

**S) Members' Code of Conduct**

**and**

**Code of Practice for Members and Officers  
dealing with Planning Matters**

**and**

**Standards Board Guidance**

# ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD

## CODE OF CONDUCT FOR MEMBERS

(Adopted 23<sup>rd</sup> May 2007)

### Part 1

#### General Provisions

#### Introduction and interpretation

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

#### Scope

2. (a) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you:
  - (i) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
  - (ii) act, claim to act or give the impression you are acting as a representative of your authority,and references to your official capacity are construed accordingly.

- (b) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.
- (c) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.
- (d) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).
- (e) Where you act as a representative of your authority:
  - (i) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
  - (ii) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

### **General obligations**

- 3. (a) You must treat others with respect
- (b) You must not
  - (i) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006(a));
  - (ii) bully any person;
  - (iii) Intimidate or attempt to intimidate any person who is or is likely to be
    - (1) a complainant,
    - (2) a witness, or
    - (3) involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
  - (iv) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

- (c) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.

**4. You must not**

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where
  - (i) you have the consent of a person authorised to give it;
  - (ii) you are required by law to do so;
  - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
  - (iv) the disclosure is
    - (1) reasonable and in the public interest; and
    - (2) made in good faith and in compliance with the reasonable requirements of the authority; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.

**5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.**

**6. You**

- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
- (b) must, when using or authorising the use by others of the resources of your authority
  - (i) act in accordance with your authority's reasonable requirements;
  - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
- (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986(a)

7. (a) When reaching decisions on any matter you must have regard to any relevant advice provided to you by
- (i) your authority's chief finance officer; or
  - (ii) your authority's monitoring officer,
- where that officer is acting pursuant to his or her statutory duties.
- (c) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

## **Part 2**

### **Interests**

#### **Personal interests**

8. (a) You have a personal interest in any business of your authority where either
- (i) it relates to or is likely to affect
    - (1) 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;
    - (2) any body
      - (aa) exercising functions of a public nature
      - (bb) directed to charitable purposes; or
      - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),of which you are a member or in a position of general control or manager;
    - (3) any employment or business carried on by you;
    - (4) any person or body who employs or has appointed you;
    - (5) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

- (6) any person or body who has a place of business or land in your authority's area, and to whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
  - (7) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
  - (8) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
  - (9) any land in your authority's area in which you have a beneficial interest;
  - (10) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
  - (11) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
- (ii) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of
- (1) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;
  - (2) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or
  - (3) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

- (b) In sub-paragraph (1)(b), a relevant person is
  - (i) a member of your family or any person with whom you have a close association; or
  - (ii) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
  - (iii) any person or body in whom such persons have a beneficial interest in a case of securities exceeding the nominal value of £25,000; or
  - (iv) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

### **Disclosure of personal interests**

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

## **Prejudicial interest generally**

10. (a) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.
- (b) You do not have a prejudicial interest in any business of the authority where that business
- (i) does not affect your financial position or the financial position of a person or body described in paragraph 8;
  - (ii) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
  - (iii) relates to functions of your authority in respect of
    - (1) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
    - (2) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
    - (3) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
    - (4) an allowance, payment or indemnity given to members;
    - (5) any ceremonial honour given to members; and
    - (6) setting council tax or a precept under the Local Government Finance Act 1992.

## **Prejudicial interests arising in relation to overview and scrutiny committees**

11. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where
- (a) that business relates to a decision made (where implemented or not) or action taken by your authority's committees, sub-committees, joint committees or joint sub-committees; and
  - (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (2) and you were present when that decision was made or action was taken.

## **Effect of prejudicial interests on participation**

- 12. (a)** Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority
- (i) you must withdraw from the room or chamber where a meeting considering the business is being held
    - (1) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
    - (2) in any other case, whenever it becomes apparent that the business is being considered at that meeting;unless you have obtained a dispensation from your authority's standards committee;
  - (ii) you must not exercise executive functions in relation to that business; and
  - (iii) you must not seek improperly to influence a decision about that business.
- (b) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

## **Part 3**

### **Registration of Members' Interests**

#### **Registration of members' interests**

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

- (b) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

### **Sensitive information**

- 14. (a) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, then you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 12.
- (b) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.
- (c) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

**THE SEVEN PRINCIPLES OF PUBLIC LIFE**

**Selflessness**

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

**Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

**Objectivity**

In carrying out our public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

**Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

**Openness**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

**Honesty**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

**Leadership**

Holders of Public office should promote and support these principles by leadership and example.

**ROYAL BOROUGH  
OF WINDSOR & MAIDENHEAD**

**CODE OF PRACTICE AND  
PROCEDURE FOR MEMBERS  
AND OFFICERS DEALING WITH  
PLANNING MATTERS**

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## CODE

### 1. INTRODUCTION

- 1.1 This Code of Practice and Procedure is a guide for both Members and Officers who deal with planning applications, planning policy and guidance. The Code should be followed at all times to avoid allegations of malpractice. It is consistent with the Code of Conduct for Members, which forms part of the Constitution (Part 5S) and to which all Members are subject. It incorporates advice from the Standards Board, the Audit Commission, the Local Government Ombudsman, the National Planning Forum, the “Probity and Planning” report produced by the Local Government Association and the Nolan Report. This Code supersedes previous advice given to Members and Officers.
- 1.2 A successful planning system relies on mutual trust and an understanding of both Members' and Officers' roles, who should both act not only in a fair and impartial way but be seen to do so whilst reflecting best practice, thereby increasing public confidence; reducing the likelihood of Borough decisions being challenged; and helping Members and Officers in dealing with what may be difficult situations. If you do not follow this Code, you may put:
- the Council at risk of proceedings on the legality or maladministration of a discussion; and
  - yourself at risk of either being named in a report made to the Standards Committee or the Council, or if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Standards Board.
- 1.3 Making a planning decision requires an informed judgement based upon firm policies. The decisions reached by Members and Officers will affect the daily lives of everyone including the private interests of individuals, be it applicants or adjoining neighbours, landowners and developers. It is imperative that the planning system is an open process actively inviting public opinion before decisions are made. The process of decision-making must therefore be transparent in nature.
- 1.4 The Human Rights Act 1998 also has a role within the planning process. The normal rule under the Act is that it is unlawful for a public authority to act in a manner which is incompatible with a Convention right. A breach of this rule would entitle the relevant party to a variety of remedies or damages in certain cases. The Act allows for a right to a fair hearing and rights to private property. When considering a planning application, it must be considered whether these rights have been complied with.

### 2. GENERAL ROLE AND CONDUCT OF MEMBERS AND OFFICERS

- 2.1 Members and Officers have defined roles within the planning process. Members are responsible to the public, whereas Officers are responsible to the Council. All statutory provisions and codes setting out standards must be followed. In doing so, this will preserve the public perception of the integrity of public service which must be maintained.

- 2.2 The Officers' role is to advise Members of the Council of the relevant planning policies and other material considerations, whilst the Members' role is to take planning decisions based on that advice.
- 2.3 Members exercise two roles in the planning system.
- They determine applications, arriving at a decision to grant or refuse permission by using planning criteria and by excluding non-planning considerations.
  - They act as representatives of public opinion.
- 2.4 Officers must be objective and impartial at all times. The areas of professional advice to be given will include planning, legal and highway issues and this advice must be based on the officers' professional judgement. This advice must not be compromised or influenced by political considerations although these may be relevant through the formal development of the Council's planning policies.
- 2.5 Members are all subject to the Code of Conduct which sets out their responsibility to identify and declare any personal interest, and that they must not take part in any discussion or debate if the interest is personal and prejudicial. This is dealt with in the next section.

### 3. DECLARATION AND REGISTRATION OF INTERESTS

- 3.1 Each Member is responsible for declaring their interests, but advice can be sought from the Head of Legal Services, Legal Services Manager or the legal officer and / or Democratic Services officer to the Panel. Further advice regarding individual declarations of interest can be found in The Code of Conduct and in guidance produced by the Standards Board for England. Failure to disclose an interest may have the consequences set out in paragraphs 3.13 below
- 3.2 The Local Government Act 2000 re-obliged Local Authorities to introduce a Code of Conduct for Members. The Code was adopted by the Council in May 2007. The requirements relating to the declaration of "personal interests" and "prejudicial interests" are detailed in the Members' Code of Conduct found earlier in this section.. The requirements of the Code of Conduct are applicable to Members when dealing with planning matters.
- 3.3 A Statutory Register of Members' Interests is maintained by Democratic Services. It is the individual Member's responsibility to notify the Head of Legal Services of any changes to their own Interests, whether by way of addition or deletion, as soon as they occur. Members are also required to register any gifts or hospitality received, over £25 in value.
- 3.4 Members and Officers must observe the Council's Anti-Fraud and Corruption Policy which aims to identify issues of fraud and corruption, bring them into the open and ensure that investigations are carried out appropriately. A copy of this Policy is available via Democratic Services. **The policy clearly states that when dealing with planning applications, gifts or hospitality must not be accepted.** Examples of what is meant by "gifts and hospitality" are given in the Policy. Again, if

required, advice can be sought from the Head of Legal Services or Legal Services Manager.

- 3.5 Any Member who has substantial property interests, or other interests which would prevent them from voting on a regular basis, should avoid serving on the Development Control Panels.

3.6 **Personal Interests**

- *Do disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter.*

Members may have a personal interest if the issue being discussed affects them more, either positively or negatively, than other people in the area. The Member must **say** they have a personal interest but can **stay** and take part and vote in the meeting.

The definition of a Personal Interest is set out in Sections 8 & 9 of the Members' Code of Conduct found earlier in this section.

- 3.7 A Member with a personal interest in a matter who attends a meeting at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of its consideration, or when the interest becomes apparent. Having done this the Member can remain in the meeting, speak and vote on the matter.

The Member should make the declaration at the beginning of the meeting or as soon as they are aware of the issue being discussed. The Member should say if anything being discussed relates to anything they are required to declare on the register of interests.

3.8 **Prejudicial Interests**

The Code of Conduct states that a Member with a personal interest in a matter may also have a prejudicial interest in that matter if the 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 the Member's judgement of the public interest.

The definition of a Prejudicial Interest is set out in Sections 8 & 9 of the Members' Code of Conduct found earlier in this section.

- 3.9 A Member with a prejudicial interest in any matter may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise. Please refer to the section of the Constitution referring to speaking rights at Development Control Panels or the pink information page reproduced on each agenda.

- 3.10 Prejudicial interests in relation to planning applications could include:-
- ◆ an application made by or on behalf of the Member
  - ◆ ownership/occupation of the property directly the subject of the application
  - ◆ an application relating to a site which is a close neighbour of the Member's property. Immediate neighbours are almost certainly likely to give rise to a prejudicial interest. How far this may extend would depend upon the development proposed, and the location of the properties. Each case would need to be judged on its own merits and it would not be appropriate to have hard and fast rules to apply to all circumstances. Relevant factors could include:
    - generation of more or less traffic locally
    - visual impact on the Member's property
    - whether a precedent for the area might be established which could affect the Member's property
  - ◆ an application made by, or on behalf of, or affecting a company or firm in which the Member has an interest (e.g. is remunerated Director or is a Partner)
  - ◆ an application made by, or on behalf of, or affecting a relative as defined in the Code
  - ◆ where the Member is involved in a firm or company associated with an application site, e.g. where the firm is the agent, architect, the development company, etc.
  - ◆ an application made by, or on behalf of, or affecting a club or society, etc., to which the Member belongs, e.g. Freemasons, trade unions, voluntary bodies, etc.
  - ◆ applications made by, or on behalf of, or affecting, friends. Those made by or affecting a close friend would always give rise to an interest, but so might ones where the friend, whilst not a close personal friend of the Member, was someone who the Member had known for a number of years and, for example, they had met at a number of social functions, including, for instance, the Member being invited to a birthday party by the individual. It is not intended to cover a casual acquaintance.
  - ◆ applications made by, or on behalf of, or affecting, firms which employ or are owned by close friends or family members.

These examples would also apply to matters where enforcement or any other action was being considered.

The list cannot be exhaustive and Members are encouraged to seek guidance from the Head of Legal Services. Some case studies are included after paragraph 3.18 below.

- 3.11 A prejudicial interest exists if a member of the public, who knows all the relevant facts, would view the Member's personal interest in the issue being discussed to be so great that it is likely to prejudice that Member's judgement of the public interest and so that Member must leave the meeting (subject to the rights on speaking as detailed above).

There are some limited exceptions to the requirement that the Member withdraws from the meeting if they have a prejudicial interest. The Member should refer to the detailed provisions of the Code of Conduct and to the section below. If in doubt, speak to the Monitoring Officer.

- **Where your interest is personal and prejudicial:-**
  - **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.
  - **Don't** get involved in the processing of the application.
  - **Don't** seek to 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. This would include, where you have a personal and prejudicial interest in a proposal, using your position to discuss that proposal with officers or Members when other members of the public would not have the same opportunity to do so.
  - 
  - **Do** notify the Monitoring Officer in writing of your own interest and note that:
    - notification to the Monitoring Officer should be made no later than submission of the application;
    - the proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers; and
    - it may be advisable that you employ an agent to act on your behalf on the proposal in dealing with officers and any public speaking at Committee (where permitted).

3.12 A Member may, however, regard himself as not having a prejudicial interest in a matter if that matter relates to:

- (i) another relevant authority of which he is a Member (in practice this refers to Parish or Town councils, the Fire Authority and the Police Authority)
- (ii) another public authority in which the Member holds a position of general control or management ('a public authority' is broadly construed by the Standards Board and would include:
  - any Government Department
  - the Armed Forces
  - Health Authority, NHS Trust, PCT
  - Education Governing bodies
  - Advisory bodies
  - The Arts Council

(See Schedule 1 to the Freedom of Information Act 2000.)
- (iii) a body to which he has been appointed or nominated by the Council as its representative (e.g. a Governor of a school).

[There are similar provisions for Members who are Council tenants, when considering school meals, transport and travelling expenses and the Member is the parent or guardian of a pupil (unless the item relates to the particular school where the child is a pupil), to matters relating to sick pay and Members' Allowances.]

The interest must be declared and the Member is still required to consider all the surrounding circumstances before deciding whether it is

appropriate for them to stay in the meeting and take part in the debate and vote. There may be additional factors present which make the interest prejudicial. Advice can always be sought from the Head of Legal Services.

- 3.13 The Local Government Ombudsman has confirmed that there are times when a Councillor may lose the right to act as a private individual. If you have a prejudicial interest that is required to be declared and would mean you have to withdraw from the meeting and not take part in the discussion, you cannot attend as if you were a member of the public.

### **Effect of Failing to Declare an Interest**

- 3.15 The concepts of “personal” and “prejudicial” interests form part of the Code of Conduct, which all Members are required to sign up to. The Local Government Act 2000 prescribes that if a Member fails to comply with the requirements as to Interests, then this will amount to a breach of the Code of Conduct unless the Standards Committee has granted a dispensation in accordance with any regulations issued by the Secretary of State. If a Member breaches the Code of Conduct, then they may be subject to investigation by the Standards Board. Over half of the complaints to the Standards Board to date are for failure to disclose an interest.

### **Interests of Officers**

- 3.16 Officers must act impartially. The Council will review, on a regular basis, the restrictions adopted on outside activities under the Local Government and Housing Act 1989 under which private work and interests are declarable.
- 3.17 Officers must declare any personal or prejudicial interests in any planning matter or application before the Council, must not deal with such matters on behalf of the Council, and must not give advice to Members or other officers on them. An officer with a personal or financial interest in a planning matter must withdraw from any relevant Panel or Council meeting whilst the matter is discussed. Officers must maintain their professional integrity and should avoid becoming associated in the public mind with representatives of the development industry or environmental pressure groups. This also applies in the case of delegated decisions. If an officer has an interest in an application, he/she must declare that interest and take no part in its processing or in the making of the decision.

## **4. PRE-APPLICATION DISCUSSIONS**

- 4.1 The Chairman and Members of any of the Development Control Panels normally should not become involved in any discussions or negotiations relating to any planning application or proposed planning application (whether for or against that proposal or application), which may be the subject of consideration at the Panel of which he is Chairman or a Member. If the Officer responsible requests that a Cabinet Member or relevant Panel Chairman or Vice-Chairman should become party to the negotiations or attend meetings, this is provided for in the Rules of

Procedure, Constitution Part 4A, 33.2. The relevant Officer must always be present at such meetings or negotiations.

- 4.2 Whilst such discussions between developers, officers and third parties who are opposed to or in favour of any particular development may be encouraged, it will always be made clear at the outset, that such discussions will not bind the Council to make a particular decision, and any views expressed are personal and provisional.
- 4.3 Officer advice given will be consistent and based upon the Development Plan (i.e. Structure and Local Plan) and other material considerations. Every effort will be made to ensure that there are no significant differences of interpretation of planning policies between Planning Officers.
- 4.4 A written note will be made of any pre-application discussions and two or more Officers will attend potentially contentious meetings, with a follow up letter sent, particularly when documentation has been left with the Borough.
- 4.5 Care will be taken to ensure that advice is seen to be impartial.
- 4.6 Except to the extent set out in the Rules of Procedure, to maintain impartiality the general rule is that Members should not take part in pre-application discussions and if they do should always be accompanied by an officer.
- 4.7 There is further guidance on Member involvement in commercial activities in the Constitution, Part 5J.

## **5. DEVELOPMENT PROPOSALS SUBMITTED BY MEMBERS THEIR CLOSE RELATIVES AND OFFICERS AND COUNCIL DEVELOPMENT**

- 5.1 Members whose business or other interests are likely to bring them into frequent contact with the planning system should generally avoid selection for Planning Panels.
- 5.2 Any planning proposals submitted by Members, their close relatives, officers or the Council (be they planning applications, development plan proposals or enforcement issues) can easily give rise to suspicions of impropriety. It is perfectly legitimate for such proposals to be submitted but it is vital to ensure they are handled in a manner, which gives no grounds for accusations of favouritism.
- 5.3 In order to avoid any risk of criticism in all cases of an application by a Member, a Member's partner, a relative, as defined in the Code of Conduct, a friend, a Member's employer or the employer of the Member's partner, relatives or friends, any corporate body in which the Member or his partner, relatives or friends hold shares with a nominal value of more than £5,000 or of which the Member is a Director will be dealt with by the appropriate Development Control Panel and not by officers under delegated powers. The Report must clearly state the applicant is a Member [or an Officer] of the Council. The same practice will also apply to officers holding politically restricted posts, that is those

who regularly advise the Council or Panels and all officers in the Planning Units.

- 5.4 Proposals for the Council's own development (or a development involving the Council and another party) and private applications in respect of Borough owned land (e.g. prior to a land sale being agreed or negotiated) – will be determined by the relevant Development Control Panel and not delegated to Officers. Decisions will be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Borough if the development is permitted. It is important that the Borough is seen to be treating such applications on an equal footing with all other applications as well as actually doing so.
- 5.5 Members who act as agents for people making an application to the Royal Borough should play no part in the decision-making process for that proposal, neither should they, nor an officer, play any part in relation to their own personal application.
- 5.6 The Monitoring Officer will be notified of such applications so that this officer can confirm that relevant applications have been processed properly.

## **6. LOBBYING OF, AND BY, MEMBERS AND ATTENDANCE AT PUBLIC MEETINGS**

- 6.1 Members may be subject to lobbying (both for and against) on planning matters and specific planning applications. Great care is essential to maintain the Council's, and indeed, the Member's own integrity and the public perception of the planning process when Members are lobbied.
- 6.2 Taking account of the need to make decisions impartially, Members should not favour, or appear to favour, any person, company, group or locality. Members should remember that they have a duty to represent the interests of the whole of the Council's area.

The Standards Board advises Councillors who are members of a lobbying group which has publicly expressed support for or against an application, that they will certainly have a personal interest which should be declared. An example might be membership of a Residents' Association which regularly comments on applications. The Member may also have a prejudicial interest but this will depend on careful consideration of all the surrounding circumstances (for example the Member's role in the group and the extent to which the Member is publicly identified with their position). If in doubt, the Standards Board advises that the matter should be discussed with the Council's Monitoring Officer .

- 6.3 Ward Members should maintain an uncommitted position on an application, until the time for decision comes. The Panel can expect help from Ward Members in drawing relevant local circumstances to the Panel's attention, but Members are reminded that they are elected to serve the interests of the whole Borough, not just their Ward, and that they should restrict their contributions to material planning matters.

- 6.4 Members must be aware that if they express a particular view on a planning application, before they have had the opportunity to consider all the relevant representations and facts at the appropriate Panel, they may be prejudicing their position and it may be inappropriate for them to be involved in the final decision process. Members should therefore avoid:
- (i) expressing a particular view on a planning matter; prior to the consideration of the matter at the Panel
  - (ii) indicating (or giving the impression of) support or opposition to a proposal; or
  - (iii) declaring their voting intentions prior to the Planning Panel when the matter is to be determined.

In addition those Members who have come to, and indicated this before the meeting, a conclusive view on an application or other planning matter, should carefully consider whether their continued involvement in determining the application or other matter would prejudice the integrity of the planning process. Their continued involvement could also amount to maladministration in such cases. Guidance, if required, can be given by the Head of Legal Services's representative at the Panel meeting.

- 6.5 If it is suggested that the public believe the Member had come to a clear view on the planning matter or application before the meeting when the decision is to be made, there should be some reasonable basis for the public belief. This might be a quote from the Member in the press or authentic reports of statements made etc. which are not repudiated by the Member or evidence in written form from the Member, e.g. letters of objection. In such cases the Member should not take part in the debate on, or vote on the issue as this would be unfair and prejudicial and may amount to maladministration.
- 6.6 Advice will always be available on this from the Head of Legal Services or the legal adviser.
- 6.7 Members who will be involved in the determination of a planning matter may, prior to any meeting, listen to a point of view about a planning proposal and may be asked for planning or procedural advice. The Member should refer the person making the request to the Case Officer or Unit Manager.
- 6.8 Individual Members should reach their own conclusions on an application or other planning matter rather than follow the lead of another Member. Any political group meetings prior to Panel meetings should not be used to decide how Members should vote and party whipping process should not be used in relation to planning applications.
- 6.9 Members involved in decision making on planning matters should not organise support or opposition to a proposal, lobby other Members, act as an advocate or put pressure on Officers for a particular recommendation.

- 6.10 As long as a Member is not prevented from attending and/or speaking and voting at a meeting for the reasons set out in this Code, any Member of the Council may attend any Development Control Panel of which he/she is not a Member, and subject to prior approval of the Chairman he/she may speak but not vote at such a meeting. (Rules of Procedure A26.2)
- 6.11 Members (in particular Members involved in determining planning matters) who find themselves contacted by an individual or group as a lobby should explain that whilst they can listen to what is said, it prejudices their impartiality to express a firm point of view or an intention to vote one way or another. As regards unsolicited written material from individuals or groups, it is suggested that the Planning Case Officer should be contacted to ascertain if he has received a similar communication. This will ensure that all the necessary information has been received by the Council and also enables Officers to comment on the contents of that material before any decision is made on the determination of the application. If any Member considers that they have been exposed to undue or excessive lobbying or approaches, this should be reported to the Monitoring Officer, who will in turn advise the appropriate Officers.
- 6.12 Officers involved in the processing or determination of planning matters should not attend public meetings in connection with development proposals (i.e. pre-application) or submitted planning applications unless those meetings have been arranged by or with the express agreement of the Panel or of the relevant Unit Manager or Director. To do so could lead to allegations of bias or prejudice in relation to a particular point of view. If put in such a position, inadvertently, Officers should only provide information and give no view on the merits or otherwise of the proposal.
- 6.13 Similarly Members involved in the determination of planning applications should take great care to maintain impartiality when attending public meetings in relation to planning matters. At such meetings it is preferable for no view on the merits or otherwise of a proposal to be given.
- 6.14 If the Monitoring Officer believes that a Member has prejudiced their position by expressing a conclusive view on an application before its determination by the Panel, the Monitoring Officer will advise the Member that it would be inappropriate for that Member to take part in the debate, or vote on the application.
- 6.15 If Members are requested to provide information by any individual or group, then regard should be had to the general provision under the Code of Conduct as to disclosure of information. A Member must not disclose information given to him in confidence by anyone, or information acquired which he believes is of a confidential nature, without the consent of a person authorised to give it, or unless he is required to do so by law; nor should a Member prevent another person from gaining access to information to which that person is entitled by law. If a Member has any doubt as to whether the information requested can be provided, then they should contact the Head of Legal Services for further advice.

## **7. PARISH COUNCILLORS**

- 7.1 The Standards Board advises that there is nothing in the Code of Conduct which prevents dual-hatted Members (councillors who serve on Parish/Town councils and on the Borough Council) speaking and voting at both parish and unitary tiers on the same planning issue. The advice is that Members who take this course need to declare their membership of the Parish or Town Council as a personal interest when attending the Borough's Planning Panel. This will generally not constitute a prejudicial interest. The advice goes on to emphasise that:

*"Members are under a legal obligation to approach decision making with an open mind, prepared to listen to all sides of the argument. Dual-hatted Members who choose to speak and vote at Parish and principal levels will need to make it very clear that their vote at Parish level represents a preliminary view and that they will reconsider the matter afresh at principal level. Failure to do this may lead to a legal challenge of the principal authority's (the Council's) decision on the grounds of predetermination."*

Different considerations apply where a Parish Council is the applicant in relation to a particular planning application. The Standards Board's advice is:

*"We consider that a dual-hatted Member is likely to have a rejudicial interest in relation to a planning application submitted by their own Parish Council."*

- 7.2 Each Parish and Town Council has its own Code of Conduct which is substantially in the same terms as the one that this Council has adopted.

## **8. OFFICER REPORTS TO PANEL**

- 8.1 Reports to Panels on planning matters must be balanced, accurate and cover all relevant points. Where a planning application is subject to a full report this will refer to the relevant provisions of the Development Plan, and all other relevant material planning considerations. Where appropriate this will include a full description of the site and any related planning history. It will also contain a summary of statutory and non-statutory representations received.
- 8.2 As recommended by the Nolan Report, all reports will have a written recommendation of action/decision, and oral reporting (other than to update an existing report) will only be used on rare occasions and any oral reports will be carefully minuted when this does occur. New objections do not need to be specifically minuted and will be treated as updates.
- 8.3 All reports will contain an appraisal which clearly justifies the stated recommendation, together with all policies to be relied upon in terms of approving or rejecting an application. Any relevant policies not specifically mentioned in the Report but raised during debate will be minuted.

- 8.4 All reasons for refusal and conditions to be attached to permissions must be clear and unambiguous, and when not contained in the Officers' recommendations will be minuted. Whenever the Development Control Panel resolves not to follow approved policies, then this must be recorded clearly together with convincing reasons for the decision. If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated.

## 9. SITE VISITS

- 9.1 Whether formal or informal site visits are made, Members should be careful to follow this guidance taken from the Nolan Report.

In all cases the Member should avoid committing themselves one way or the other in respect of the application and must not give any undertakings as to how they would vote. Members must not enter into discussion on the merits of the application and should not be seen to take sides. If they do speak to an applicant the Member should also try to speak to local objectors. Members should keep to public highways and only go onto private land if invited. They have no right to go onto the application site or adjoining property. If a site visit is made the Council's identification badge should be carried on such visits.

- 9.2 A decision by a Panel to carry out a formal site visit normally only takes place where it is felt by the Panel that decisions cannot be taken without viewing the site and adjoining properties. Examples of when formal site visits might be appropriate would be where:

- ◆ the proposal represents a departure from the Development Plan; or
- ◆ the proposal is contrary to a specific policy, or raises wider policy issues; or
- ◆ the proposal raises particularly unusual factors, for example it would have a major environmental impact or could lead to loss of jobs and/or financial hardship (e.g. enforcement against an existing use or development that has already been carried out); or
- ◆ there is considerable local concern about a proposal, allied to planning reasons for carrying out a visit (e.g. the physical relationship of the site to other sites in the neighbourhood).

- 9.3 The purpose of a site visit is for Members to use the visit for fact finding to gain further knowledge of the development proposal, the application site and its relationship to adjacent sites.

- 9.4 Following formal site visits Officers will prepare a report on the planning issues and any relevant information obtained from the site visit to enable the next Panel to determine the application. Where appropriate, officers will attempt to secure reasonable access to the application (or objector's) site.

- 9.5 The agreed procedures do not allow Members to receive representations from interested parties i.e. the Applicants and Objectors

during the course of the site visit. All representations are made in the Panel meeting itself. No decision is made at the site visit, and it is essential that Members and Officers ensure that those attending are not led to believe that a decision has been taken on the visit, or that conclusive views have been reached.

- 9.6 Officers will ensure that all correspondence in relation to site visits clearly identifies the purpose of a site visit, the format and conduct of the visit, and if appropriate the procedure for applicants/agents and interested parties to address Members.
- 9.7 Those Members wishing to make representations, either on the application or to emphasise (or rebut) any specific issue arising from the site visit, can do so when the matter is reported back to the Panel for a decision. Other parties, applicants and objectors can make written submissions to the officers which will be reported to the Panel.

## **10. PRE-PANEL TECHNICAL BRIEFINGS**

- 10.1 Officers will provide a briefing to all Members of the Panel prior to any meeting of the Panel. These briefings will advise of any verbal updating at the meeting that will be necessary and to afford the Members an opportunity to give notice to the Officers of any potential problems. No decisions are or can be made at these briefing meetings.

## **11. DETERMINATION OF PLANNING APPLICATIONS**

- 11.1 When dealing with planning matters only material planning considerations must be taken into account.
- 11.2 North Cornwall District Council was strongly criticised in a formal report because it lacked probity in its planning process. One of the main problems identified in North Cornwall was that too much account was taken of an individual's personal circumstances, such as personal or business hardship and too little account taken of planning policies. Whilst the human factor cannot entirely be excluded, the individual circumstances of the applicants will only be material considerations in the most unusual of circumstances. On very rare occasions when personal circumstances may be considered, and are of influence on the decision, those facts should be minuted in explicit terms.
- 11.3 If the Development Plan is material to the application then the statutory position is that the application should be determined in accordance with the Development Plan unless material considerations indicate otherwise. [Section 54A of the Town and Country Planning Act 1990 (as amended).]
- 11.4 Officers involved in the processing and determination of Planning applications also must act in accordance with the Council's Disciplinary Rules and Procedures, Procedure Rules within the Constitution, Member and Officer Code of Conduct and with the relevant sections of the Royal Town Planning Institute's Code of Professional Conduct.

- 11.5 Where any of the Development Control Panels are considering a planning application, members of the public and applicants shall be entitled to speak prior to determination of the application in accordance with the Protocol on Public Speaking at Planning Meetings which forms part of the Council's Constitution, Part 5L.
- 11.6 Under the Council's Scheme of Officer Delegation certain types of applications may be determined by the Development Control Manager. These are listed in the Council's Constitution, in the Annex to Part 3.
- 11.7 If a Member requests that an application normally determined under delegated powers should be referred to a Development Control Panel the Member is asked to complete a formal request card or submit that request in writing providing reasons for referring the application to Panel if possible - but this is a matter for their own discretion. The completed request should be given to the Development Control Unit Manager so that the Officers' report can contain any information relevant to the reason for referral.

## **12. THE DECISION MAKING PROCESS AND DECISIONS CONTRARY TO OFFICER RECOMMENDATION AND/OR THE DEVELOPMENT PLAN**

- 12.1 Where the Development Plan is relevant, decisions should be taken in accordance with it unless material considerations indicate otherwise.
- 12.2 In discussing, and then determining, a planning application or other planning matter Members must confine themselves to the planning merits of the case and the reasons for making a final decision should be clear and convincing, and supported by planning evidence. If Members wish to refuse or approve an application against Officer advice, or impose additional conditions to the permission, the reasons for refusal, approval or the additional conditions to be applied must be clearly stated at the time the propositions are moved at the meeting. A detailed minute of Members' reasons will be made.
- 12.3 Panel meetings are well attended by the public, applicants and professional advisers, and objectors. It is particularly important that Members and Officers are seen to conduct the business of the Panel in a fair and sensitive manner. The debate on a planning application should be confined to the planning merits of a development proposal.
- 12.4 If the Officer's report recommends approval of a departure from the Development Plan, the justification for this should be included, in full, in the report.
- 12.5 Wherever approved policies are not followed clear and convincing reasons must be recorded. Legal and Planning Officers will always attend meetings of the Panel to advise so that procedures can be properly followed and planning issues properly addressed and to advise the Chairman and Members.

## **13. MINUTES**

- 13.1 The Minutes shall be a full and detailed record of the decisions made at the Panel. Updating of reports by officers does not have to be recorded

but new issues introduced and policies used for making the decision will be recorded in the minutes.

- 13.2 If a resolution is passed which is contrary to the Officer recommendation (whether for approval or refusal) a detailed Minute of the Panel's reasons will be made and a copy placed on the application file.
- 13.3 Details of any declarations of Interest will be recorded under a separate heading in the Minutes.

#### **14. COMPLAINTS AND RECORD KEEPING**

- 14.1 If a member of the public, or applicant, wishes to complain about the Council's treatment of an application, this will be dealt within accordance with the Council's Complaints Procedure. In the first instance they should write to the Development Control Manager or the Director of Community Services. The complaint will be acknowledged in writing and will be investigated as quickly as possible; a written reply will be given.
- 14.2 So that complaints can be fully investigated and, in any case, as a matter of general good practice, record keeping will be complete and accurate. Every planning application file must contain an accurate account of events throughout its life, with particular care being taken with regard to those applications that are likely to be determined by officers under delegated authority. Such decisions should be as well documented and recorded as those taken by the Panel.
- 14.3 A record of all written complaints received by the Director of Community Services will be maintained on a separate file, and will be monitored regularly.

#### **16. BREACH OF CODE**

- 16.1 Any breach of this "Code of Conduct" will be reported to the Monitoring Officer, who will investigate the matter and take such action as necessary.

#### **17. TRAINING**

- *Do make every effort to attend the planning training provided by the Council if you are going to participate in meetings dealing with planning matters.*
- *Do endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum, thus assist you in carrying out your role properly and effectively.*
- *Do suggest to the Head of Planning any other areas of planning legislation you require training on..*

## **18. SUMMARY**

Serving as a Member of the Council and as a Member of a Development Control Panel brings clear responsibilities to the whole community and not to any particular section of it. Similarly the whole community has a right to expect Members of the Council and Panels to consider matters transparently, impartially and fairly having regard only to relevant information and disregarding irrelevant details.