

STANDARDS COMMITTEE – 13TH APRIL 2012

FINANCE AND CORPORATE SERVICES

**REPORT OF THE HEAD OF LEGAL SERVICES/MONITORING
OFFICER**

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ITEM 1
PART 1 SECTION B

1. **COMPOSITION OF STANDARDS COMMITTEE**
RECRUITMENT OF ADDITIONAL INDEPENDENT
MEMBERS

- 1.1. I have spoken to Standards Committee previously about difficulties encountered previously when all independent members of the Standards Committee retired at one time. I recommended to the full Council meeting of 29th March 2012 that further appointments be made to the Standards Committee. This would also allow me to cover any vacancy in the current complement of the Committee.
- 1.2. Full Council approved the suggestion and authorised me to recruit members for the Standards Committee at the same time as making the appointment of a lay member for the Audit Committee.
- 1.3. I envisage that I will be in a position to advertise the appointment before the forthcoming elections and would hope to have some level of response in order to put forward names to Council for the annual meeting at the end of May.
- 1.4. I would wish to discuss with members at the meeting the recruitment and appointment process.

1.5. **LIST OF BACKGROUND PAPERS**

None

1.6. **WARDS AFFECTED**

All

1.7. **OFFICER CONTACT**

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ITEM 2
PART 1 SECTION B

2. **PLANNING PROTOCOL**

2.1. Members will be aware that the most important document governing Members' conduct is the Members' Code of Conduct itself. The Code is supplemented by other documents. Prior to the adoption of the Code in its present form many if not all local planning authorities had also developed codes dealing specifically with conduct of Members of the Planning Committee.

2.2. A new standard form of recommended code governing the conduct of members of Planning Committee has been published. Also, changes to the rules relating to predetermination of decisions or "apparent bias" have been affected by provision in the Localism Act 2011. These provisions are comparatively unusual now since they affect local government both in England and Wales.

2.3. I attach to this report as an Annex a copy of the Planning Protocol which would be taken to the Planning Committee and the full Council after the local elections in May. We have called it a Protocol as opposed to a Code to distinguish it from the Members' Code.

2.4. The Standards Committee are invited to give their views on the draft protocol prior to consideration by Planning Committee and the Council.

2.5. **LIST OF BACKGROUND PAPERS**

Members' Code of Conduct and the Planning Protocol

2.6. **WARDS AFFECTED**

All

2.7. **OFFICER CONTACT**

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PLANNING PROTOCOL 2012

1. Background

1.1 The Third Report of the Committee in Standards in Public Life (the Nolan Committee) looked in detail at the Planning System making a number of recommendations, including a recommendation that Planning Committees should review their procedures and set them out in a code accessible to Councillors, staff and members of the public.

1.2 In response, the Council adopted a document following this recommendation in November 2000. It was reviewed in _____ 2012 following the revised National Code of Conduct for Councillors in 2007, the publication by the Local Government Association in 2009 of updated guidance in “Probity in Planning: The vote of Councillors and Officers”, and also to take into account Section 25 of the Localism Act 2011 (the provision relating to predetermination) which came into force in January 2012.

1.3 This protocol is supplemental to the Neath Port Talbot Members’ Code of Conduct.

2. General Considerations

2.1 Planning decisions necessarily affect land and property interests including the value of land and the amenities of people living in the vicinity. Consequently planning is often highly contentious.

It is important, therefore, that the Council as Planning Authority, should make planning decisions, openly, impartially with sound judgements and for justifiable planning reasons.

2.2 The aim of this planning protocol is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

- 2.3 The key purpose of Planning is to control development in the public interest.
- 2.4 The role of a Member of the Planning Committee is:
 - 2.4.1 To make planning decisions openly, impartially, with sound judgement and for justifiable reasons.
 - 2.4.2 The overriding duty of a Councillor is to the whole community.
 - 2.4.3 Whilst the Councillor can take into account the views of others it is his or her responsibility alone to decide what view to take on any question which Councillors have to decide.
 - 2.4.4 It is not enough to avoid actual impropriety. The Councillor must always avoid giving suspicion for or the appearance of improper conduct.
- 2.5 This protocol applies to Members at all times when involving themselves in the planning process. (This includes when taking part in the decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers, or the public and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues and decisions relating to the LDP, as it does to planning applications.
- 2.6 If you have any doubts about the application of this protocol to your own circumstances you should seek advice early, from the Monitoring Officer or one of his or her staff, and preferably well before any meeting takes place.
- 3. **Relationship to the Members' Code of Conduct**
 - 3.1. The Councillor should apply the rules in the Members' Code of Conduct first, which must always be complied with.

- 3.2. The Councillor should then apply the rules in this Planning Protocol which seek to explain and supplement the Members' Code of Conduct for the purposes of planning control. If the Councillor does not abide by this protocol:
 - 3.2.1 The Council may be at risk of proceedings on the legality or maladministration of the related decision; and
 - 3.2.2. The Councillor may be at risk of being reported to the Ombudsman and the matter referred to the Standards Committee if the failure is also likely to be a breach of the Code of Conduct.

- 4. Development proposals and interests under the Members' Code
 - 4.1. The Councillor should disclose the existence and nature of any interest at any relevant meeting, including informal meetings or discussions with officers and other Members. The interest should be disclosed at the beginning of the meeting and not just at the commencement of discussion on that particular matter.
 - 4.2. Where the interest is personal and prejudicial:-
 - 4.2.1 The Councillor should not participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.
 - 4.2.2 The Councillor should not represent ward views, but should ask another Ward Member or a Member from another Ward to do so instead.
 - 4.2.3 The Councillor should not get involved in the processing of the application.
 - 4.2.4 The Councillor should not seek or accept any preferential treatment, or place him or herself in a position that could lead the public to think the Councillor is receiving preferential treatment. This would include using the Councillor's official position to discuss proposals with officers or Members when other members of the public would not have the same opportunity to do so.

- 4.2.5.1 The Code places limitations on what the Councillor can do in respect of an application in respect of which they have a personal and prejudicial interest whether positive or negative.
- 4.2.5.2 The Councillor should notify the Monitoring Officer in writing and note that:
 - 4.2.5.2.1 notification should be sent as soon as the Councillor is aware of the application where possible.
 - 4.2.5.2.2 the proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers; and
 - 4.2.5.2.3 where a Councillor has a personal and prejudicial interest in a proposal to put before a meeting, the Councillor will have to withdraw from the room or chamber whilst the meeting considers it, whereas an ordinary member of the public would be able to address the meeting on the proposal and observe the meetings consideration of it from the public gallery.
 - 4.2.5.2.4 it is advisable to employ an agent or use a representative to act on the Councillor's behalf on the proposal in dealing with officers.
- 4.2.6 Para 10 (2)(b) of the Members' Code of Conduct operates to define as a personal (and potentially prejudicial) interest a situation where a member of the public may reasonably perceive that the member was more swayed by ward interest than wider public interest. Where a controversial planning application potentially affects the whole of a Member's ward the Member should seek advice from the Monitoring Officer at an early stage as to whether this paragraph may be relevant. If para 10 (2)(b) is triggered a Member must declare an interest and withdraw from the Planning Committee meeting in accordance with the requirements of the Members' Code of Conduct. (NB awaiting guidance from Ombudsman).

5. **Predetermination in the planning process**
- 5.1.1 In addition to the declaration of personal or prejudicial interests the Courts have stated over the years that members of a planning committee need to avoid any actual bias or any appearance of bias or of having predetermined their views when taking a decision on a planning application or LDP matter. Avoidance of bias or predetermination is a principle of natural justice which the decision-maker is expected by the courts to embrace.
- 5.1.2 The position of the Courts is supplemented by the provision of the Members' Code of Conduct which states that decisions should be reached on the basis of the merits of the circumstances involved and in the public interest having regard to any relevant officer's advice.
- 5.1.3 In addition Planning Committees are obliged to consider what are known as "material considerations" when considering planning matters and should disregard matters not relevant to planning. Therefore, regardless of background views Councillors are required to focus on material considerations when making decisions. The Code also requires that Councillors should be able to give reasons for decisions.
- 5.2 A distinction is drawn between a planning councillor having clearly decided beforehand how he or she would vote and having a closed mind at a meeting (predetermination), and a predisposition to an initial view, but where the councillor is clear they are willing to listen to all the material considerations presented at the committee before deciding on how to exercise their vote on behalf of the community. In the latter case there is no predetermination.
- 5.3 The Councillor should not decide on how to vote on any planning matter prior to formal consideration of the matter at the meeting of the planning authority and hearing the officer's presentation and evidence and arguments on both sides.

- 5.4 Otherwise, taking part in the decision could put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- 5.5 Under the Localism Act 2011 just because the Councillor has expressed a view prior to the meeting does not mean that he or she has predetermined the matter. However under the Act any views expressed prior to a meeting can be relevant if together with other evidence, it shows that a member has or appeared to have predetermined a matter. This section only deals with evidence of predetermination and does not abolish the rule that a decision maker should not predetermine. The legislation is confusing and your legal advisors will monitor developments in the law. However, what remains clear is that, if a Councillor is satisfied that he or she has predetermined a matter participation in a decision is not appropriate.
- 5.6 Members can talk to constituents, take an active part in local discussions and express a view on local issues prior to a matter coming before the Planning Committee
- 5.7 Members should however refrain from expressing views which could be perceived as being their final view and a determination to vote in a particular way irrespective of all the arguments and points raised at the meeting.
- 5.8 Councillors should be aware that they are likely to have fettered their discretion where the Council is the landowner, developer or applicant and the Councillor has acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits).

- 5.9 Members of the Planning Committee who also serve on bodies (such as Town and Community Councils) that are consulted about planning applications need to think carefully about their participation in that consultation process in order to avoid the impression that they have already made their minds up before the matter arrives at the Planning Committee. Members will be familiar with the fact that, when they receive the consultation on a particular matter, they only receive the proposal and not the full officers' report. It is at the point when the officers' report is submitted to Members that all material considerations are before Members. A firm decision before that point is as stated above therefore premature in terms of planning law.
- 5.10 The Ombudsman has issued guidance on the Code of Conduct in which he says that, if Members participate in considering consultations at the Community Council level, they should emphasise that they would look at the matter afresh when it was considered in the Planning Committee and further that they would take into account all the information and advice provided to them. The Ombudsman goes on to say that the Members should then emphasise at the Planning Committee that they are not bound by the decision of the Community Council on the consultation. This advice is rather complicated to follow and one can question whether any member of the public attending a Community Council meeting would understand the distinction between a view expressed on consultation and a vote taken at the Planning Committee. Members may well consider whether it would be preferable to simply listen to debate in the Community Council but express no view until the matter comes before Planning Committee.
- 5.11. Members who consider that they have predetermined a matter shall adhere to the following procedures:-
- 5.11.1 The Member shall inform the Committee at the commencement of the meeting that he or she intends to make a personal statement on a specified item.
- 5.11.2 When the Committee reaches that item the Chair shall call the Member to make the personal statement.

- 5.11.3 The statement shall contain only the following matters:-
 - 5.11.3.1 a statement by the Member that he or she has committed themselves on the matter and therefore cannot participate in the decision making;
 - 5.11.3.2 any representations received by the Member as a ward Member;
 - 5.11.3.3 any queries or requests for clarification which the Member wishes the officers to address at Committee.

Following this statement the Member shall withdraw from the meeting but may remain in the public gallery.

- 5.12 A predetermined councillor can continue to represent those ward interests as a spokesperson for their local community outside a meeting.

6. **Contact with applicants, Developers and objectors**

- 6.1 Councillors should refer those who approach them for planning, procedural or technical advice to officers.
- 6.2 Where Councillors feel a formal meeting with applicants, developers or groups of objectors would be useful in clarifying the issues, the Councillor should never seek to arrange that meeting but should request the Head of Planning to organise it. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.
- 6.3 If Councillors are contacted they should:
 - 6.3.1 follow the rules on lobbying;
 - 6.3.2 consider whether or not it would be prudent in the circumstances to make notes when contacted; and

- 6.3.3 report to the Head of Planning any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and their involvement in them, and ensure that this is recorded on the planning file.
- 6.4 Where there are presentations by applicants/developers:
 - 6.4.1 Councillors should not attend a planning presentation unless an officer is present and/or it has been organized by officers.
 - 6.4.2 Councillors may ask relevant questions for the purposes of clarifying their understanding of the proposals.
 - 6.4.3 Councillors should remember that the presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the appropriate Committee of the planning authority.
 - 6.4.4 Councillors should be aware that a presentation is a form of lobbying and any views should be expressed as their provisional views and should not state how Members might vote.

7. **Lobbying of Councillors**

- 7.1. Councillors should explain to those lobbying or attempting to lobby that, whilst Councillors can listen to what is said, it could prejudice impartiality and therefore the ability to participate in the Committee's decision making.
- 7.2. Councillors should remember that their overriding duty is to the whole community not just to the people in their ward and, taking account of the need to make decisions impartially, that Councillors should not improperly favour, or appear to improperly favour, any person, company, group or locality.

- 7.3. Councillors should not accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable Councillors should ensure it is of a minimum and its acceptance is declared as soon as possible and remember to register it on the Register of Members' Interests where its value is over £50 (in accordance with the authority's rules on gifts and hospitality).
- 7.4. Councillors should copy or pass on any lobbying correspondence received to the Head of Planning at the earliest opportunity.
- 7.5. Councillors should promptly refer to the Head of Planning any offers made of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- 7.6. Councillors should inform the Monitoring Officer where they feel they have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality).
- 7.7. Councillors should note that, unless they have a personal and prejudicial interest, they will not have predetermined or breached this Planning Protocol through:
- 7.7.1 Listening or receiving viewpoints from residents or other interested parties.
- 7.7.2 Making comments to residents, interested parties, other Councillors or appropriate officers, provided they do not consist of or amount to pre-judging the issue and they are clear about keeping an open mind.
- 7.7.3 Seeking information through appropriate channels; or
- 7.7.4 Indicating what views they have held or speaking at the meeting as a Ward Member, provided they explain their actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, they have not committed themselves to vote in accordance with those views and will make up their own mind having heard all the facts and listened to the debate.

8. **Lobbying by Councillors**

8.1 It may be unwise for a Councillor to become a member or lead or represent an organisation whose primary purpose is to lobby to promote or oppose specific planning proposals. If they do, they will have predetermined the matter and may have a personal and prejudicial interest.

8.2 Councillors may join general interest groups which reflect their areas of interest and which concentrate on issues beyond particular planning proposals, but should disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that the Councillor has reserved judgement to make up their own mind on each separate proposal. However advice should be sought in each case.

8.3 Councillors should not lobby excessively fellow councillors regarding their 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.

8.4 Councillors should not decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue.

9. **Site Visits**

9.1 There is a need for consistency both in the way that it is decided that a site visit should take place and in the conduct of such visits. Otherwise it leaves the Council open to the accusation that site visits are arbitrary or even a covert lobbying device.

9.2 A call for a site visit should be the subject of a substantive motion to the Planning Committee, and such motion shall include the reasons for the site visit.

- 9.3 Site visits can cause delay and additional costs and should only be acceded to when the expected benefit is substantial, e.g. where the impact of the proposed development is difficult to visualise from the material available to the Committee, or where relevant issues cannot be expressed adequately in writing, or where a proposal is particularly contentious.
- 9.4 Where the Planning Committee agree to a site visit, the reasons shall be recorded in the Minutes.
- 9.5 Site visits will normally be undertaken by the Planning (Site Visits) Panel, plus local members. Site visits by the whole of the Planning Committee should be rare and should relate to contentious major proposals.
- 9.6 Site visits are open for anyone to attend, subject to the landowners permission where the meeting is being held on private land. There is no provision for third parties to speak. Their purpose is to view the proposals on site and, following consideration of the planning officer's report, including where relevant the views of any statutory consultee, to make a reasoned recommendation to the Planning Committee.
- 9.7 The visit is not intended to be a site meeting with either the applicant or objectors, as the pros and cons of the application are for debate and discussion at the Panel meeting. Site visits by their very nature need to be informal. They of course take place in the open air, sometimes in adverse weather conditions, and it is often neither the time nor the place for reasoned debate.
- 9.8 Any local residents, particularly objectors who may attend at the site, should therefore be acknowledged and told their objections will be reported to the Planning Committee (which they should separately put in writing) but there should be no debate with them at the site. Sometimes it will be necessary to enter the property of a local resident who will be able to point to features but, again, he/she must be informed of the objective of the visit.

9.9 One variation to the above may be for the Site Visits Panel, on the instruction of the Planning Committee, to meet with another statutory body or organisation, at a site visit (e.g. a Community Council) but again it will be for the Panel to report back to the Planning Committee. However, in this case the applicant must also be given the opportunity to be present and to be heard by the Panel.

10. **Public speaking at meetings**

Councillors should not allow members of the public to communicate with them during the Committee's proceedings (orally or in writing) [*other than through the scheme for public speaking*] as this may give the appearance of bias.

[Do ensure that you comply with the Council's procedures in respect of public speaking, and where a member has a personal and prejudicial interest the provisions of the Code of Conduct and this Protocol]

11. **Officers**

11.1 Councillors should not put pressure on officers to put forward a particular recommendation. This does not prevent you from asking questions or expressing views to the Head of Planning.

11.2 Councillors should recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with a Head of Service or those officers who are authorised by their Head of Service to deal with the proposal at a Member level.

11.3 Councillors should recognise and respect the fact that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

12. **Decision making**

12.1 *Councillors should ensure that, if they request a proposal to go before the Committee rather than be determined through officer delegation, that their reasons are recorded and repeated in the report to the Committee.*

12.2 Councillors should come to meetings with an open mind and demonstrate that they are open-minded.

12.3 Councillors must comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.

12.4 Councillors should come to their decision only after due consideration of all of the information reasonably required upon which to base a decision. If they feel there is insufficient time to digest new information or that there is simply insufficient information before them they should request that further information. If necessary, seek a short adjournment or deferral.

12.5 Councillors should fully assimilate the report on any application and try to be present to hear the entire debate, including the officers' presentation of their report.

12.6 Councillors should have recorded the reasons for Committee's decision to defer any proposals and these should form part of a substantive motion to defer.

12.7 Councillors should make sure that if they are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that they identify clearly and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. They should be aware that they may have to justify the resulting decision by giving evidence in the event of any challenge.

12.8 Councillors should ensure that they consider any issue in light of material considerations overall and not ward interests.

13. **Local Development Plan**

13.1 The principles set out in this Protocol apply equally to decisions on the Local Development Plan. Whilst it is expected that Members will be fully involved in community engagement and discussions Members should avoid putting themselves in a position of predetermination.

13.2 Preparation of the Local Development Plan differs from the consideration of individual planning applications in that it both relates to the consideration of individual sites and to how sites relate to the needs of the wider area. It is important that even where Members or Officers have a prejudicial interest in relation to a site, that they are able to contribute to the work and discussion concerning a wider area. However, whenever the discussion or preparatory work focuses on the comparison of individual sites or could otherwise be seen as impacting on or in some other way relevant to their site they must exclude themselves from the work and decision making.