member can discuss the application with the Director of the service.

9.4. Councillors should arrive at meeting with an open mind and make a decision only after due consideration of all the information reasonably required to make that decision including any matters reported at the meeting. If you feel that there is

insufficient information before you, you should request that further information. If necessary, defer or, if the grounds are adequate, refuse the proposal.

- 9.5. Site Visits – Councillors will be expected to be familiar with the site and the issues surrounding the decision when they arrive at a committee meeting. It is acceptable to visit the site and, if necessary, surrounding properties that may be affected by the proposal, as an individual councillor before the meeting, although councillors should not enter onto a site without the consent of the owner. On no account should councillors express a view on the merits of the application to anyone, including the applicant, owner or any third party. With regard to the Strategic Committee, for major and controversial applications arrangements will exceptionally be made for organised site visits where these are considered necessary.

The committee reports and officer presentations should provide ample information for councillors to determine applications. Very exceptionally, councillors at a committee may feel that a site visit is appropriate to assess the implications of the development. In these cases, reasons for the site visit will be provided and consideration of the application should be deferred pending the visit. (The site visit will be arranged by officers and although the owner's permission will be required, there should be no dialogue with members of the public or applicant/owner during the visit.) The application will then be re-listed on the following agenda.

- 9.6. Public Speaking at Meetings - The council has an established procedure in respect of public participation at planning meetings. This should be complied with. In particular, it is not permissible during meetings for members of the public to communicate with councillors debating the proposal either orally or in writing, as this may give the appearance of bias.

Consultees and members of the public who wish to speak at a planning meeting, either in favour of or against an application will be asked to register with Democratic Services. Notification can be given in advance of the meeting, but not before the agenda has been published, by contacting the Democratic Services Officer identified on the agenda. However it should be noted that the Democratic Services Officer must receive registrations in person at least ten minutes prior to the meeting; registration will take place on a first come first served basis and if someone fails to register in person the opportunity to speak will be offered to someone else if appropriate. If a large number of speakers wish to speak on an application, Democratic Services will advise them to coordinate their speakers.

Town/parish/city councils will have an individual four minute representation slot should they wish to speak. Only one representative per council should speak and it is important that the spokesperson expresses the formal views of their council, and not their own individual thoughts. If an application is near the boundary with an adjacent parish, each affected council will have a four minute slot. Any additional time will be at the committee chairman's discretion.

There will be a maximum of three members of the public permitted to speak in objection to an application and three members of the public permitted to speak in support of an application. Where a committee member with a ~~prejudicial~~ disclosable pecuniary interest wants to ~~speak-participate in their private capacity~~ as a member of the public (as they are entitled to do) they will need to secure one of the 'public slots'.

Each speaker will be allotted 3 minutes to address the committee and an audible 30 second warning may sometimes be given before the end of the three minutes.

In the case of particularly controversial or large scale applications the chairman of the committee will have discretion over these timings and will be able to allow more

speakers. It is imperative, however, in the interests of natural justice that any increase in time allowance is applied equally between those speaking for and against.

9.7. Decisions Contrary to Officer Recommendation

There will be occasions when councillors wish to make a decision that conflicts with the planning officer's recommendation. In these circumstances, members proposing, seconding or supporting such a decision must clearly identify and understand the planning reasons leading to this decision and must give the planning officer an opportunity to explain the implications of it. The reasons for the decision must be given prior to the vote and be recorded. If an application is to be approved, councillors should set out any particular conditions they would like imposed which will be in addition to the 'standard' conditions for that type of development which will be added by officers. An opportunity must be given to the planning officer to comment on conditions suggested by members and if necessary, the application should be deferred to the next available meeting to enable proper consideration to be given to the wording needed to achieve members' objectives or members may delegate to the officers the imposition of suitable conditions.

Reasons for refusal against officer advice must be planning related, clear and convincing. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge or appeal.

Where councillors think they could have concerns about any given recommendation at committee, officers will be happy to discuss the application beforehand to explore the options which may be open to the Members.

In cases where councillors have overturned a recommendation and the applicant lodges an appeal with the Planning Inspectorate which will be dealt with by way of hearing or public inquiry, Members should be prepared to defend that decision. This defence should be made in person or, at the Member's discretion in writing. Where Members attend and give evidence as part of the council's 'official team,' e.g., they are supported by counsel (as opposed to turning up to speak on an individual basis,) a Rule 6 statement will be required which usually has to be submitted nine weeks before the appeal hearing/inquiry. (Members may of course also be called upon to support the council's case on appeal where the decision has been made in line with the officer recommendation.)

10. Training

Planning is a complex area, but one that generates a great deal of interest amongst local residents and is at the heart of much of the activity of the council. Great care needs to be taken over procedural matters and to ensure that consideration of applications takes place in a clear and open manner and that decisions are based on sound planning principles. For these reasons, it is mandatory for all elected councillors of Wiltshire Council to have training in planning matters prior to sitting on a planning committee. All elected councillors will be able to attend this training and it will be arranged immediately after each election. For those elected at by-elections, similar training will be made available.

11. The order of events at committee meetings

Meetings will normally commence at 6 p.m. and the applications will be determined in the order in which they appear in the agenda unless the chairman has valid reasons for changing the order. Officer will try and ensure that applications which are likely to attract large numbers of the public appear early in the agendas. If the order is changed, this will be announced at the start of each meeting. The usual procedure will be:

- a) The planning officer will introduce each item and set out any representations, amended plans or material considerations which have been received or come to light in the period between the publication of the agenda and the committee meeting.
- b) Committee Members will then ask the officer to clarify any points/ask technical questions.
- c) Members of the public who wish to make representations opposing the application will then be invited to do so. (up to 3 minutes each)
- d) Members of the public/applicant/agent (in this order) who wish to make representations in support of the application will then be invited to do so.
- e) Consultees who wish to make representations will be invited to do so. (up to 3 minutes each)
- f) The town/city or parish council representative, if present, will then be invited to make representations. (up to 4 minutes each)
- g) The division member will be invited to make representations².
- h) The planning officer will then have an opportunity to respond to comments or provide clarification of any points raised.
- i) The chairman will then normally ask if anyone is prepared to move the officer recommendation or propose an alternative motion. Once a motion has been seconded it will be open to the councillors to debate it and ask further questions of officers if required and determine the issue. The rules of debate as detailed in Part 4 of the Constitution will apply.

² Any division member, be they a member of the committee or not is welcome to attend committee meetings and make representations on any application within their division. Councillors who are part of the committee will have voting rights but those who are not can speak, but are not eligible to vote. Division members who are not on the committee may be invited to participate in any debate at the chairman's discretion.

Wiltshire Council Planning Site Visit Protocol

1. Arranging the visit

When members have decided in committee that they would like to visit a site, they will be asked to agree a time and date at the end of the meeting. If this is not possible, a schedule for the visit will be agreed between the chairman and officers. This will identify the timetable for the meeting, invited attendees and what matters will be viewed on site.

Democratic services will then notify the applicant or their agent of the time and date of the site visit and seek authority for councillors and officers to visit the site. Where the application site is on private land, the applicant or agent will be requested to be in attendance only to facilitate access.

All members of the relevant development regulatory committee will be invited to attend the site visit as will the local division member should he or she not be on the committee. Where a proposal would have a significant impact on an adjoining division, the adjoining division member will similarly be invited to attend.

On occasion, officers of other services such as highways or archaeology may be invited (by the area development manager) to attend a site visit to clarify factual matters.

Councillors are reminded that they have no right of entry to private land except by permission of the owner and that they and officers should not enter a private site until all are present and an officer has made contact with the landowner/operator/applicant.

In the unlikely event that the landowner will not give permission to enter a private site, the site will have to be viewed from public highway.

2. Conduct of the visit

The purpose of the site visit is to enable councillors to familiarise themselves with the site and its surroundings and in order to understand the issues more clearly when considering the application at committee.

While it may be necessary for an applicant or his agent to be present on the site (e.g. to provide access or for safety reasons), discussions with the applicant or their agent or any third party should be avoided and they will be advised that lobbying of councillors is unacceptable. Presentations by applicants will not be permissible.

At the request of the chairman, the planning officer will describe the proposal to councillors and will display appropriate plans or drawings of the proposal. (It is expected that councillors will already be familiar with the planning officer's report) The planning officer will indicate matters of fact in relation to the proposal and surrounding land which councillors should take into account.

Questions by councillors should be addressed to the planning officer and be of a factual nature, for example, distances to adjoining or objectors' properties or the landscape features to be retained. If it is necessary to seek information from the applicant or agent on site this will be done by an officer.

At no time during the site visit should councillors debate or comment on the planning merits or otherwise of a proposal.

The role of the local division member will be limited to drawing attention to features of the site that he/she considers relevant to the committee's understanding of the site, its surroundings and the proposal. The local member will not be permitted to make representations on the merits or otherwise of the application.

3. General

- Councillors should avoid being separated; it is essential that they should not allow themselves to be lobbied or enter into a debate about the application.
- Councillors should ensure that they have seen all aspects of the site suggested by the accompanying officer or the chairman during the visit.
- Councillors will not make any decision at the site visit and individual members should keep an open mind about the merits or otherwise of the proposal to which the site visit relates.
- The application will usually be the first item on the agenda of the following Planning Committee meeting where the decision will be made.

4. Record of the visit

A record of the visit will be retained on the planning application file. The record will include the timetable for the meeting, attendees and what matters were viewed on site.

Notes:

- Officers will identify relevant health and safety issues for all site visits. All health and safety instructions, as issued by the site owner/operator must be strictly followed.
- Where appropriate, protective clothing e.g. visibility jackets, hard hats will be provided for councillors on arrival at the site. Councillors should, however, be aware of the need to wear appropriate footwear.
- In the interests of sustainability and highway safety, it is recommended that car-sharing opportunities be used where practical to minimise travelling and parking.