SECTION 16 - PROTOCOL FOR MEMBERS IN DEALING WITH PLANNING MATTERS

1. INTRODUCTION

1.1 One of the key purposes of the planning system is to manage development in the public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. It is important, therefore, that the Council should make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons. The process should leave no grounds for suggesting that a decision has been partial, biased or not well founded in any way.

1.2 Members role in the Planning process is to make decisions openly, impartially, with sound judgement and for justifiable planning reasons. When planning applications are reported to Committee, the report will contain an Officer recommendation as to whether planning permission should be granted or refused. Members are entitled to bring their own judgment to bear on planning applications and to make a decision contrary to Officer recommendation but it is important that such decisions are taken on sound planning grounds which will withstand scrutiny at a possible appeal (if planning permission is refused) or if the decision is referred to the Local Government Ombudsman.

1.3 Members should bear in mind their overriding duty is to the whole community, not just to the people in their Ward and, taking account of the need to make decisions impartially, they should not favour, or appear to favour any persons, business or locality irrespective of other considerations.

2. WHEN THE CODE APPLIES

2.1 This Protocol applies to all Member involvement in Planning functions (i.e. whether or not they are Members of the Planning Committee or hold any Executive responsibilities for Planning), including not only consideration and determination of applications for Planning Permission but also Planning enforcement action and the formulation and adoption of Planning policies.

3. RELATIONSHIP TO THE MEMBERS' CODE OF CONDUCT: GENERAL

3.1 The rules set out in the Members' Code of Conduct apply equally to Planning matters as it does to other Council functions. This Protocol clarifies and supplements the Members Code of Conduct for the purposes of planning.

3.2 A breach of this Protocol may, in some circumstances, constitute a breach of the Members' Code of Conduct. However, in various respects, this Protocol goes beyond the requirements set out in the Code. Although, in some instances, a breach of the Protocol will not constitute a breach of the Code of Conduct the process for dealing with complaints alleging a breach of the Code of Conduct will apply also to complaints alleging a breach of this Protocol. A complaint may be made to the Council's Monitoring Officer who, in consultation with Independent Person will determine whether or not there are reasonable grounds for believing that there has

been such a breach and, if so, whether the complaint warrants investigation and reference to the Council's Code of Conduct Panel.

4. DEVELOPMENT PROPOSALS AND MEMBERS' INTERESTS

4.1 If a Member has a Disclosable Pecuniary Interest or an Affected Interest, as defined by the Code of Conduct for Members, in a Planning matter, they should disclose the existence and nature of the interest in any discussions or meeting relating to the matter with officers or other Members.

4.2 All planning applications submitted by a Councillor (or their partner/spouse or close family member) shall be determined by the Planning Committee. All planning applications submitted by a Council Chief Officer and above (or their partner/spouse or close family member) shall be determined by the Planning Committee.

4.3 The Council's Code of Conduct for Members provides that a Member has an Affected Interest in a matter if:-

(a) a decision in relation to that matter might reasonably be regarded as affecting the financial position of an Affected Person to a greater extent than the majority of other residents in their Ward, or

(b) it is an application for a Licence, permission or consent made by an Affected Person or which (to the Member's knowledge) an Affected Person has made objections to the Council.

AND (in relation to both (a) and (b)) a member of the public who knows the relevant facts would reasonably think that the interest is so significant that it would be likely to prejudice the Member's judgement of the public interest.

The following are "Affected Persons":-

(a) the Member

(b) the Member's spouse/partner

(c) the Member's parents and grandparents and those of the Member's spouse/partner

(d) the Member's children and grandchildren and those of the Member's spouse/partner

(e) the Member's employer, business partner or any person whom the Member has undertaken work for in the previous two years, and

(f) an employee of the Member

(g) a company in which the total nominal value of the securities held by the Member and/or the Member's spouse or partner exceeds £25,000 or more than ten per cent of the issued share capital

(h) a person with whom the Member has a close association

4.4 Development on a particular site will frequently have a financial impact upon other properties. In determining whether or not a development would have a financial impact upon a property owned by an Affected Person Members should have regard to the following factors in particular:-

- the proximity of the property of the Affected Person to the development site
- the visual impact which the development would have on or from the Affected Person's property
- whether the development would generate significant additional traffic passing or very near to the Affected Person's property

If a Member has any doubt as to whether a development would have a financial impact upon an Affected Person's property they should consult the Borough Solicitor who, jointly with the Director of Resources, will make a determination.

4.5 Where a Member has a Disclosable Pecuniary Interest or an Affected Interest

4.4.1 They should not participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Council

4.4.2 They should not try to represent ward views; they should get another Ward Member to do so instead.

4.4.3 They should not get involved in the processing of the Application (other than as provided for by 4.4.5 below).

4.4.4 They should not seek or accept any preferential treatment, or place themselves in a position that could lead the public to think they are receiving preferential treatment, because of their position as a Councillor.

4.4.5 They should not make representations in connection with the matter except in writing to the Officer having conduct of the matter and/or to another Member appointed to the Planning Committee (or to the relevant Executive Member if the matter in issue is an Executive responsibility). All correspondence should expressly state that the Member has a Disclosable Pecuniary Interest/an Affected Interest and indicate the nature of the interest.

4.4.6 They should withdraw from a meeting of the Council, a Committee, a Sub-Committee, a Joint Committee, the Executive or an Executive Committee prior to the relevant matter being considered after first advising the Democratic Services Officer in attendance at the meeting that they are withdrawing from the meeting as they have a Disclosable Pecuniary Interest or an Affected Interest (as the case may be).

4.6 Members should not act as an Agent for anyone else in pursuing an application for planning consent, enforcement issue or other planning matter.

4.7 Members should inform the Monitoring Officer, in writing, of any application for a planning permission or consent which they intend to seek.

5. BIAS

5.1 Case law has established that if a Member participates in consideration of a matter in circumstances where a fair minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias, the decision taken will be unlawful and, if challenged in the courts, will be likely to be quashed.

5.2 The Council's Code of Conduct for Members and Standing Orders require a Member to withdraw from a meeting and to refrain from involvement in decision making where the Member has a Disclosable Pecuniary Interest or an Affected Interest. However, there may, exceptionally, be other interests which do not fall within the category of either Disclosable Pecuniary Interests or Affected Interests but which may give rise to a real possibility of bias. The test to be applied is that set out in paragraph 5.1 above. If a Member concludes that there is a real possibility of bias they should withdraw from a meeting when the matter is discussed and Members should refrain from any involvement in decision making. In case of doubt or difficultly Members should discuss the matter with the Monitoring Officer.

6. PRE-DETERMINATION

6.1 The law also provides that a decision will be unlawful and liable to be quashed if a Member who has pre-determined the issue makes or participates in the making of the decision. Pre-determination means approaching the matter with a closed mind. i.e. that in advance of the meeting the Member has decided which way they will vote/what decision they will make, regardless of the officer advice or what is said by other Members during debate.

6.2 Section 25 of the Localism Act has modified the case law on pre-determination by providing that a Member is not to be taken to have had a closed mind when making the decision **just because** they had previously done anything that directly or indirectly indicated what view they would take.

6.3 Section 25 does not abolish the rule against pre-determination but it does re-affirm a distinction between pre-disposition and pre-determination. A Member may arrive at a meeting pre-disposed to voting or making a decision in a particular way so long as they have not entirely closed their mind to any alternatives. Members are entitled to express to their constituents their view on a particular application in advance of the meeting so long as they do not bind themselves to vote at the meeting in a particular way.

6.4 The law provides that it is lawful for a Party Group Whip to be applied to a Planning matter. In reaching their view as to which way they will vote Members of the Group may have regard to the views of colleagues as expressed through the imposition of the Group Whip but should not abdicate their personal responsibility by considering that they have to blindly follow the Group Whip. The Council in the formulation of this Protocol has determined that Party Group Whips may only be applied in connection with the formulation and adoption of Planning policies, including the formulation and adoption of Development Plan Documents (Local Plans) and Supplementary Planning Documents. Accordingly, it would be a breach of this Protocol if a Group Whip were to be applied in relation to an application for planning permission or a decision on whether or not to take enforcement action.

7. DISCUSSIONS WITH CONSTITUENTS

It is important that Members should be able to receive the views of their constituents. Accordingly, Members may discuss Planning matters with any of their Ward constituents including those constituents who have made or intend to make an

application for Planning Permission. For the protection of Members it would be prudent for a Member having any such discussion to make a written note of the meeting. If a Member considers that it would be appropriate to have an officer present when they meet with a constituent they should contact the Head of Development Management to agree the arrangements. If a Member is requested to meet with a constituent to discuss a Planning matter they should make clear that no third party (such as a developer who is not a constituent or a planning agent) can be present. If the constituent advises that they wish a third party to be involved the Member should advise their constituent that they should use the Pre-Application process as set out in Section 9 below. If in the event a constituent does attend the meeting with a third party the meeting should not proceed further.

7.2 In any discussions with constituents (and as provided by Section 9 on Pre-Application discussions and Section10 on Presentations) Members may indicate their view in relation to the matter but should not commit themselves to voting or determining the matter in a particular way.

7.3 In any discussions concerning planning applications (whether with constituents or as provided by Section 9 below) Members should be careful not to convey the impression or to represent that they are doing anything other than expressing their personal views i.e. Members should be careful to avoid giving the impression that they have authority to speak on behalf of the Council.

7.4 Members should inform the Monitoring Officer if they feel that they have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), whether from a constituent or a third party.

8. DISCUSSIONS WITH NON-CONSTITUENTS

8.1 Members should not have discussions with persons (including developers and their planning agent or other representative) who are not constituents of the Ward which they represent save:-

(a) as provided by Section 9 below,

(b) with constituents of the Ward in which the Member resides,

(c) with other Members, or

(d) with officers

9. PRE-APPLICATION DISCUSSIONS

9.1 The National Planning Policy Framework recognises the value of and encourages Pre-Application discussions between Local Planning Authorities and developers. The NPPF notes that the more issues that can be resolved at pre-application stage, the greater the benefits, and exhorts Local Planning Authorities to encourage developers to take up any pre-application services offered. The appropriate involvement of Members in the Pre-Application process in accordance with the provisions set out below should enhance its value. As a general principle, Members should, where appropriate, seek to encourage promoters of development schemes to engage in the Pre-Application process.

9.2 Promoters of development schemes wishing to engage in Pre-Application discussions will be advised that:-

(a) if they wish to secure Member input into the Pre-Application discussions they can request that the Ward members attend a meeting with a Planning Officer present. The decision as to whether or not a Ward Member attends such a meeting rests with the Member.

(b) although (subject to the Environmental Information Regulations Act and any other relevant legislation) the Council will respect the confidentiality of information which the scheme promoter makes clear is disclosed in confidence, Members will have access to Council files on Pre-Application discussions.

9.3 The Planning section will include new requests for Pre-Application discussions on the weekly list of Planning applications circulated to Members.

9.4 If a Member wishes to express their views on a matter the subject of Pre-Application discussions they may set out those views in writing sent to the relevant Planning Officer who will place a copy of the communication from the Member on the Pre-Application file. Members should be aware that such comments may in due course become publically available.

9.5 Members should not disclose any confidential information or documents held on Pre-Application files other than to another Member or to an officer of the Council.

9.6 The Executive Member with responsibility for Planning, the Chairman and Vice Chairman of the Planning Committee may attend any meeting for Pre-Application discussions.

10. PUBLIC EXHIBITIONS AND PRESENTATIONS

10.1 Members may attend exhibitions of development proposals arranged by developers which the general public may attend. There is no need for an officer to be present or to inform the Planning section of a proposed attendance. However, the preceding provisions of this Protocol, notably those relating to Pre-determination and Members not conveying the impression that they have any authority from the Council, apply equally to attendance at exhibitions and presentations as they do to other occasions.

10.2 Members should not attend exhibitions arranged by developers on an occasion when the general public are not able to attend.

10.3 On occasions developers may in advance of an application being considered by the Planning Committee wish to give a presentation to Members to explain their development proposals and/or to provide an opportunity for Members to raise questions in connection with the proposals. The decision on whether to agree to a request for a presentation rests with the Chief Officer: Planning and Transport following consultation with the Executive Member with responsibility for Planning and the Chairman (or in his/her absence the Vice-Chairman of the Planning Committee). Any such presentation will be open to the public and public notice of the presentation shall be given.

10.4 The foregoing provisions shall not preclude Members from attending a closed meeting or presentation by a developer which the Member attends in a non-Planning capacity (for example, in the Council's capacity as a landowner).

11. OFFICERS

11.1 Members should not put pressure on Officers to put forward a particular recommendation. (This does not prevent Members from asking questions or submitting views to the Head of Development Management or the Chief Officer: Planning & Transportation, which may be incorporated into any Committee report).

11.2 Members should recognise and respect that Officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, Planning Officers views and opinions will be presented on the basis of their overriding obligation of professional independence, which may, on occasion, be at odds with the views, opinions or decisions of the Committee or its Members. Members should bear in mind that in assessing planning applications and formulating their recommendations officers will, in light of the statutory obligation placed upon the Council to determine applications in accordance with the statutory Development Plan unless other material consideration indicate otherwise, have particular regard to the Council's adopted planning policies.

12. DECISION MAKING

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

12.2 All reports on Planning applications will contain an officer recommendation. Members are **not** required to consider a motion in the terms of the officer recommendation before any other motion is considered. If prior to a meeting of the Planning Committee a Member forms the view that they are likely to move a Motion contrary to the Officer's recommendation (whether for approval or refusal) they should contact the Case Officer to discuss the Application as soon as reasonably practicable to discuss their reasons for departing from the Officer recommendation. If the Member remains of the view that they wish to move a Motion contrary to the Officer recommendation, they should formulate reasons for refusal or approval (as the case may be) and ensure that a copy is circulated to all Members of the Committee when the item is considered. If a Member decides during the course of debate at the Planning Committee that they wish to move a Motion contrary to the officer recommendation they will still need to formulate reasons for the decision which should be read to the Committee. Officers may assist Members in the formulation of wording for a Motion to be put to the Planning Committee and supporting reasons but should officers do so such assistance should not be understood as constituting support for either the Motion or reasons. The Chairman of the Planning Committee may at his/her discretion request officers to appraise the Committee of their views on the Motion and supporting reasons.

12.3 Members should not vote or take part in the meeting's discussion on a proposal unless they have been present to hear the entire debate, including the Officers' introduction to the matter.

12.4 If a Member proposes, seconds or supports a decision contrary to Officer recommendation, or the Development Plan, they should clearly identify and understand the planning reasons leading to this conclusion or decision. Those reasons must be given prior to the vote and be recorded. Members should be aware that they may have to justify the resulting decision by giving evidence in the event of any appeal or challenge.

13. SITE VISITS

13.1 This section relates to site visits arranged by Officers prior to a meeting of the Planning Committee or made pursuant to a resolution of the Committee; it does not relate to visits made by individual Members (usually Ward Members) to the location of a planning application to assist him/her in formulating his/her views on an application. Individual Members making such visits should not enter on to private land unless they are authorised to do so by the owner and should bear in mind that no discussions should be held save in accordance with the preceding provisions of this Protocol.

13.2 The site inspection should only be treated as an opportunity to seek information and to observe the site.

13.3 Through the Officers present at the site meeting, questions should be asked or clarification of matters which are relevant to the site inspection should be sought.

13.4 If at all possible, representations from the Applicant (or their Planning agent and/or other representative) or third parties should not be received.

13.5 Opinions or views to the Applicant (or their Planning agent and/or other representative) and/or Site Owner should not be expressed.

14. APPEALS

14.1 An applicant applying for planning permission whose application is refused by the Council has a statutory right of appeal. Rights of appeal are also afforded in respect of certain types of other refusals (e.g reserved matters consent, listed buildings consent). Such appeals may be determined by way of written representation, informal hearing or public inquiry. Once an appeal is made, the Council ceases to have jurisdiction in the matter and Members are able to make representations on the matter to the Inspector appointed to determine or hear the appeal. However, a Member with a Disclosable Pecuniary Interest or an Affected Interest in the matter should disclose that fact and the nature of the interest when making representations.

14.2 Although a Member when making representations in connection with an appeal may disclose to the Inspector that they are a Member of the Council care should be taken to avoid the impression that the Member is making representations on behalf of the Council or is authorised by the Council to make such representations.

14.3 On rare occasions, notably in some cases where Members have refused permission against Officer advice, it may be appropriate for a Member to give evidence on behalf of the Council.