



**Report for:
ACTION/INFORMATION**

Item Number:

Contains Confidential or Exempt Information	NO
Title	Members Code of Conduct and Transparency in Planning: consideration of a report by 'Transparency International UK', July 2020
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Portfolio(s)	Portfolio Holder for Housing, Planning
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Affected Wards	All
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Purpose of Report:

To present details of a review of the Members' Code of Conduct in relation to Planning Matters with regard to member involvement in development proposals and the confidentiality of the pre-application process, following the publication of a report on the UK Planning System by 'Transparency International UK' and to seek approval of a revised Code of Conduct

1. Recommendations

It is recommended that Full Council approves:

- 1.1 The proposed revisions to the 'Code of Conduct for Members in relation to Planning Matters (as highlighted in Appendix 2), as recommended by Cabinet on 19th January 2021
- 1.2 Agrees that the Constitution be amended to reflect the revised Code as approved
- 1.3 Notes and supports the proposal to change the pre-application process to enhance transparency by publishing pre-application material at the time that a formal planning application is submitted for the proposed development

2. Reason for Decision and Options Considered

- 2.1 A Transparency International Report (June 2020) has raised the profile of the need for Local Authorities to ensure there is probity and transparency in the decision-making process for Pre-application advice and planning applications Ealing Council has recognised the importance of officer and member involvement in the planning and regeneration process as a means of attracting development and investment in the competitive London, through the successful 'Ealing In London' brand.
- 2.2 In addition, the early engagement of officer and members in development proposals through the pre-application planning process is considered beneficial in supporting the Council's priorities for high quality sustainable development that delivers housing (including genuinely affordable housing), employment and training opportunities, attractive public realm, high quality design and the infrastructure to support the development and surrounding area.
- 2.3 The interconnected issues of member engagement and the planning/pre-planning application process were considered full Council in 2019. Changes to the then July 2012 Code of Conduct for Members in relation to Planning Matters and were approved by full Council on 2nd April 2019 to take account of the stronger emphasis on the pre-application consultation and engagement that developers undertake with local communities including councillors. The publication of the June 2020 Report has provided a good opportunity to review the Code and further revise it as appropriate.

3. Consideration

- 3.1 Transparency International UK report
- 3.2 The report was published in July 2020 by 'Transparency International UK' which is part of a global Charity 'Transparency International'. The charity has a budget

of approx. £7m which serves the vision of raising awareness about corruption; advocating legal and regulatory reform at national and international levels with particular reference to the world of business (which, it is assumed, covers the planning system), health and defence. The funding is generally sourced from Government, NGO, other charities and individuals. There are no apparent funders from the development sector. More recent information (dated Oct 2020) on the background to the production of their report can be found at: <https://www.transparency.org.uk/permission-accomplished-local-government-authority-planning-corruption-risk>

- 3.3** The report cites the Charity's previous research (2012) and report into English Local Authority governance, which it then considered *'provided an environment where corruption was likely to thrive'*.

It also suggested that

'low levels of transparency, poor external scrutiny, networks of cronyism, reluctance or lack of resource to investigate alleged wrongdoings, and the sums of money at play all provided a fertile environment for those entrusted with public office to abuse it for private gain'.

The Charity now believes that these risks have been

'translated into specific risks in major planning decisions, an area where there is often a large amount of money at stake'. It further states:

'Unminuted, closed-door meetings with developers and excessive hospitality undoubtedly undermine confidence in the planning process, yet too many local authorities have weak rules to stop this from happening. Even fewer councils have control measures for major conflicts of interest, with far too many decision-makers also working for developers on the side. Moreover, when councillors behave badly, there are no clear or meaningful sanctions available to councils that could act as an effective deterrent against serious misconduct by them or others in the future'.

- 3.4** There are 10 recommendations relating to Councillors, grouped around the three themes:

- external engagement,
- managing private interests, and
- regulating conduct.

Appendix 1 reproduces the Report's Executive Summary and the details of each recommendation. These recommendations are summarised as follows;

Risk 1- External Engagement- risk of decision making behind closed doors or in return for payments.

Recommendation 1: Minute and publish all meetings with developers and their agents for major developments

Recommendation 2: Prohibit those involved in making planning decisions from accepting gifts and hospitality that risk undermining the integrity of the planning process.

Recommendation 3: Increase transparency over gifts and hospitality

Recommendation 4: Stronger leadership from the industry on ethical lobbying

Risk 2 – Managing Private Interests

Recommendation 5: Improved management of financial interests

Recommendation 6: Prohibit all councillors from undertaking lobbying or advisory work relating to their duties on behalf of clients

Recommendation 7: Manage the revolving door between the elective office and private business.

Risk 3 – Weak oversight

Recommendation 8: Provide clear guidance and boundaries for councillors so they can better understand what is and is not acceptable behaviour

Recommendation 9: Provide a meaningful deterrent for serious breaches of the code of conduct.

Recommendation 10: Increase transparency over investigations and enforcement action

3.5 It is fair to say the report highlights the more extreme risks to councils and gives examples of significant failures in protocols and member conduct. However, these are confined to a handful of organisations. Its general findings are based on a survey of 50 LAs and thus need to be seen in that narrow context. However, the recommendations provide a useful foundation for re-considering the role of members in their involvement in the planning system. In addition, although the pre-application process is not explicitly raised as a risk it is appropriate to consider the transparency of the Pre-Application process and the need to publish information, at the right time in the application process, to resolve the issues relating to public trust. It would also significantly reduce the amount of officer time spent dealing with numerous Environmental Information /Freedom of Information requests.

3.6 It should be noted that only the first of the 10 recommendations directly relate to the Planning Code of Conduct. The other 9 deal principally with the general conduct of councillors. Recommendation 8 does cover the role of member training in raising councillor awareness of what is and is not acceptable conduct for those involved in making planning decisions

When considering the experience of members and planning in Ealing there have been no significant issues relating to member conduct. As such the focus of the review has been on strengthening and where necessary clarifying the existing Code of Conduct in relation to members involvement within the planning process, rather than wholesale changes.

It is also recommended that the planning pre-application process should be changed to allow public access to documents associated with pre-application proposals but only once formal planning applications have been submitted.

3.7 Members' role in Planning

3.8 Members have always played a part in the planning process, whether on Planning Committee, as ward councillors or in fulfilling other roles within the Council. Their role in the planning system will continue to be significant for several reasons:

- a. Local residents continue to become more engaged and active in the consideration of planning matters in relation to neighbourhood planning, the Local Plan (and its review), Pre-applications and mainstream planning applications, particularly the major regeneration schemes.
- b. The requirements for early engagement by developers as set out in the Council's Statement of Community Involvement and as adjusted by the increase responsibilities put on developers and applicants as a response to engagement methodology during the Covid crisis.
- c. The continued pressure for development (particularly residential) within London. The need and demand for housing of increased density has already been realised in increased targets for housing within the Mayor's Draft London Plan and is likely to continue if the Government implements changes to the Planning System through a White Paper in 2021.

3.9 The pre-application planning process

3.10 Increasingly, and particularly in relation to major proposals, members across the Council are seen by developers as a key part of their engagement process with the Council at pre-application stage.

3.11 The Planning Service has for several years offered a pre-application advice service for applicants/developers to seek the informal views of the Council on the acceptability of proposed planning schemes. The service generally consists of the submission of plans and documents setting out the proposals in advance of a meeting attended by planning officers (both policy planners and development management) and other specialist officers from other services as required such as Transport and Highways, Environmental Health, and regeneration. This is a discretionary, paid-for service.

3.12 For the larger, strategic regeneration schemes a more tailored process for pre-application advice is offered through an 'enhanced service' approach which can include a series of meetings with planning officers, senior officers and specialists. These meetings should be documented with the notes forming part of the pre-application documentation.

- 3.13 Pre-application advice has been provided on a confidential and ‘without prejudice’ basis and proposed schemes can only be formally decided within the context of a planning application, having taken into account planning policy and other material considerations, which include the views of local residents and third parties.
- 3.14 The pre application advice has, to date, been provided to applicants/developers on a voluntary and confidential basis. However, planning officers and managers spend a considerable amount of resource dealing with EIR/FOI requests for information relating to pre-application submissions. Whilst each request is regarded on its own merits, it has been common to refuse disclosure of pre-application material on the basis of the need to retain confidentiality in respect of documents provided voluntarily from developers. This invariably creates further work in officers having to undertake ‘internal reviews’ of the FOI/EIR decision and in some cases pursue lengthy discussions with the Information Commissioners Office (ICO).
- 3.15 The ICO has recently (October 2020) issued a ‘Decision Notice’ in relation to a resident’s request for information submitted as part of a pre-application on a scheme which was subsequently considered at the planning application stage. The Decision Notice required the Council to disclose advice given to the developer during the pre-application process. The Council had relied on exemptions to disclosure based on the fact that the information submitted by the developer, at the pre-application stage, was of a confidential and ‘voluntary’ nature. That is, the service is not a statutory service but a discretionary one. The ICO held that the ‘voluntary supply’ exemption only applied to the information submitted by the developer and not to the advice subsequently given by the Council to the developer. Although the Council argued that the pre-application process could not be logically ‘disaggregated’ in this way, the ICO, nevertheless, took an opposing view.
- 3.15 In considering confidentiality one significant issue is that the submission of a pre-application for a planning proposal can, if made public, raise the value of a plot of land, even if the applicant has no ownership/financial interests in said land. This is obviously to be avoided as inflated land values ultimately affect the viability of a scheme and thus the level of Genuinely Affordable Housing and other S106 contributions that can be secured during the planning application stage. In addition, it is arguably better for developers and officers to have a ‘safe space’ in which to conduct discussions on initial proposals prior to the submission of planning applications. The failure to achieve this could significantly affect the uptake of the pre-application process. This in turn could result in poorly designed and thought out schemes coming forward as planning applications. This potential disadvantage does however need be balanced by consideration of the public interest benefit of openness and transparency in the planning process.
- 3.16 The practice amongst other London councils varies in relation to the stage at which pre-application information is released. At a recent POS (Planning Officer’s Society) meeting of London Chief Planning Officers, of the 15

authorities represented the prevailing view was that it was appropriate to release information on pre-application advice once a planning application for development had been submitted. This would seem to satisfy the need to maintain confidentiality until a formal planning application is made (at which time the proposals are in the public realm) and also service to provide the 'safe space' for early officer/developer discussions. LB Croydon recently introduced a process of publishing pre-application documentation (on planning 'public access' web pages) when formal applications have been received and as a result it has seen a marked drop off in the number of EIR/FOI requests submitted. The proposal to change the pre-application process by publishing pre-application material at the time that a formal planning application is submitted for the proposed development would not apply retrospectively to Pre-applications already considered or currently being worked on. For these Pre-applications any request for information would have to have regard to the fact that they were submitted by the applicant/developer on the understanding that confidentiality would be maintained.

3.17 Amendment to Protocol for member involvement in planning

The 2019 revisions to the Code of Conduct for Members in relation to Planning Matters, recognised the responsibilities of councillors, at all levels, to have an active engagement with planning proposals and the development of planning policy. The changes made to the Code in 2019 sought to emphasise the fact that the involvement of councillors is an entirely appropriate and intrinsic part of the planning decision making process but that this process also needs safeguards regarding member conduct to ensure probity and transparency. On this basis It was considered appropriate to make changes to the Code of Conduct such that:

- Officers should be present with councillors in pre-application meetings. Councillors should avoid giving separate advice on the development plan or material considerations as they may not be aware of all the issues at an early stage. Neither should they become drawn into any negotiations, which should be done by officers (keeping interested councillors up to date) to ensure that the authority's position is co-ordinated.
- A written note should be made of all meetings. An officer should make the arrangements for such meetings, attend and arrange for notes to be produced. A note should also be taken of any phone conversations, and relevant emails recorded for the file. Notes should record issues raised and advice given. The note(s) should be placed on the file as a public record. If there is a legitimate reason for confidentiality regarding a proposal, a note of the non - confidential issues raised or advice given can still normally be placed on the file to reassure others not party to the discussion.
- A register to be kept of engagement by members with developers and their representatives (with or without officers, such as local ward members meeting with a developer for a site within their ward)

- A requirement for senior planning committee and cabinet members to be accompanied by officers when engaging with developers of sites within the borough where discussions about proposed planning applications will be had.

3.18 The register of engagement by members is still considered to be a sound idea but it does not currently provide a 100% accurate record of meetings attended by officers and members or members acting independently of officers.

3.19 In December 2019 the LGA and Planning Advisory Service published an updated version of their guidance to councillors titled 'Probity in Planning'. The guidance confirms that

The Localism Act, particularly Section 25, which establishes prior indications of view of a matter not to amount to predetermination, has given councillors much more freedom to engage in pre-application discussions. Nevertheless, in order to avoid the perception that councillors might have fettered their discretion, such discussions should take place within clear, published guidelines.

Officers should arrange any meetings, attend these with councillors and make a written record of the meeting placing this note on the case file. A note should also be taken of any phone conversations, and relevant emails recorded for the file. Notes should record issues raised and advice given. If there is a legitimate reason for confidentiality regarding a proposal, a note of the non-confidential issues raised or advice given can still normally be placed on the file to reassure others not party to the discussion.

3.20 It is therefore suggested that

- Officers review the way in which the Register is maintained and monitored through the use of electronic rather than manual systems of recording to ensure that a central register as well as a file record is held.
- That officers and members be reminded of their responsibilities regarding the Code of Conduct and the need to advise of any meetings that they have with applicants or developers.
- In terms of member contact with applicants and agents that members be strongly reminded that under no circumstances should they seek to undertake any form of negotiation with the application or developer.
- That members of the Planning Committee should where possible avoid any contact with developers or agents other than formal presentations (when accompanied by officers) either at the pre-application or application stage.

4 Financial

a) Financial impact on the budget

There are no direct financial implications associated with any change to the Members Code of Conduct. The move towards publishing information relating to pre-application proposals, when formal applications are submitted, may affect the take up of the pre-application/enhanced service. However, developers must come to the Council to discuss and submit schemes and it is in their interests to engage with officers at the earliest possible stage. As such, it is anticipated that there will be no significant impact on income received through the pre-application process.

5 Legal

Legal considerations are set out throughout this report

The continued application of Codes and Protocols and their regular review is considered to be part of the Council's requirements for sound governance, transparency and probity in the delivery of its services.

6 Value For Money

There would some savings in officer time if the number of EIR/FOI requests reduces with the introduction of revised process for publication of pre-application information.

7 Sustainability Impact Appraisal

No specific impacts identified.

8. Risk Management

Clarity on the role of members in their engagement with planning schemes can help minimise the risk of complaints, applications for Judicial Review and other legal challenges.

8 Community Safety

None

10. Links to the 3 Key Priorities for the Borough

The council's administration has three key priorities for Ealing. They are:

- Good, genuinely affordable homes
- Opportunities and living incomes
- A healthy and great place

The planning service and members' involvement in planning proposals has direct and positive impacts on each of these three priorities through the shaping and consideration of a variety of development proposals.

11. Equalities, Human Rights and Community Cohesion

There are no direct equalities impacts identified from recommendations in this report.

12. Staffing/Workforce and Accommodation implications

None

13. Property and Assets

There are no property implications.

14. Any other implications

None identified.

15. Consultation

Considered with Cllrs Sabiers and Manro in their capacities as Portfolio lead for Housing and Planning and Chair of Planning Committee.

16. Timetable for Implementation

Subject to consideration by Cabinet

17. Appendices

Appendix 1 – Recommendations of Transparency in Planning report, 2020,
Transparency International

Appendix 2 Code of Conduct for members in relation to planning matters, 2019

18. Background Information

Code of conduct for members in relation to planning matters, June 2012

Probity in Planning December 2019

https://www.local.gov.uk/sites/default/files/documents/34.2_Probity_in_Planning_04.pdf

APPENDIX 1 RISKS AND RECOMMENDATIONS

EXTERNAL ENGAGEMENT

Risk 1: the perception or reality that decisions are unduly influenced behind closed doors or in return for payments in cash or in-kind.

Lobbying transparency

Holding meetings behind closed doors fuels suspicion about the integrity of important planning decisions.

Recommendation 1: Minute and publish all meetings with developers and their agents for major developments.

To help provide greater confidence in interactions with those seeking planning consent, councils should ensure all meetings between councillors, developers and their agents in major planning decisions are:

- attended by at least one council official,
- recorded in detailed notes, and
- published online with the planning application file.

Managing gifts and hospitality

Those involved in planning decisions accepting gifts and hospitality from developers or their agents can easily give rise to the perception that their judgement is being unduly influenced.

Recommendation 2: Prohibit those involved in making planning decisions from accepting gifts and hospitality that risk undermining the integrity of the planning process.

To help prevent the perception of undue influence over planning decisions, councillors should be prohibited from accepting any gifts and hospitality that could give rise to:

- real or substantive personal gain; or
- reasonable suspicion of favour or advantage being sought.

Reporting gifts and hospitality

Inconsistent reporting thresholds for gifts and hospitality that are accepted provide confusion for the public and councillors (especially those 'double hatting' councillors in district and county councils). Also, publishing registers of gifts and hospitality as PDFs and in other nonmachine-readable formats do not meet good practice standards for transparency.

Recommendation 3: Increase transparency over gifts and hospitality.

To help present a clear and consistent view of corruption risks across local government, local authorities should be required by law to establish a register of gifts and hospitality. This should apply to all gifts and hospitality over a value of £50 or totalling £100 over a year from a single source. This should apply to anything

received by all councillors, their family members, or associates that could reasonably be regarded as given in relation to the councillor's role as an elected official.

We support the CSPL's recommendation that local authorities should publish registers of gifts and hospitality as structured open data – for example, a CSV format that can be opened in an Excel spreadsheet – and maintain them in a central location on their websites.

Leadership from industry

The lobbying industry sets out its code for managing its members' conduct, but this should be improved to help reduce the risk of it being implicated in future impropriety.

Recommendation 4: Stronger leadership from the industry on ethical lobbying

The Public Affairs Board (PAB) should include explicit provisions within the public affairs code to:

- Require members to conduct engagements with elected or public officials openly and transparently.
- Prohibit members giving any gifts and hospitality to elected or public officials that could give rise to a real or substantive personal gain; or a reasonable suspicion of favour or advantage being sought.

MANAGING PRIVATE INTERESTS

Risk 2: the perception or reality that councillors are putting their private interests over the public's

Financial interest transparency

If a councillor has other outside employment and interests, which is not unusual, these should be made available for public scrutiny. This is required by law. However, publishing registers of financial interests as PDFs and other non-machine-readable formats do not meet good practice standards for transparency. Financial interest registers that are poorly formatted and decentralised limit the public's ability to properly hold elected officials to account. The more easily accessible they are the greater transparency and accountability there is over these interests. In some instances declaring interests is not sufficient enough and councillors should not be involved in a decision due to apparent bias.

Recommendation 5: Improved management of financial interests. To help improve the management of potential conflicts of interest, we support the CSPL's recommendations that:

- Councils should publish registers of financial interests as structured open data – for example, a CSV format that can be opened in an Excel spreadsheet – and maintain them in a central location on their websites.
- Section 31 of the Localism Act is repealed and replaced with a new requirement for councillors to remove themselves from decisions where there it can reasonably be regarded that they hold a significant conflict of interest that could prejudice their judgement.

Managing conflicts of interest with current outside employment

It is not good practice to allow elected officials to lobby or provide advice on lobbying other elected officials. Permitting this creates the obvious risk that they abuse their position for their commercial benefit and the private gain of their clients, potentially at the public's expense.

Recommendation 6: Prohibit all councillors from undertaking lobbying or advisory work relating to their duties on behalf of clients. To help provide confidence that councillors are working in the public interest, members should be prohibited from:

- lobbying councils on behalf of paying clients, and
- providing paid advice on how to influence councils.

The PAB should also amend its code of conduct to, as soon as reasonably practicable, prohibit its members from employing sitting councillors, as it does for other forms of elective office.

Managing the revolving door

Moving through the revolving door between public and private office can be beneficial to both sides, improving understanding and communication between public officials and business, and allowing sharing of expertise. However, the revolving door brings risks that the interests of past or prospective employers could influence officials in their decisions.

Recommendation 7: Manage the revolving door between the elective office and private business.

To help reduce the risk of councillors abusing their movement between public and private office, local authorities should:

- Provide advice, guidance and training to those involved in making decisions on planning applications about the risks involved.
 - Prohibit those who have recently worked as lobbyists for developers, or for developers seeking planning permission (for example within the prior two years), from sitting on planning committees or receiving executive responsibilities relating to planning.
 - Require councillors to report any offers of employment to their Monitoring Officer, including details of any interaction they have had with their prospective employer.

REGULATING CONDUCT

Risk 3: Weak oversight does not prevent or deter misconduct

Clear advice, guidance and protocols

There are some good examples of local authorities providing mandatory training and clear guidelines on conduct for those involved in making planning decisions. However, there are still many that do not.

Recommendation 8: Provide clear guidance and boundaries for councillors so they can better understand what is and is not acceptable behaviour.

To inform councillors about the boundaries of acceptable conduct in the planning process, all local authorities should introduce:

- Compulsory training for those on planning committees or with executive functions relating to planning, including specific modules on ensuring integrity in the process and the factors they should take into account when making a decision.
- Establish a dedicated planning protocol, with proportionate sanctions for non-compliance.

Clear and credible deterrents against serious misconduct

In its 2019 report on ethical standards in local government, the CSPL highlighted there are not enough options for sanction when a councillor has committed a serious breach of the rules that falls short of criminal conduct.⁹ Unless a criminal offence is committed (for example, an offence under the Bribery Act 2010 or the common law offence of misconduct in public office) there are currently insufficient deterrents against particularly egregious behaviour; for example, significant breaches of the rules on declaring financial interests or disclosure of confidential information. Opaque investigations and sanctions in concluded cases of misconduct also weaken the deterrents local authorities have.

Recommendation 9: Provide a meaningful deterrent for serious breaches of the code of conduct.

To provide a meaningful deterrent against impropriety in the planning process, we support the recommendations from the CSPL that Government should legislate to:

- Give local authorities the power to suspend councillors, without allowances, for up to six months with the ability to appeal the decision to the Local Government and Social Care Ombudsman for England.

Clarify beyond doubt that local authorities may lawfully bar councillors from council premises or withdraw facilities as sanctions.

- Require councils to prepare and publish a sanctions policy explaining when they will use their enforcement powers, and what independent safeguards they will use to protect against their abuse.

Recommendation 10: Increase transparency over investigations and enforcement action.

To help provide a greater understanding of the level of alleged misconduct and to provide a greater deterrent against future breaches of the rules, local authorities should regularly publish in a central location:

- Anonymised details about allegations made regarding councillors' alleged misconduct, including any grounds for rejection; for example, they were malicious or unfounded.
- Summary statistics on the number of investigations underway, including their status.
- Full details of substantiated breaches, including the councillor concerned, and any sanctions imposed.

END

APPENDIX 2 (Changes to the 2019 Code are highlighted in yellow)

CODE OF CONDUCT FOR MEMBERS IN RELATION TO PLANNING MATTERS

Introduction

This Code was originally drawn up on the recommendation of the review of standards in local government by 3rd Report of the Nolan Committee on Standards in Public Life, published in 1997 and against the background of the increasing possibilities of liability for local authorities and councillors in the event that mistakes are made. The Code was subsequently reviewed in July 2012 to take account of the Localism Act 2011.

This Code is designed to assist provide guidance for members on their roles when dealing with planning matters whether in relation to policy or the decision making on planning applications. The principal purpose is to maintain standards of transparency and fairness when dealing with residents, interest groups, applicant and developers and officers of the Council. The continued adoption of the Code will also minimise the possibilities for legal action against the Council and individual councillors. In this respect the Code contains important guidance for all members of the Council not just those serving on the Planning Committee.

This Code forms part of Ealing Council's Local Code of Conduct for Councillors, and failure to comply with it may potentially result in a complaint under the council's standards regime.

The Code

General

1. Under the Localism Act 2011 a member is not to be taken to have had, or to have appear to have had, a closed mind when making a decision just because
 - the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took or would or might take, in relation to a matter, and
 - the matter was relevant to the decision
2. Although this provision recognises the role of members in matters of local interest and debate, if you are a member of the Planning Committee taking part in a decision on a planning matter, you should not make up your mind how to vote prior to consideration of the matter by the Planning Committee and therefore you should not comment in advance how you intend to vote which might indicate that you have a closed mind
3. This does not prohibit your ability as a ward member to represent the views of your constituents throughout the planning process, provided that you make it clear that those views are not necessarily your own.
4. If you have any doubts about the interpretation of this code, you should consult appropriate officers on the point.

5.0 Protocol for Member involvement in Pre-application and application presentations and discussions

5.1 It is recognised that that there is an increasing role for members at both the pre-application and application stages of planning proposals. This is encouraged provided members' roles are clearly understood. The role needs to be unambiguous and transparent to members themselves and to developers and the public. Members of the public and local residents are sometimes concerned that proposals, when

considered at the pre-application stage are in effect 'decided in advance'. This is not the case and it is entirely appropriate and proper that all Councillors consider taking an active part in discussions concerning development proposals at the pre-application stage and in relation to planning applications. There should be no ambiguity about the requirements or responsibilities of councillors in this respect. In particular members need to be aware of the distinction between giving and receiving information and engaging in negotiations. Without a published protocol member involvement may inadvertently open members to challenge on the grounds of apparent pre-determination. Members should be aware that presentations by developers are, in effect, a form of lobbying and that the general principles set out below relating to lobbying are relevant.

5.2 Members should be aware of the differences in publicity for the pre-application and application stages of any development proposal. The pre-application stage is a paid for service. The submission of information and documents by an applicant/developer is a matter of choice and not as a statutory requirement of the planning process. The pre-application process is a means by which an applicant or developer can seek advice on the appropriateness of a development in terms of either its use or design. The pre-application service does not give a green light to proposals but is intended to weed out proposals that are clearly unacceptable and to shape proposals to a point where they can be further assessed through a formal planning application. Pre-application discussions are always made on the basis that they are 'without prejudice' to the consideration a subsequent application against planning policy, and other material considerations, including representations made by local residents and other parties.

5.3 On this basis pre-application discussions are considered private and confidential discussions between the applicant/developer and the Council and are not publicised on the Council's website or notified to local residents and interested parties **at the time the pre-application discussions are ongoing (see change below).** In the interests of transparency, the Council will make available the material received from the application/developer and the advice given to the applicant/developer by officers, upon request, from the time a formal, valid planning application is received by the Council.

5.4 The Council's Protocol for member involvement in pre-application and application presentations and discussions is set out below as follows:

- Any presentations or discussions with developers, should be part of structured arrangements agreed with officers in advance and may also include other interested parties. Where members are approached by applicants or developers to attend meetings the matter should be referred to the planning case officer so that s/he is aware of the meeting. Officers of appropriate seniority should normally attend the meeting depending on the size and complexity of the scheme under consideration.
- Meetings and any presentations should be limited to the development proposal and a question and answer session on factual matters on the clear basis that the discussion is being held to improve understanding and not to discuss the merits of the application. This should be confirmed at the start of the presentation. **Within this context, members can comment on aspects of the scheme providing that they keep an open mind**

- Members should avoid giving any indication that they have already decided how they propose to vote.
- Questions from members will be appropriate to clarify aspects of a proposal as long as they do not develop into negotiations.
- When appropriate (depending on the size and complexity of the scheme) the applicant/developer will be required to submit a written note of the meeting to the planning case officer which should be checked for accuracy
- All meetings of members with applicants/developers should be entered on a Register of Member Involvement in Planning Matters. Members will be advised of the process by which they need to notify officers of meetings and the way in which the Register of Member Involvement will be made available to the public.
- In respect of all member contact with developers and applicants Officers will need to know
 - the time and date of the meeting
 - the name of those present
 - the site in question
 - why the meeting has been arranged
 - the nature of the development proposal

Lobbying

6. Lobbying is acknowledged to be an integral part of the planning process and is appropriate provided that care is taken to avoid members' integrity and impartiality being called into question.

7. If you are approached about a planning matter (even if you are not a member of the Planning Committee) by any applicant, agent, objector or other interested party, you should:

- (a) Consider whether or not it would be prudent in the circumstances to make notes of the meeting and (if so) make such notes
- (b) Disclose any such contact if you make representations about a planning matter (either at or outside the Planning Committee meeting)
- (c) In the light of such contact, and of other relevant considerations (including, for members of the Planning Committees, the importance of remaining impartial as a decision maker), carefully exercise your judgment as to the best means to play your representative role as a ward member with regard to the planning matter in question
- (d) Avoid giving the impression that you, or anyone else, can exert any improper influence over the planning process
- (e) If the contact is to seek professional, technical or legal advice with regard to a planning matter, consider whether or not it is appropriate to refer the enquirer to the appropriate council officer or other appropriate independent person or organisation, and
- (f) Immediately report to the appropriate officer any improper contact, pressure or inducements to yourself or - if you become aware of them - to others involved in the planning process.
- (g) Ensure the requirements regarding the Register of Members Interests on Planning Applications are adhered to.

8. Whether or not you are a member of the Planning Committee, if you are approached as set out in paragraph 7 above, you shall - if requested by an officer or by another member - disclose details of the approach at any relevant meeting of the Planning Committee which you attend.

9. If you are approached about a planning matter and you are a member of the Planning Committee you should, in addition to the points at 7 and 8 above.

(a) Consider whether or not your impartiality as a decision maker might be compromised or seen to be compromised by such contact, and

(b) Avoid giving any commitment, or the impression of a commitment, to take any particular stance in relation to a forthcoming decision of the Planning Committee

10. In some circumstance you may consider that you would prefer to represent a view or support objections to an application, in which case, should stand aside from determination of any subsequent application and make it clear that it is your intention to do so.¹¹ If you are approached about a planning matter and you are Chair or Vice Chair of the Planning Committee you should:

(a) Recognise that your role as Chair / Vice Chair prevents you from responding to contact in the same way as other ward members, and

(b) Recognise and make clear that any contact will not influence your special responsibility for the fair and impartial handling and consideration of planning matters considered at Planning Committee

Members' Interests

12. If you have business or other interests bringing you into frequent contact with the planning system locally you should avoid membership of the Planning Committees. Such interests might include you acting as a planning agent or other consultant in respect of planning applications within the borough.

13 If you are a member of the Planning Committee and are contemplating making an application which could come before the Planning Committee, you should:

(a) notify the Director of Legal and Democratic Services

(b) if you are present at the meeting when that application is considered ensure that any disclosable pecuniary interest is registered or disclosed in accordance with the Ealing Code of Conduct for Members and only participate in relation to that item if permitted by the Code

(c) not take any part in the planning process relating to that application which could interpreted as improper lobbying of officers or other members.

14. If you think that you have a disclosable pecuniary interest in a matter (as set out in paragraphs 9 of the Ealing Code of Conduct for Members and the relevant regulations), you should take no part in the proceedings other than is permitted by paragraph 12 of the Ealing Code.

15. If you are a member of the Planning Committee and consistently feel unable to fulfil that role within the constraints of an approved planning policy you should consider carefully whether you should continue to serve on the Committee. This will not prevent you from serving on the Planning Committee if you disagree with a particular approved policy but are still able to recognise and uphold its legal significance in the planning process

16. You should not accept hospitality or gifts from any person who you know or suspect to be an applicant, agent, or interested party (including an objector) in a planning matter due to be considered by the Planning Committee. Where it is not practicable for you to refuse such hospitality or gifts then you should report the receipt of such gifts or hospitality to the appropriate senior officer of the Council, as provided for in Ealing Code of Conduct for Members. Any gifts you receive should be donated to an appropriate body under any arrangements approved by the Standards Committee or to one of the Mayor's charitable appeals

Site Visits

17. Where you know a site to be the subject of or affected by a planning matter or you know it is likely to become subject to or be affected by a planning matter, you should not enter that site for any purpose in connection with such matter except in the course of an official site visit

18. If you are a member of the Planning Committee and visit an application or enforcement site you should:

- (a) avoid giving any indication of your likely decision
- (b) be aware of the provisions of clauses 4-5 of this Code above, if any other person is present on that site visit, and
- (c) avoid entering into a dialogue with any third parties during the course of a site visit without an officer being present
- (d) observe the Council's Protocol for Site Visits during all site visits

19. You should only ask for a site visit where the expected benefit is substantial.

This means that a site visit is only likely to be necessary if:

- (i) the impact of the proposed development or enforcement action is difficult to visualise from the plans and any supporting material, including photographs taken by officers (although in that case, additional illustrative material should have been requested in advance); or
- (ii) there is good reason why the comments of the applicant and objectors cannot be expressed adequately in writing, or
- (iii) the proposal is particularly contentious

(b) Where decisions are deferred for the purposes of an official site visit, you should ensure that the detailed reasons for that decision are stated at the meeting at which this decision is taken, and minuted. Further considerations for members are set out in Appendix 1 – The Planning Committee Site Visits Protocol.

Contact with officers

20. Officers have a duty to give impartial advice to you and to the Council on planning applications and to make recommendations to the Planning Committee only on the basis of the Development Plan and other material considerations. You should not attempt to use your position as a member to improperly influence officers into making a particular recommendation or delaying applications or enforcement action.

21. You should not seek to delay the enforcement of planning control (including the bringing of prosecutions) because of lobbying from a person having an interest in the land the subject of such enforcement.

The Planning Committee Meeting

22. If you are a member of the Planning Committee you must not take part or vote on any planning matter if you have not been present throughout consideration of the matter at that meeting

23. If a planning application which would normally be decided under the delegated powers procedure relates to a site in your ward you may submit a written request to the Chair or nominated Vice Chair asking that this application be brought to Planning Committee for decision giving reasons for the request.

24 If the Chair or nominated Vice Chair agrees to your request, the committee agenda report will include a note of your request and reasons.

25. If you are a member of a Planning Committee you must ensure that, where a decision of a Planning Committee is contrary to the officer recommendation, a clear

statement of the reasons for that decision is given at the time the decision is taken, and minuted.

26. Whenever a matter is deferred for decision by a meeting of the Planning Committee, for example for the purpose of holding a site visit or for further information to be obtained, there will be no guarantee that the matter will return to a meeting of the Planning Committee with the same membership as the one which made the deferral

Training

27. If you are a member of a Planning Committee you must participate in a programme of training on the planning system organised for you by officers.

28. If you are a member of the Planning Committee and you fail to participate in the programme of training this may result in you being asked to stand down as a member of Planning Committee

29. You should be aware that : (a) Training is particularly important for members who are new to Planning Committee and for members who have not attended training in the recent past, and

(b) Where you have genuine difficulty in attending any particular training session, officers will try where practicable to accommodate a request for an individual or repeat session

Complaints about planning matters.

30. Members will be approached by their constituents with issues relating to way in which planning applications or related matters have been dealt with or regarding the decisions made.

31. Members should refer the matter to the Regeneration Complaints Team for consideration as a service request or as a formal complaint, depending on the issues raised.

32. In the interest of fairness and transparency for both land owner/applicant and local residents, Members should avoid prejudging the issue prior to the relevant service request or complaint being dealt with by officers.

33. Where a resident wishes to raise a formal complaint, in almost all circumstances it is appropriate for the complaint to be submitted by the resident and not by an individual Councillor.

Appendix 1 - PLANNING COMMITTEE SITE VISITS PROTOCOL

1. BACKGROUND:

This Protocol has been written having regard to the recommendation contained in the guide issued by the Local Government Association and the Planning Advisory Service in April 2013, 'Probity in Planning for Councillors and Officers'. The guide recommends that Councils should have a clear and consistent approach on when and why to hold a site visit and how to conduct it.

This Protocol should be read in conjunction with the existing Members' Codes of Conduct and in particular paragraph 17 of the Code of Conduct for Members in Relation to Planning Matters as follows

Site Visits

17. *Where you know a site to be the subject of or affected by a planning matter or you know it is likely to become subject to or be affected by a planning matter, you should not enter that site for any purpose in connection with such matter except in the course of an official site visit*
18. *If you are a member of the Planning Committee and visit an application or enforcement site you should:*
 - (a) *avoid giving any indication of your likely decision*
 - (b) *be aware of the provisions of clauses 4-5 of this Code above, if any other person is present on that site visit, and*
 - (c) *avoid entering into a dialogue with any third parties during the course of a site visit without an officer being present*
 - (d) *observe the Council's Protocol for Site Visits during all site visits*
19. *You should only ask for a site visit where the expected benefit is substantial. This means that a site visit is only likely to be necessary if:*
 - (i) *the impact of the proposed development or enforcement action is difficult to visualise from the plans and any supporting material, including photographs taken by officers (although in that case, additional illustrative material should have been requested in advance); or*
 - (ii) *is good reason why the comments of the applicant and objectors cannot be expressed adequately in writing, or*
 - (iii) *the proposal is particularly contentious “*

2. PURPOSE OF SITE VISITS

Probity in Planning confirms that the purpose of site visits is for Planning Committee members to observe site and surroundings and gain a better understanding of the issues. They are not to be used as a lobbying opportunity by objectors or supporters

3. ARRANGEMENTS FOR SITE VISITS

- A decision to hold a site visit will be made following discussion between Planning and the Chair or Vice Chair) having regard to paragraph 19 of the Code of Conduct set out above
- A list of site visits will be sent to all councillors by officers 5 working days prior to the Planning Committee meeting
- Officers will try to ensure (as far as possible) that the applicant is there to give access to the site

4. CONDUCT AT THE VISIT

Role of Chair

- Chair to take note of attendance and forward to Committee clerk for records purposes (Chair also advises attendance at the Committee meeting)
- At start of visit, Chair should introduce himself/herself and the Committee members to the applicant/agent and any members of public
- The Chair will also advise that the purpose of the visit is for members to see site and surroundings and to gain a better understanding of the issues but that it is not an opportunity for lobbying and that there will be no discussion the merits of the proposal
- The lead officer/case officer will present facts of the proposal
- For some schemes, particularly major ones, it may be appropriate for a representative of the developer to be present at the site visit (usually the architect or planning consultant) to present the scheme, explain the development in an objective way and to answer factual questions the Planning Committee members may have. Where officers consider it appropriate for a site visit presentation to occur, the agreement of the Chair of Planning Committee will be sought beforehand.
- During the visit, during and after the presentation, the chair will allow public to ask questions in orderly manner, but not go into debate
- The Chair will advise objectors that there will be opportunity for an objector to speak at the Committee meeting (and if so, a representative of the applicant) and that the councillors will debate the proposal then and not on the site visit
- If going into a site, the Chair will ensure that there is applicant agreement for any residents/ members of public to enter (generally allowing one or two representatives)
- It is the Chair's decision whether to go into adjacent sites to view potential impact

5. Planning Committee Members

It is expected that Committee members will

- Stay together on arrival at a site and listen to the Chair & lead officer
- Not talk to residents at same time as chair or officers are speaking
- Not engage in separate dialogue with members of the public or applicant/agent
- Avoid giving any indication of their likely decision on the proposal
- Avoid entering into any dialogue with the objectors or applicant/agent without an officer being present

6. Ward Members

It is expected that ward members will

- Allow the site visit proceedings to flow uninterrupted
- Not talk to residents at same time as chair or officers speaking

6. Lead planning officer and any case officers in attendance

The role of lead officer is to ensure relevant facts are provided to the Committee members. This will normally be by way of a brief presentation by showing selected

plans to illustrate proposals, looking at the site and surroundings (often from outside), and going onto site to look at detail if necessary

Larger sites will normally have a pre-planned route, advised to Committee members at the start

Officers will provide clarifications to Committee and, if Chair agrees, to questions from members of public

7. Large schemes and/or large attendance

Site visits for large schemes or where a large attendance is anticipated officers will make any necessary additional arrangements in advance including the possible use of a hall or special area for the presentation with plans on display in advance, and for the Chair to set out expectations for the visit at the start.

Consultation

Name of consultee	Post held	Date sent to consultee	Date response received	Comments appear in paragraph:
Internal				
Gary Alderson	Executive Director of Place	26/11/20	4/12/20	No comments
Helen Harris Jackie Adams	Director, Legal Services Head of Legal (Property & Regulatory)	26/11/20	30/12/20	Minor comment on various aspects
Ross Brown	Director, Finance	26/11/20	7/12/12	No comment
Cllr Mick Sabiers	Cabinet Member for: Housing and Planning	8/12/20	Meeting on 11/12/20	5-9
Cllr Shital Manro	Chair, Planning Committee	8/12/20	Meeting on 11/12/20	5-9
Cllr Julian Bell	Leader	8/12/20	Meeting on 11/12/20	5-9
Cllr Steve Donnelly	V Chair Planning Com	8/12/20	Meeting on 11/12/20	5-9
External	None	8/12/20	Meeting on 11/12/20	5-9

Report History

Decision type:	Urgency item?
For information	No
Report no.:	David Scourfield, Chief Planning Officer