



Chelmsford City Council

17 July 2024

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## Report from the Cabinet

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Report by: Leader of the Council

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### Officer contact:

Dan Sharma-Bird, 01245 606523, [dan.sharma-bird@chelmsford.gov.uk](mailto:dan.sharma-bird@chelmsford.gov.uk)

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### Purpose

To inform Council of the decision of the Cabinet on 9 July 2024.

### Recommendations:

That the recommendation of the Cabinet on Agenda Item 7.1 be approved.

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## 1. Proposed Changes to the Constitution

RESOLVED that the proposed changes be recommended to Council, with the below changes as agreed by Cabinet to the Terms of Reference for the Constitution Working Group;

- Remove the word 'any' in the first sentence of the Functions/Purpose and add "This does not prevent Council adopting changes to the constitution that have not been reviewed by the Constitutional working group."

Background papers:

None

Appendices:

Appendix 1 – Report to Cabinet on 9<sup>th</sup> July

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Corporate Implications

As set out in the original report to the Cabinet

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## Chelmsford City Council Cabinet

**9 July 2024**

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### Proposed Changes to the Constitution

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#### Report by:

Leader of the Council

#### Officer Contact:

Lorraine Browne, Legal & Democratic Services Manager and Monitoring Officer, 01245 606560, [lorraine.browne@chelmsford.gov.uk](mailto:lorraine.browne@chelmsford.gov.uk)

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#### Purpose

To consider proposed changes to the constitution in relating to working groups and planning related matters as set out in the report.

#### Options

1. Recommend the proposed changes to Council.
2. Do not recommend to Council that proposed changes are made.

#### Preferred option and reasons

The preferred option is Option 1.

#### Recommendations

It is recommended that:

1. Cabinet recommends to Council that the proposed changes set out in the report are made to the constitution.
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## 1. Background

- 1.1. The Council's Constitution is reviewed regularly and at least annually to ensure that it remains complete, up to date and reflects current practice and legislation. Reviews are normally initiated by officers although can be requested by members. Any recommendations are submitted in the first instance to the Constitutional Working Group. Its recommendations are then passed to the Governance Committee, the Cabinet (where appropriate) and finally Full Council.
- 1.2. The proposed changes to the constitution arising from the latest reviews concern working groups and planning related changes. The Constitutional Working Group and Governance Committee have been consulted upon these changes. Changes relating to working groups are set out briefly below and in detail within Appendices 1 & 2 and planning related changes in Appendices 3 & 4. Cabinet is asked to consider these in advance of July Council:
  - The removal of the Civic Centre Panel from the Constitution as it has not met for some time.
  - Clarifying the arrangements for appointing a Chair to the Community Funding Panel
  - The addition of the Constitutional Working Group. Draft terms of reference can be found at Appendix 2.
  - The adoption of the model planning code which has been produced by Lawyers in Local Government. This can be found at Appendix 3.
  - Appendix 4 sets out two minor amendments to the planning code to retain the City Council's current approach to unopposed planning applications from officers/members and a decision contrary to officer recommendation.
  - Appendix 4 sets out consequential amendments arising from the adoption of the planning code to clarify speaker time limits at committee and new material.
  - Finally Appendix 4 sets out a clarification in relation to the timeframe for member call in.
- 1.3. The Planning Committee was also consulted in relation to proposed changes to planning related changes.

## 2. Conclusion

- 2.1. Cabinet is asked to consider whether to recommend the amendments to the Constitution set out in Appendices 1-4 before consideration by Full Council.

List of appendices:

Appendix 1 – Proposed changes to constitution in relation to working groups

Appendix 2 - Terms of Reference for Constitution Working Group

Appendix 3 – LLG Model Planning Code

Appendix 4 – Two minor changes to the planning code and consequential amendments to the constitution arising from adoption of the code.

Background papers:

None

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Corporate Implications

Legal/Constitutional: These are set out in the report.

Financial: None

Potential impact on climate change and the environment: None

Personnel: None

Risk Management: None

Equality and Diversity: None

Health and Safety: None

Digital: None

Other: None

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Consultees:

Constitution Working Group. Planning Committee have also been consulted upon the planning related changes to the constitution.

Relevant Policies and Strategies:

LLG Model Planning Code (updated January 2024)

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Appendix 1 Cabinet (July 2024) Proposed changes to constitution – working groups

Agenda item	Current version	Proposed version (with changes highlighted)
<p>1. Working Groups</p> <p>A review of working groups has been undertaken. As a general approach it is recommended that standing working groups which operate in the long term and are still in operation are included in the constitution. It is not proposed to include other working groups that may arise from time to time.</p> <p>As a result of this review, it is proposed to add the Constitution working group to the constitution, remove the Civic Centre Panel and include arrangements for a chair of the Community Funding Panel to clarify cabinet member consultation in relation to delegations.</p>	<p>Constitution working group not currently included in constitution</p> <p>Civic centre panel TOR can be found at 3.2.4 under advisory panels for Cabinet</p> <p>Community Funding Panel</p>	<p>Suggest draft TOR attached at Appendix 2 are added after Mayoral working group at 3.2.4 as an advisory panel for Council functions</p> <p>Suggest that the Panel and TOR are deleted from the constitution</p> <p>Suggest add to the TOR that there will be a chair of the panel and that a Cabinet Member will be appointed by the Leader of the Council</p>

<b>Constitutional Working Group</b>			
<b>Membership: Seven Members including the Leader of the Council and Chair of Governance Committee</b>			
<b>Quorum</b>	<b>Other attendees</b>	<b>Politically Balanced</b>	<b>Frequency of meetings</b>
3	Monitoring Officer, Democratic Services officer	Yes (by convention see para 4.2.8A.1)	as necessary
<b>Functions/Purpose</b>		<b>Delegations</b>	
<p>The Constitutional working group will meet as necessary to review any proposed changes to the constitution where member consultation is required.</p> <p>The working group may also act as a consultative group for matters arising from the Governance Committee where it would be helpful for informal member consultation to take place prior to public consideration.</p> <p>This does not prevent Council adopting changes to the constitution that have not been reviewed by the Constitutional working group.</p>		<p><b>Minor changes – see 2.16.3 of constitution</b></p>	
<b>Procedures</b>	<b>Constitution</b>		
<b>Codes</b>	<b>Part 5.1 – Code of Conduct for Councillors</b>		

**Commented [LB1]:** Suggested deletion by Cabinet

**Commented [LB2]:** Suggested addition by Cabinet





## **The Members Planning Code of Good Practice**

### **Background**

The Members' Planning Code of Good Practice was originally prepared in response to a series of successful court challenges concerning local planning authorities and the members' conduct or conflicts of interests. It replaced what was a number of individual and sometimes haphazard approaches in individual councils at the time. The drafting of the Model Code was subject to consultation and comment from a number of local authorities through the machinery of LLG as well as with the Local Government Ombudsman and from firms of solicitors or counsel. LLG then worked with the Local Government Association to publish the Code as part of a suite of guidance.

The Model Planning Code and Protocol was first published in 2003, was refreshed in 2007. Following the Localism Act 2011's introduction of the new law on members' conduct, the clarification in the law on bias and predetermination in that Act and in the courts<sup>1</sup> and commentary from the Committee on Standards in Public Life in better defining the Nolan Principles, it was reviewed and updated in 2014.

In 2017, the UK Supreme Court stated that the Code and Protocol "*offers sound practical advice*"<sup>2</sup>.

The Model Council Planning Code and Protocol has thus now become a central plank of the guidance used by local authorities to give their members and others advice and to direct the business of the planning decisions to ensure fairness and legality. Many councils have incorporated it into their constitutional documents and a number have turned its provisions into standing orders to provide binding rules of procedure. The ability to do this was confirmed by the Court of Appeal in 2023<sup>3</sup>.

As we approach ten years since that last update, we have looked again at the Code and Protocol for use by local authorities. In doing this we would wish to thank Bevan Brittan and in particular Philip McCourt, together with Sharon Bridglalsingh, Director of Law and Governance at Milton Keynes City Council.

This refresh will help in having clarified some of the points concerning consistency and reasoning in decision making and underscores the potential impact of social media interactions upon proceedings.

The successful operation of the planning system relies on mutual trust and understanding of Member and officer roles. It also relies on the important legal principle that a decision-maker must not only ask themselves the right question, but to obtain the relevant information to enable them to answer it correctly and to be able and willing to understand it and then take it properly.

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<sup>1</sup> R (Island Farm Development Ltd) v. Bridgend County BC [2006] EWHC 2189 (Admin), [2007] LGR 60, approved R (Lewis) v. Redcar & Cleveland BC [2008] EWCA Civ 746, [2009] 1 WLR 83

<sup>2</sup> Para 62, Dover District Council (Appellant) v CPRE Kent (Respondent) [2017] UKSC 79

<sup>3</sup> The Spitalfields Historic Building Trust, R (On the Application Of) v London Borough of Tower Hamlets [2023] EWCA Civ 917



into account when making their decision. All of this requires Members and their officers ensuring that they act in a way which that is fair and impartial and is clearly seen to be so.

In reproducing the Model Council Planning Code and Protocol in 2023, we are seeking to endorse and ensure that those principles continue to be upheld.

**LLG**  
**January 2024**



## Introduction

**The aim of this code of good practice:** to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

One of the key purposes of the planning system is to regulate the development and use of land in the public interest. **Your role as a Member of the Planning Authority is** to make planning decisions openly, impartially, with sound judgement and for justifiable reasons. You are also a democratically accountable decision-taker who had been elected to provide and pursue policies. You are entitled to be predisposed to make planning decisions in accordance with your political views and policies **provided** that you have considered all material considerations and have given fair consideration to relevant points raised.

**When the Code of Good Practice applies:** this code applies to Members at all times when involving themselves in the planning process. (This includes when taking part in the decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

**If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or one of his or her staff, and preferably well before any meeting takes place.**

### 1. Relationship to the Members' Code of Conduct

- **Do** apply the rules in the Authority's Code of Conduct first, which must be always be complied with. This is both the rules on disclosable pecuniary interests (and other interests if included in your authority's code) and the general rules giving effect to the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- **Do** then apply the rules in this Members' Planning Code, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning and development control. If you do not abide by this Members' Planning Code, you may put:
  - the Council at risk of proceedings on the legality or maladministration of the related decision; and
  - yourself at risk of either being named in a report made to the Standards Committee or Council or, if the failure is also likely to be a breach of the Localism Act 2011, a complaint being made to the police to consider criminal proceedings.
- **Do** be aware that, like the Authority's Code of Conduct, this Planning Code is a reflection and summary of the law on decision making and not a direct replication of it. If in doubt, seek the advice of your monitoring officer or their staff advising at the meeting.



## 2. Development Proposals and Interests under the Members' Code

- **Do** disclose the existence and nature of your interest as required by your members Code of Conduct.
  
- **Do take into account when approaching a decision that** the Principle of integrity is defined, by the Committee on Standards in Public Life in 2013, in terms that “*Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships*”. It is therefore advisable that you:
  - **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a disclosable or other personal conflict of 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** note that you are not prevented from seeking to explain and justify a proposal in which you may have a conflict of interest to an appropriate officer, in person or in writing, but that the Members' Code of Conduct may place additional limitations on you in representing that proposal
  - **Do** notify the Monitoring Officer in writing where it is clear to you that you have a disclosable pecuniary interest or other personal conflict of interest and note that:
    - you should send the notification no later than submission of that application where you can;
    - the proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers;
    - you must not get involved in the processing of the application; and
    - it is advisable that you employ an agent to act on your behalf in respect of the proposal when dealing with officers and in public speaking at Committee.

## 3. Fettering Discretion in the Planning Process

(natural justice, predisposition and predetermination)

- **Don't** fetter your discretion and therefore your ability to participate in planning decision making at this Council by approaching the decision with a closed mind. Fettering your discretion in this way and taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of bias, pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- **Do** be aware that in your role as an elected Member you are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the law. Your prior observations, apparent favouring or objections in respect of a particular outcome will not on their own normally suffice to

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make a decision unlawful and have it quashed, but you must never come to make a decision with a closed mind.

- **Do** keep at the front of your mind that, when you come to make the decision, you
  - must keep an open mind and hear all of the evidence before you, both the officers' presentation of the facts and their advice and the arguments from all sides;
  - are not required to cast aside views on planning policy you held when seeking election or when otherwise acting as a Member, in giving fair consideration to points raised;
  - are only entitled to take account a material consideration and must disregard considerations irrelevant to the question and legal context at hand; and
  - are to come to a decision after giving what you feel is the right weight to those material considerations.
- **Do** be aware that you can be biased where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)
- **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the parish council, for example, or both a district/borough and county councillor), provided:
  - the proposal does not substantially effect the well being or financial standing of the consultee body;
  - you make it clear to the consultee body that:
    - your views are expressed on the limited information before you only;
    - you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Committee and you hear all of the relevant information; and
    - you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee.
- **Do** explain that you do not intend to speak and vote as a member of the Committee because you will be perceived as having judged (or you reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes. (*Use the disclosure form provided for disclosing interests.*)
- **Do** take the opportunity to exercise your separate speaking rights as a Ward/Local Member (*where this is granted by the authority's standing orders or by the consent from the Chair and Committee*) where you have represented your views or those of local electors and fettered your discretion, but do not have a disclosable or other personal conflict of interest. Where you do:
  - advise the proper officer or Chair that you wish to speak in this capacity before commencement of the item;
  - remove yourself from the seating area for members of the Committee for the duration



of that item; and

- ensure that your actions are recorded in accordance with the Authority's committee procedures.

#### 4. Contact with Applicants, Developers and Objectors

- **Do** refer those who approach you for planning, procedural or technical advice to officers.
- **Don't** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should seek to arrange that meeting yourself through a request to the [*relevant Development Control Manager*] to organise it. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.
- **Do** otherwise:
  - follow the rules on lobbying;
  - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
  - report to the [*relevant Development Control Manager*] any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file [a profoma has been supplied to you for this purpose].

#### In addition in respect of presentations by applicants/developers:

- **Don't** attend a planning presentation without requesting an officer to be present.
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the appropriate Committee of the planning authority.
- **Do** be aware that a presentation is a form of lobbying and, whilst you may express any view on the merits or otherwise of the proposal presented, you should never state how you or other Members would intend to vote at a committee.

#### 5. Lobbying of Councillors

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it may subsequently prejudice your impartiality, and therefore your ability to participate in the Committee's decision making, to express an intention to vote one way or

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another or such a firm point of view that it amounts to the same thing.

- **Do** remember that your overriding duty is to the whole community not just to the people in your [ward][division][particular interest or area] and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible, including its addition to your register of interests where relevant.
- **Do** copy or pass on any lobbying correspondence you receive to the [*relevant Development Control Manager*] at the earliest opportunity.
- **Do** promptly refer to the [*relevant Development Control Manager*] any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- **Do** note that, unless you have a disclosable or overriding other personal conflict of interest, you will not have fettered your discretion or breached this Planning Code through:
  - listening or receiving viewpoints from residents or other interested parties;
  - making comments to residents, interested parties, other Members or appropriate officers (making clear that you must keep an open mind);
  - seeking information through appropriate channels; or
  - being a vehicle for the expression of opinion of others in your role as a [Ward][Division] Member.

## 6. Lobbying by Councillors

- **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will be seen to have fettered your discretion on the grounds of bias.
- **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society, but you should normally disclose that interest on the grounds of transparency where the organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal
- **Don't** excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken
- **Do** be aware of the power of social media posts or re-posting and be careful to not to give



the impression that you will definitively vote in a certain way or act with a closed mind if you intend to participate in the decision making on behalf of the authority.

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

## 7. Site Visits/Inspections

- **Do** try to attend site visits organised by the Council where possible.
- **Don't** request a site visit unless you feel it is strictly necessary because:
  - particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
  - there are significant policy or precedent implications and specific site factors need to be carefully addressed.
- **Do** ensure that you report back to the Committee any information gained from the site visit that you feel would benefit all Members of the Committee
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **Don't** hear representations from any other party, with the exception of the [Ward][Division] Member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.
- **Don't** express opinions or views.
- **Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
  - you feel it is essential for you to visit the site other than through attending the official site visit,
  - you have first spoken to the [*relevant Development Control Manager*] about your intention to do so and why (which will be recorded on the file) and
  - you can ensure you will comply with these good practice rules on site visits.

## 8. Public Speaking at Meetings

- **Don't** allow members of the public to communicate with you during the Committee's proceedings (orally, in writing or by social media) other than through the scheme for public speaking or through the Chair, as this may give the appearance of bias.
- **Don't** participate in social media or exchanges by texting as a member of the committee during the committee's proceedings as this may give the impression of undue external influence and may give the appearance of bias.

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- **Do** ensure that you comply with the Council's procedures in respect of public speaking.

## 9. Officers

- **Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Development Control Manager, which may be incorporated into any committee report).
- **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with a Head of Service or those officers who are authorised by their Head of Service to deal with the proposal at a Member level.
- **Do** 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, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

## 10. Decision Making

- **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your planning reasons are recorded and repeated in the report to the Committee.
- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **Do** comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.
- **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter. (Where a matter is deferred and its consideration recommences at a subsequent meeting, only Members who were present at the previous meeting will be able to vote. If this renders the Committee inquorate then the item will have to be considered afresh and this would include public speaking rights being triggered again).
- **Do** have recorded the reasons for Committee's decision to defer any proposal [and that this is in accordance with the Council's protocol on deferrals].
- **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded (it will help to take advice from officers when and where necessary to do this and, if there are no indications allowing you to do this in advance of



the meeting, it may be helpful to request a short adjournment for these purposes). Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

## 11. Training


- **Don't** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.
- **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 referred to above and thus

assist you in carrying out your role properly and effectively.

- **Do** participate in the annual review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations.

**LLG**  
**January 2024**

## Acknowledgements

LLG would like to thank Philip McCourt, Legal Director at Bevan Brittan.  
Bevan Brittan 

LLG would like to thank Sharon Bridglalsingh, Director of Law and Governance at Milton Keynes City Council.

The Members Planning Code of Good Practice has been produced by LLG for the benefit of its membership. It may not be copied, transmitted, or otherwise distributed to anyone who is not a member of LLG without prior express written consent.

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Planning related proposed changes to constitution 2024 - Appendix 4

Item proposed for change	Current version	Proposed version (with additions highlighted in yellow and deletions in pink)
<p>1. Planning Code – consider whether to adopt the LLG model planning code which is recognised good practice and been subject to judicial approval. Recommended to adopt the code with two clarifications to maintain existing Council approach – these are set out in the proposed version</p>	<p>Council existing planning code can be found at 5.2 of published constitution</p> <p>1. Applications by members/officers</p> <p>3.4.7.21 ( e ) currently provides that planning proposals from councillors/officers are referred to planning committee where an “adverse representation or comment” is made (and not in all cases) :-</p> <p>proposals, except for applications for certificates of lawfulness, identified as being submitted by or on behalf of City Councillors or employees where an adverse representation or comment has been received, unless the Monitoring Officer has notified the Director of Sustainable Communities Services in writing that they are satisfied that the delegation may be exercised in the case concerned;</p>	<p>It is suggested that the Council adopts the LLG planning code but makes two clarifications so as to retain its existing approach.:-</p> <p>1. Applications by members/officers</p> <p>Add to Section 2 of the new code “the proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers where an adverse representation or comment has been made – as per officer delegations set out in 3.4.7.21( e ) of the council’s constitution”;</p>

	<p>2. Decisions contrary to officer recommendation</p> <p>contrary to officer recommendation are currently dealt with at 5.2.7. of the current planning code –</p> <p>DECISIONS CONTRARY TO OFFICER RECOMMENDATION</p> <p>5.2.7.1 If the Planning Committee wants to make a decision contrary to the officer’s recommendation the material planning reasons for doing so shall be clearly stated, agreed and minuted. The application should be deferred to the next meeting of the Committee for consideration of appropriate conditions and reasons and the implications of such a decision clearly explained in the report back.</p> <p>5.2.7.2 Only those Members of the Committee present at both meetings can vote on the reason for the decision. Exceptionally, the Committee may decide that circumstances prevent it from deferring the decision but its reasons must be clearly stated and recorded in the minutes. The Committee may be asked to nominate a ‘member witness’ at any subsequent appeal hearing in order to justify their decision.</p>	<p>2. Decisions contrary to the officer recommendation</p> <p>Propose to adopt the new code but clarify in final bullet at para 10 decision making (so as to retain the existing approach). Propose to delete the pink highlight and replace with the yellow highlight from model code. (note – para 10 already provides that a councillor must attend the original and deferred meeting to be able to vote)</p> <p>Do make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded (it will help to take advice from officers when and where necessary to do this and, if there are no indications allowing you to do this in advance of the meeting, it may be helpful to request a short adjournment for these purposes (where the planning committee is minded to make a decision contrary to officer recommendation the item will normally be deferred to the next meeting for consideration of appropriate conditions and reasons together with implications of such a decision clearly explained in the report back). Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.</p>
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<p>2. If adopt the model code then changes are proposed to retain and update speaker time limits. This is proposed to add a new rule in the cabinet and committee procedure rules at 4.2.25.5 to cover this. A clarification has also been added to demonstrate that speakers cannot add new material at the meeting.</p>	<p>Speaker time limits are currently dealt with in the planning code. 4.2.25 sets out rules that are specific to certain committees, including Planning Committee at 4.2.25.3 &amp; 4. It is proposed to add rules for speaker time limits at the new 4.2.25.5.</p>	<p>Planning Committee</p> <p><b>4.2.25.5</b>  <i>In addition to any requirement to give notice of any questions or comments the following time limits will apply to any speakers at the committee:-</i></p> <p><i>Ward councillor(s) or cabinet member(s) – 5 minutes</i>  <i>One lead Parish tier councillor speaking on behalf of a parish tier council – 5 minutes</i>  <i>Any other public speakers – 2 minutes</i></p> <p><i>Nothing in this rule entitles a speaker to submit new material or documents at this point in the planning process.</i></p>
<p>3. 3.4.7.21 (a) – review of member call in</p> <p>To clarify the timeframe within which ward members can call in an item to Planning Committee and how to manage</p>	<p>3.4.7.21 Referral to the Planning Committee of:</p> <p>a) proposals where a representation has been received before the end of the 21-day consultation period that is contrary to</p>	<p>It is proposed that 3.4.7.21(a) is replaced with :-</p> <p>3.4.7.21 Referral to the Planning Committee of:</p> <p>a) proposals where a representation has been received before the end of the <b>consultation expiry date</b> that is contrary to the recommendation</p>

an extension of time for representations (eg by Parish tier Council).

the recommendation of the appropriate officer and a City Councillor(s) for the ward or wards in which the proposal is intended to take place has requested that the case should be reported to Members for determination:

of the appropriate officer, and a City Councillor(s) for the ward or wards in which the proposal is intended to take place has notified officers on or before the consultation expiry date that they wish the case to be reported to Members for determination;

Appendix 1 Cabinet (July 2024) Proposed changes to constitution – working groups

Agenda item	Current version	Proposed version (with changes highlighted)
<p>1. Working Groups</p> <p>A review of working groups has been undertaken. As a general approach it is recommended that standing working groups which operate in the long term and are still in operation are included in the constitution. It is not proposed to include other working groups that may arise from time to time.</p> <p>As a result of this review, it is proposed to add the Constitution working group to the constitution, remove the Civic Centre Panel and include arrangements for a chair of the Community Funding Panel to clarify cabinet member consultation in relation to delegations.</p>	<p>Constitution working group not currently included in constitution</p> <p>Civic centre panel TOR can be found at 3.2.4 under advisory panels for Cabinet</p> <p>Community Funding Panel</p>	<p>Suggest draft TOR attached at Appendix 2 are added after Mayoral working group at 3.2.4 as an advisory panel for Council functions</p> <p>Suggest that the Panel and TOR are deleted from the constitution</p> <p>Suggest add to the TOR that there will be a chair of the panel and that a Cabinet Member will be appointed by the Leader of the Council</p>

<b>Constitutional Working Group</b>			
<b>Membership: Seven Members including the Leader of the Council and Chair of Governance Committee</b>			
<b>Quorum</b>	<b>Other attendees</b>	<b>Politically Balanced</b>	<b>Frequency of meetings</b>
<b>3</b>	<b>Monitoring Officer, Democratic Services officer</b>	<b>Yes (by convention see para 4.2.8A.1)</b>	<b>as necessary</b>
<b>Functions/Purpose</b>		<b>Delegations</b>	
<p>The Constitutional working group will meet as necessary to review any proposed changes to the constitution where member consultation is required.</p> <p>The working group may also act as a consultative group for matters arising from the Governance Committee where it would be helpful for informal member consultation to take place prior to public consideration.</p>		<b>Minor changes – see 2.16.3 of constitution</b>	
<b>Procedures</b>	<b>Constitution</b>		
<b>Codes</b>	<b>Part 5.1 – Code of Conduct for Councillors</b>		





## The Members Planning Code of Good Practice

### Background

The Members' Planning Code of Good Practice was originally prepared in response to a series of successful court challenges concerning local planning authorities and the members' conduct or conflicts of interests. It replaced what was a number of individual and sometimes haphazard approaches in individual councils at the time. The drafting of the Model Code was subject to consultation and comment from a number of local authorities through the machinery of LLG as well as with the Local Government Ombudsman and from firms of solicitors or counsel. LLG then worked with the Local Government Association to publish the Code as part of a suite of guidance.

The Model Planning Code and Protocol was first published in 2003, was refreshed in 2007. Following the Localism Act 2011's introduction of the new law on members' conduct, the clarification in the law on bias and predetermination in that Act and in the courts<sup>1</sup> and commentary from the Committee on Standards in Public Life in better defining the Nolan Principles, it was reviewed and updated in 2014.

In 2017, the UK Supreme Court stated that the Code and Protocol "*offers sound practical advice*"<sup>2</sup>.

The Model Council Planning Code and Protocol has thus now become a central plank of the guidance used by local authorities to give their members and others advice and to direct the business of the planning decisions to ensure fairness and legality. Many councils have incorporated it into their constitutional documents and a number have turned its provisions into standing orders to provide binding rules of procedure. The ability to do this was confirmed by the Court of Appeal in 2023<sup>3</sup>.

As we approach ten years since that last update, we have looked again at the Code and Protocol for use by local authorities. In doing this we would wish to thank Bevan Brittan and in particular Philip McCourt, together with Sharon Bridglalsingh, Director of Law and Governance at Milton Keynes City Council.

This refresh will help in having clarified some of the points concerning consistency and reasoning in decision making and underscores the potential impact of social media interactions upon proceedings.

The successful operation of the planning system relies on mutual trust and understanding of Member and officer roles. It also relies on the important legal principle that a decision-maker must not only ask themselves the right question, but to obtain the relevant information to enable them to answer it correctly and to be able and willing to understand it and then take it properly.

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<sup>1</sup> R (Island Farm Development Ltd) v. Bridgend County BC [2006] EWHC 2189 (Admin), [2007] LGR 60, approved R (Lewis) v. Redcar & Cleveland BC [2008] EWCA Civ 746, [2009] 1 WLR 83

<sup>2</sup> Para 62, Dover District Council (Appellant) v CPRE Kent (Respondent) [2017] UKSC 79

<sup>3</sup> The Spitalfields Historic Building Trust, R (On the Application Of) v London Borough of Tower Hamlets [2023] EWCA Civ 917



into account when making their decision. All of this requires Members and their officers ensuring that they act in a way which that is fair and impartial and is clearly seen to be so.

In reproducing the Model Council Planning Code and Protocol in 2023, we are seeking to endorse and ensure that those principles continue to be upheld.

**LLG**  
**January 2024**



## Introduction

**The aim of this code of good practice:** to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

One of the key purposes of the planning system is to regulate the development and use of land in the public interest. **Your role as a Member of the Planning Authority is** to make planning decisions openly, impartially, with sound judgement and for justifiable reasons. You are also a democratically accountable decision-taker who had been elected to provide and pursue policies. You are entitled to be predisposed to make planning decisions in accordance with your political views and policies **provided** that you have considered all material considerations and have given fair consideration to relevant points raised.

**When the Code of Good Practice applies:** this code applies to Members at all times when involving themselves in the planning process. (This includes when taking part in the decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

**If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or one of his or her staff, and preferably well before any meeting takes place.**

### 1. Relationship to the Members' Code of Conduct

- **Do** apply the rules in the Authority's Code of Conduct first, which must be always be complied with. This is both the rules on disclosable pecuniary interests (and other interests if included in your authority's code) and the general rules giving effect to the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- **Do** then apply the rules in this Members' Planning Code, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning and development control. If you do not abide by this Members' Planning Code, you may put:
  - the Council at risk of proceedings on the legality or maladministration of the related decision; and
  - yourself at risk of either being named in a report made to the Standards Committee or Council or, if the failure is also likely to be a breach of the Localism Act 2011, a complaint being made to the police to consider criminal proceedings.
- **Do** be aware that, like the Authority's Code of Conduct, this Planning Code is a reflection and summary of the law on decision making and not a direct replication of it. If in doubt, seek the advice of your monitoring officer or their staff advising at the meeting.



## 2. Development Proposals and Interests under the Members' Code

- **Do** disclose the existence and nature of your interest as required by your members Code of Conduct.
- **Do take into account when approaching a decision that** the Principle of integrity is defined, by the Committee on Standards in Public Life in 2013, in terms that “*Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships*”. It is therefore advisable that you:
  - **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a disclosable or other personal conflict of 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** note that you are not prevented from seeking to explain and justify a proposal in which you may have a conflict of interest to an appropriate officer, in person or in writing, but that the Members' Code of Conduct may place additional limitations on you in representing that proposal
  - **Do** notify the Monitoring Officer in writing where it is clear to you that you have a disclosable pecuniary interest or other personal conflict of interest and note that:
    - you should send the notification no later than submission of that application where you can;
    - the proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers;
    - you must not get involved in the processing of the application; and
    - it is advisable that you employ an agent to act on your behalf in respect of the proposal when dealing with officers and in public speaking at Committee.

## 3. Fettering Discretion in the Planning Process

(natural justice, predisposition and predetermination)

- **Don't** fetter your discretion and therefore your ability to participate in planning decision making at this Council by approaching the decision with a closed mind. Fettering your discretion in this way and taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of bias, pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- **Do** be aware that in your role as an elected Member you are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the law. Your prior observations, apparent favouring or objections in respect of a particular outcome will not on their own normally suffice to



make a decision unlawful and have it quashed, but you must never come to make a decision with a closed mind.

- **Do** keep at the front of your mind that, when you come to make the decision, you
  - must keep an open mind and hear all of the evidence before you, both the officers' presentation of the facts and their advice and the arguments from all sides;
  - are not required to cast aside views on planning policy you held when seeking election or when otherwise acting as a Member, in giving fair consideration to points raised;
  - are only entitled to take account a material consideration and must disregard considerations irrelevant to the question and legal context at hand; and
  - are to come to a decision after giving what you feel is the right weight to those material considerations.
- **Do** be aware that you can be biased where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)
- **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the parish council, for example, or both a district/borough and county councillor), provided:
  - the proposal does not substantially effect the well being or financial standing of the consultee body;
  - you make it clear to the consultee body that:
    - your views are expressed on the limited information before you only;
    - you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Committee and you hear all of the relevant information; and
    - you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee.
- **Do** explain that you do not intend to speak and vote as a member of the Committee because you will be perceived as having judged (or you reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes. (*Use the disclosure form provided for disclosing interests.*)
- **Do** take the opportunity to exercise your separate speaking rights as a Ward/Local Member (*where this is granted by the authority's standing orders or by the consent from the Chair and Committee*) where you have represented your views or those of local electors and fettered your discretion, but do not have a disclosable or other personal conflict of interest. Where you do:
  - advise the proper officer or Chair that you wish to speak in this capacity before commencement of the item;
  - remove yourself from the seating area for members of the Committee for the duration



of that item; and

- ensure that your actions are recorded in accordance with the Authority's committee procedures.

#### 4. Contact with Applicants, Developers and Objectors

- **Do** refer those who approach you for planning, procedural or technical advice to officers.
- **Don't** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should seek to arrange that meeting yourself through a request to the [*relevant Development Control Manager*] to organise it. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.
- **Do** otherwise:
  - follow the rules on lobbying;
  - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
  - report to the [*relevant Development Control Manager*] any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file [a profoma has been supplied to you for this purpose].

#### In addition in respect of presentations by applicants/developers:

- **Don't** attend a planning presentation without requesting an officer to be present.
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the appropriate Committee of the planning authority.
- **Do** be aware that a presentation is a form of lobbying and, whilst you may express any view on the merits or otherwise of the proposal presented, you should never state how you or other Members would intend to vote at a committee.

#### 5. Lobbying of Councillors

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it may subsequently prejudice your impartiality, and therefore your ability to participate in the Committee's decision making, to express an intention to vote one way or

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another or such a firm point of view that it amounts to the same thing.

- **Do** remember that your overriding duty is to the whole community not just to the people in your [ward][division][particular interest or area] and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible, including its addition to your register of interests where relevant.
- **Do** copy or pass on any lobbying correspondence you receive to the [*relevant Development Control Manager*] at the earliest opportunity.
- **Do** promptly refer to the [*relevant Development Control Manager*] any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- **Do** note that, unless you have a disclosable or overriding other personal conflict of interest, you will not have fettered your discretion or breached this Planning Code through:
  - listening or receiving viewpoints from residents or other interested parties;
  - making comments to residents, interested parties, other Members or appropriate officers (making clear that you must keep an open mind);
  - seeking information through appropriate channels; or
  - being a vehicle for the expression of opinion of others in your role as a [Ward][Division] Member.

## 6. Lobbying by Councillors

- **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will be seen to have fettered your discretion on the grounds of bias.
- **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society, but you should normally disclose that interest on the grounds of transparency where the organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal
- **Don't** excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken
- **Do** be aware of the power of social media posts or re-posting and be careful to not to give



the impression that you will definitively vote in a certain way or act with a closed mind if you intend to participate in the decision making on behalf of the authority.

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

## 7. Site Visits/Inspections

- **Do** try to attend site visits organised by the Council where possible.
- **Don't** request a site visit unless you feel it is strictly necessary because:
  - particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
  - there are significant policy or precedent implications and specific site factors need to be carefully addressed.
- **Do** ensure that you report back to the Committee any information gained from the site visit that you feel would benefit all Members of the Committee
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **Don't** hear representations from any other party, with the exception of the [Ward][Division] Member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.
- **Don't** express opinions or views.
- **Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
  - you feel it is essential for you to visit the site other than through attending the official site visit,
  - you have first spoken to the [*relevant Development Control Manager*] about your intention to do so and why (which will be recorded on the file) and
  - you can ensure you will comply with these good practice rules on site visits.

## 8. Public Speaking at Meetings

- **Don't** allow members of the public to communicate with you during the Committee's proceedings (orally, in writing or by social media) other than through the scheme for public speaking or through the Chair, as this may give the appearance of bias.
- **Don't** participate in social media or exchanges by texting as a member of the committee during the committee's proceedings as this may give the impression of undue external influence and may give the appearance of bias.

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- **Do** ensure that you comply with the Council's procedures in respect of public speaking.

## 9. Officers

- **Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Development Control Manager, which may be incorporated into any committee report).
- **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with a Head of Service or those officers who are authorised by their Head of Service to deal with the proposal at a Member level.
- **Do** 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, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

## 10. Decision Making

- **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your planning reasons are recorded and repeated in the report to the Committee.
- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **Do** comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.
- **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter. (Where a matter is deferred and its consideration recommences at a subsequent meeting, only Members who were present at the previous meeting will be able to vote. If this renders the Committee inquorate then the item will have to be considered afresh and this would include public speaking rights being triggered again).
- **Do** have recorded the reasons for Committee's decision to defer any proposal [and that this is in accordance with the Council's protocol on deferrals].
- **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded (it will help to take advice from officers when and where necessary to do this and, if there are no indications allowing you to do this in advance of



the meeting, it may be helpful to request a short adjournment for these purposes). Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

## 11. Training


- **Don't** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.
- **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 referred to above and thus

assist you in carrying out your role properly and effectively.

- **Do** participate in the annual review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations.

**LLG**  
**January 2024**

## Acknowledgements

LLG would like to thank Philip McCourt, Legal Director at Bevan Brittan.  
Bevan Brittan 

LLG would like to thank Sharon Bridglalsingh, Director of Law and Governance at Milton Keynes City Council.

The Members Planning Code of Good Practice has been produced by LLG for the benefit of its membership. It may not be copied, transmitted, or otherwise distributed to anyone who is not a member of LLG without prior express written consent.

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Planning related proposed changes to constitution 2024 - Appendix 4

Item proposed for change	Current version	Proposed version (with additions highlighted in yellow and deletions in pink)
<p>1. Planning Code – consider whether to adopt the LLG model planning code which is recognised good practice and been subject to judicial approval. Recommended to adopt the code with two clarifications to maintain existing Council approach – these are set out in the proposed version</p>	<p>Council existing planning code can be found at 5.2 of published constitution</p> <p>1. Applications by members/officers</p> <p>3.4.7.21 ( e ) currently provides that planning proposals from councillors/officers are referred to planning committee where an “adverse representation or comment” is made (and not in all cases) :-</p> <p>proposals, except for applications for certificates of lawfulness, identified as being submitted by or on behalf of City Councillors or employees where an adverse representation or comment has been received, unless the Monitoring Officer has notified the Director of Sustainable Communities Services in writing that they are satisfied that the delegation may be exercised in the case concerned;</p>	<p>It is suggested that the Council adopts the LLG planning code but makes two clarifications so as to retain its existing approach.:-</p> <p>1. Applications by members/officers</p> <p>Add to Section 2 of the new code “the proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers where an adverse representation or comment has been made – as per officer delegations set out in 3.4.7.21( e ) of the council’s constitution”;</p>

	<p>2. Decisions contrary to officer recommendation</p> <p>contrary to officer recommendation are currently dealt with at 5.2.7. of the current planning code –</p> <p>DECISIONS CONTRARY TO OFFICER RECOMMENDATION</p> <p>5.2.7.1 If the Planning Committee wants to make a decision contrary to the officer’s recommendation the material planning reasons for doing so shall be clearly stated, agreed and minuted. The application should be deferred to the next meeting of the Committee for consideration of appropriate conditions and reasons and the implications of such a decision clearly explained in the report back.</p> <p>5.2.7.2 Only those Members of the Committee present at both meetings can vote on the reason for the decision. Exceptionally, the Committee may decide that circumstances prevent it from deferring the decision but its reasons must be clearly stated and recorded in the minutes. The Committee may be asked to nominate a ‘member witness’ at any subsequent appeal hearing in order to justify their decision.</p>	<p>2. Decisions contrary to the officer recommendation</p> <p>Propose to adopt the new code but clarify in final bullet at para 10 decision making (so as to retain the existing approach). Propose to delete the pink highlight and replace with the yellow highlight from model code. (note – para 10 already provides that a councillor must attend the original and deferred meeting to be able to vote)</p> <p>Do make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded (it will help to take advice from officers when and where necessary to do this and, if there are no indications allowing you to do this in advance of the meeting, it may be helpful to request a short adjournment for these purposes (where the planning committee is minded to make a decision contrary to officer recommendation the item will normally be deferred to the next meeting for consideration of appropriate conditions and reasons together with implications of such a decision clearly explained in the report back). Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.</p>
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<p>2. If adopt the model code then changes are proposed to retain and update speaker time limits. This is proposed to add a new rule in the cabinet and committee procedure rules at 4.2.25.5 to cover this. A clarification has also been added to demonstrate that speakers cannot add new material at the meeting.</p>	<p>Speaker time limits are currently dealt with in the planning code. 4.2.25 sets out rules that are specific to certain committees, including Planning Committee at 4.2.25.3 &amp; 4. It is proposed to add rules for speaker time limits at the new 4.2.25.5.</p>	<p>Planning Committee</p> <p><b>4.2.25.5</b>  <i>In addition to any requirement to give notice of any questions or comments the following time limits will apply to any speakers at the committee:-</i></p> <p><i>Ward councillor(s) or cabinet member(s) – 5 minutes</i>  <i>One lead Parish tier councillor speaking on behalf of a parish tier council – 5 minutes</i>  <i>Any other public speakers – 2 minutes</i></p> <p><i>Nothing in this rule entitles a speaker to submit new material or documents at this point in the planning process.</i></p>
<p>3. 3.4.7.21 (a) – review of member call in</p> <p>To clarify the timeframe within which ward members can call in an item to Planning Committee and how to manage</p>	<p>3.4.7.21 Referral to the Planning Committee of:</p> <p>a) proposals where a representation has been received before the end of the 21-day consultation period that is contrary to</p>	<p>It is proposed that 3.4.7.21(a) is replaced with :-</p> <p>3.4.7.21 Referral to the Planning Committee of:</p> <p>a) proposals where a representation has been received before the end of the <b>consultation expiry date</b> that is contrary to the recommendation</p>

an extension of time for representations (eg by Parish tier Council).

the recommendation of the appropriate officer and a City Councillor(s) for the ward or wards in which the proposal is intended to take place has requested that the case should be reported to Members for determination:

of the appropriate officer, and a City Councillor(s) for the ward or wards in which the proposal is intended to take place has notified officers on or before the consultation expiry date that they wish the case to be reported to Members for determination;