

## CODE OF CONDUCT 2007

### Personal interests

8.—(1) You have a personal interest in any business of your authority where either—

(a) it relates to or is likely to affect—

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

(ii) any body—

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

(vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

(vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

(ix) any land in your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward, as the case may be, affected by the decision;

(2) In sub-paragraph (1)(b), a relevant person is—

(a) a member of your family or any person with whom you have a close association; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

### Disclosure of personal interests

9.—(1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the

meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

- (6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- (7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000(d).

#### **Prejudicial interest generally**

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

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

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

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

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

## STANDARDS COMMITTEE

**HELD: 13 FEBRUARY 2008**

Start: 4.30pm

Finish: 5.40pm

### PRESENT

Independent Members: J Cailes (Chairman)  
P Hanmer (Vice Chairman)  
P Hayman

Councillors Mrs Atherley  
Dereli

Parish Councillor D Kitson

Officers: Council Secretary & Solicitor  
Assistant Member Services Manager  
Legal and Member Services  
Assistant

### 23. APOLOGIES

Apologies for absence were received on behalf of Independent Members, R Chester and R Patterson, Councillors Grant and Nolan and Parish Councillor M Hammond.

### 24. URGENT BUSINESS, IF ANY, INTRODUCED BY THE CHAIRMAN

There were no items of urgent business.

### 25. DECLARATIONS OF INTEREST

There were no declarations of interest.

### 26. MINUTES

RESOLVED The minutes of the meeting of the Standards Committee held on 1 November 2007 were received as a correct record and signed by the Chairman.

### 27. CONSULTATION - LOCALLY BASED ETHICAL FRAMEWORK

The Committee considered the report of the Council Secretary and Solicitor, as contained on pages 117 to 162 of the Book of Reports, which advised of the consultation paper on Orders and Regulations relating to the Conduct of Local Authority Members in England.

RESOLVED A That the contents of the consultation paper at Appendix 1 to the report be noted.

B That the draft response at Appendix 2 to the report be sent to the Department of Communities and Local Government by Friday, 15 February 2008 subject to the following amendments:

Bullet Point 1 – The addition of the following:

“We would hope that sufficient time would be given for the Guidance from the Standards Board to be received and implemented. A more appropriate date might be the Council’s Annual Meeting in May when new committee members are appointed.”

Bullet Point 4 – Be amended to read:

“Resourcing issues are significant, particularly because of the number of Parish Councils in West Lancashire, and the requirement to incur advertisement costs etc should be minimised.”

Bullet Point 7 – Be amended to read:

“Cognisance of the fact that financial support is not being given by Central Government to Councils for the full cost of these functions should be taken.”

## **28. LOCAL ASSESSMENT - IMPLEMENTATION**

The Committee considered the report of the Council Secretary and Solicitor, as contained on pages 163 to 171 of the Book of Reports, which referred to the implementation of Local Assessment.

RESOLVED That the update and general approach be noted and endorsed.

## **29. LANCASHIRE STANDARDS CONFERENCE - 31 MARCH 2008**

RESOLVED That the arrangements for the Lancashire Standards Conference being held in the Woodlands Conference Centre, Chorley, on Monday 31 March 2008 at 10.00am, be noted and the possibility for transport be investigated.

## **30. CODE OF CONDUCT SEMINAR/WORKSHOP AND TRAINING PACK - FUTURE TRAINING REQUIREMENTS**

The Committee considered the success of the Seminar/Workshop event held at Edge Hill University on Thursday 29 November 2007 and discussed the training pack and future training requirements.

Members commented that the event and the training pack issued was very good and that attendance had been excellent.

RESOLVED That the comments raised be noted.

## **31. ANNUAL STANDARDS BOARD FOR ENGLAND (SBE) CONFERENCE 2008**

RESOLVED That any member interested in attending the Annual Standards Board for England Conference being held on 14 & 15 October 2008 in Birmingham, contact the Council Secretary and Solicitor.

**32. PLANNING CODE OF GOOD PRACTICE**

RESOLVED That it be noted that the Council Secretary and Solicitor was intending to bring a report on the Planning Code of Good Practice to the next meeting of the Committee.

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The Chairman





**AGENDA ITEM: 5**

**PLANNING COMMITTEE:  
17 APRIL 2008**

**STANDARDS COMMITTEE:  
22 APRIL 2008**

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**Report of: Council Secretary and Solicitor**

**Contact for further information: Mrs G L Rowe (Ext 5004) or Mr M Jones  
(Extn. 5025)**

**SUBJECT: PLANNING CODE OF GOOD PRACTICE**

The following wards are affected:- District Wide

**1.0 PURPOSE OF THE REPORT**

1.1 To amend the Council's Planning Code of Good Practice to make it consistent with the revised Members' Code of Conduct.

**2.0 RECOMMENDATIONS TO THE PLANNING COMMITTEE**

2.1 That the amended Planning Code of Good Practice be adopted with effect from 23<sup>rd</sup> April 2008 subject to any comments from the Standards Committee.

**3.0 RECOMMENDATIONS TO THE STANDARDS COMMITTEE**

3.1 That the Planning Code of Good Practice attached as **Appendix 2** be adopted with effect from 23<sup>rd</sup> April 2008.

**4.0 BACKGROUND**

4.1 Members of Planning Committee will recall that on the 24<sup>th</sup> May 2007 they considered a report of the Executive Manager Planning and Development Services in relation to the need to update the Planning Code of Good Practice in light of the revised Members' Code of Conduct. Planning Committee resolved that an amended Planning Code of Good Practice be brought back to Committee for its consideration.

- 4.2 The Planning Code of Good Practice forms part of the Council's Constitution and was issued as an insert to that document in 2003. The Code adopted by West Lancashire is derived from a model code drafted by the Association of Council Secretaries and Solicitors and launched on 14<sup>th</sup> February 2003, following consultation with local authorities, the Standards Board for England, the Local Government Ombudsman and the Audit Commission.
- 4.3 The Planning Code of Good Practice is a supplementary code to the Members' Code of Conduct and provides guidance on the special role played by Members who are involved in the quasi-judicial process of making decisions on planning applications at Planning Committee. The Code of Good Practice applies equally to those who are standing members of the Planning Committee and to those who only occasionally attend as substitutes on the Committee. The Code is also relevant to those Members who get involved in planning matters in their ward in a representative role, whether they are Members of Planning Committee or not.

The Code provides a series of helpful advice on things to do and the things to avoid doing in relation to the issues of :

- Development Proposals and Members' interests under the Members' Code of Conduct
- Pre-determination and bias
- Contact with Applicants, Developers and Objectors
- Lobbying of Members
- Committee site visits
- The role of officers

The key aim of the Code is to ensure through the planning process that there are no grounds for suggesting that a decision has been biased, partial or not well-founded in any way and that decisions are made having taken into account all relevant and material planning considerations.

## **5.0 EXPLANATION OF THE PROPOSED AMENDMENTS TO THE PLANNING CODE OF GOOD PRACTICE**

- 5.1 For ease of reference attached at **Appendix 1** is the current adopted version of the Planning Code of Good Practice with the proposed amendments shown using "tracked changes".
- 5.2 Attached at **Appendix 2** is the revised version of the Planning Code of Good Practice recommended for adoption.
- 5.3 One of the main changes brought about by the Revised Members' Code of Conduct is that members with a personal and prejudicial interest in a matter being discussed at a Council meeting may, before withdrawing from that meeting, make representations, answer questions or give evidence provided that the public are also allowed to attend the meeting for the same purpose.
- 5.4 In relation to Planning Committee, members will be aware that Committee have adopted a procedure for members of the public who wish to speak to Committee.



Members are aware that there is no general right for members of the public to address Committee. However, certain categories of persons may speak to Committee, upon giving the required notice, in relation to planning applications that affect them. Paragraph 3 of the public speaking provisions provides:

*“The people who can speak at meetings are (in this order):*

- *Anyone who has written objecting to the planning application and who has been consulted under the neighbour notification process by the Council, or his/her representative;*

**Note:** *Organisations that have been formally consulted on the application will not be invited to speak, as their views will be set out clearly in the Committee reports).*

- *The Clerk to a Parish Council, or his/her representative where the Clerk is unavailable, to express the view of the Parish Council;*
- *The applicant or his/her representative but only where it has been agreed that a third party objecting to the proposal may speak.....”*

5.5 Members will note therefore that the amended version of the Planning Code of Good Practice advises those members who have a personal and prejudicial interest in a planning application that they may, before leaving the Council Chamber, make representations, answer questions or give evidence if they fall within one of the categories of persons entitled to speak to Committee under the Committee’s public speaking provisions and have given the required notice.

5.6 Other changes have been made to make the Code clearer (for example in relation to the advice given with regard to the declaration of gifts and hospitality), to update it in line with organisational changes (for example references to the “Development Control Manager” have been changed to “Planning Control Manager”) to reflect the latest guidance from the Standards Board in relation to Predetermination and Bias and to note a legislative change.

## **6.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY**

6.1 Applying the amended Planning Code of Good Practice will help to continue to ensure that the wider public interest is served and the social/economic/environmental objectives of the Council’s planning policies are delivered.

## **7.0 FINANCIAL AND RESOURCE IMPLICATIONS**

7.1 There are no direct resource implications arising from this report. Any requirements for external training will require some revenue funding which may be possible from existing resources, subject to the scale of training envisaged.

## **Background Documents**

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

## **Equality Impact Assessment**

Compliance with the Planning Code of Good Practice helps to ensure that planning decisions are made without bias or favour and hence without any adverse impact on equality in relation to the Equality Target Groups.

## **Appendices**

1. Planning Code of Good Practice (showing proposed amendments using “tracked changes”)
2. Revised Planning Code of Good Practice (recommended for adoption by members)

Mjplan13march08

## APPENDIX 1

### PLANNING CODE OF GOOD PRACTICE

#### Background

This Code of Good Practice has been prepared in response to the Local Government Association's Guidance Note on the preparation of Local Codes of Good Practice on Planning Matters in the light of the introduction of the new ethical framework and in consultation with the District Audit Service, Local Government Ombudsman and the Standards Board for England. This Code has been further amended to reflect the Council's revised Members' Code of Conduct as adopted on 16<sup>th</sup> May 2007.

#### 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.

**The key purpose of Planning:** to control development in the public interest.

**Your role as a Member of the Planning Authority:** to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.

**When the Code of Good Practice applies:** this code applies to Members at all times when involving themselves in the planning process. (This includes, where applicable, when part of 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 her staff, and preferably well before any meeting takes place.**

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

**Do** apply the rules in the Members' Code of Conduct first, which must be always be complied with.

**Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not abide by this Code of Good Practice, 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 Code of Conduct, a complaint being made to the Standards Board for England.

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

- **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter.
- **Do** then act accordingly. **Where your interest is personal and prejudicial:-**
  - **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.
  - **Don't** try to represent ward views, get another Ward Member to do so instead.
  - **Don't** get involved in the processing of the application.
  - **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 personal and prejudicial interest in a proposal, using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.
  - **Do declare the fact that you have a personal and prejudicial interest in an application (and the nature of that interest) at the start of any relevant meeting where that application is discussed. If the application falls to be determined by Planning Committee you must leave the Council Chamber whilst that application is dealt with. However, you may, before leaving, make representations, answer questions or give evidence to the meeting if you fall within one of the categories of persons entitled to speak to Committee under the Committee's Public Speaking Provisions**
  - **Do consider carefully paragraphs 6(a) and 12(1)(c) of the Members' Code where you have a personal and prejudicial interest and fall within the Public Speaking Provisions. Paragraph 6(a) provides that a member must not use, or attempt to use, their position as a member improperly to confer on or secure for himself, or another person, an advantage or disadvantage. Paragraph 12(1)(c) provides that a member must not seek to improperly influence a decision in respect to business in which he has a personal and prejudicial interest**
  - **Do** notify the Monitoring Officer in writing of your own development proposals and note that:

- notification to the Monitoring Officer should be made no later than submission of the application;
- the proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers; and
- you may wish to consider employing an agent to act on your behalf on the proposal in dealing with officers and any public speaking at Committee.

### 3. **Fettering Discretion in the Planning Process (Predetermination and Bias).**

**Don't** fetter your discretion and therefore your ability to participate in planning decision making at this Council by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the planning authority and of your hearing the officer's presentation and evidence and arguments on both sides.

**Fettering your discretion** in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

**Do apply the following test: would a fair-minded and informed observer, having considered the facts, decide that there is a real possibility that you have predetermined the issue or are biased**

**Do** be aware that you are likely to have fettered your discretion 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.)

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**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:

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- 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; and

- (1) you disclose the personal interest regarding your membership or role when you address Committee and (2) consider whether that personal interest may also be a prejudicial interest

**Don't** speak and vote on a proposal where you have fettered your discretion. You do not also have to withdraw, but you may prefer to do so for the sake of appearances.

**Do** explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.

**Do** take the opportunity to exercise your separate speaking rights as a Ward/Local Member (*where this has been granted by the consent of the Chairman and Committee*) where you have represented your views or those of local electors and fettered your discretion, but do not have a personal and prejudicial interest. Where you do:

- advise the proper officer or Chairman that you wish to speak in this capacity before commencement of the item;
- remove yourself from the member seating area for the duration of that item; and
- ensure that your actions are recorded.

#### **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 never seek to arrange that meeting yourself but should request the Planning Control Manager or Executive Manager Planning and Development Services 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 Planning Control Manager or Executive Manager Planning and Development Services 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.

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

- **Don't** attend a planning presentation unless an officer is present and/or it has been organised by officers.
- **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 you must not express any strong view or state how you or other Members might vote.

## 5. Lobbying of Councillors

**Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and therefore your ability to participate in the Committee's decision making to express an intention to vote one way or 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 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, and remember to (1) declare a personal interest where the hospitality has an estimated value of at least £25 and (2) record the hospitality within the Register of Personal Interests **Do** copy or pass on any lobbying correspondence you receive to the Planning Control Manager or Executive Manager Planning and Development Services at the earliest opportunity.

**Do** promptly refer to the Planning Control Manager or Executive Manager Planning and Development Services 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 personal and prejudicial interest, you will not have fettered your discretion or breached this Planning Code of Good Practice through:

listening or receiving viewpoints from residents or other interested parties;

making comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;

seeking information through appropriate channels; or

being a vehicle for the expression of opinion or speaking at the meeting as a ward Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

## 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 have fettered your discretion and may be considered to have a personal and prejudicial interest and have to withdraw.

**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 disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that 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

**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

- **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 any information which you gained from the site visit is reported back to the Committee, so that all Members have the same information
- **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 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 to anyone.
- **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 Planning Control Manager or Executive Manager Planning and Development Services 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 or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- **Do** ensure that you comply with the Council's procedures in respect of public speaking.

## 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 Planning Control Manager or Executive Manager Planning and Development Services, which may be incorporated into any committee report).
- **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 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.

- **Do** have recorded the reasons for Committee's decision to defer any proposal.
- **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. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.



## APPENDIX 2

### PLANNING CODE OF GOOD PRACTICE

#### Background

This Code of Good Practice has been prepared in response to the Local Government Association's Guidance Note on the preparation of Local Codes of Good Practice on Planning Matters in the light of the introduction of the new ethical framework and in consultation with the District Audit Service, Local Government Ombudsman and the Standards Board for England. This Code has been further amended to reflect the Council's revised Members' Code of Conduct as adopted on 16<sup>th</sup> May 2007.

#### 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.

**The key purpose of Planning:** to control development in the public interest.

**Your role as a Member of the Planning Authority:** to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.

**When the Code of Good Practice applies:** this code applies to Members at all times when involving themselves in the planning process. (This includes, where applicable, when part of 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 her staff, and preferably well before any meeting takes place.**

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

**Do** apply the rules in the Members' Code of Conduct first, which must be always be complied with.

**Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not abide by this Code of Good Practice, 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 Code of Conduct, a complaint being made to the Standards Board for England.

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

- **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter.
- **Do** then act accordingly. **Where your interest is personal and prejudicial:-**
  - **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.
  - **Don't** try to represent ward views, get another Ward Member to do so instead.
  - **Don't** get involved in the processing of the application.
  - **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 personal and prejudicial interest in a proposal, using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.
  - **Do** declare the fact that you have a personal and prejudicial interest in an application (and the nature of that interest) at the start of any relevant meeting where that application is discussed. If the application falls to be determined by Planning Committee you must leave the Council Chamber whilst that application is dealt with. However, you may, before leaving, make representations, answer questions or give evidence to the meeting if you fall within one of the categories of persons entitled to speak to Committee under the Committee's Public Speaking Provisions
  - **Do** consider carefully paragraphs 6(a) and 12(1)(c) of the Members' Code where you have a personal and prejudicial interest and fall within the Public Speaking Provisions. Paragraph 6(a) provides that a member must not use, or attempt to use, their position as a member improperly to confer on or secure for himself, or another person, an advantage or disadvantage. Paragraph 12(1)(c) provides that a member must not seek to improperly influence a decision in respect to business in which he has a personal and prejudicial interest
  - **Do** notify the Monitoring Officer in writing of your own development proposals and note that:

- notification to the Monitoring Officer should be made no later than submission of the application;
- the proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers; and
- you may wish to consider employing an agent to act on your behalf on the proposal in dealing with officers and any public speaking at Committee.

### 3. **Fettering Discretion in the Planning Process (Predetermination and Bias).**

**Don't** fetter your discretion and therefore your ability to participate in planning decision making at this Council by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the planning authority and of your hearing the officer's presentation and evidence and arguments on both sides.

**Fettering your discretion** in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

**Do** apply the following test: would a fair-minded and informed observer, having considered the facts, decide that there is a real possibility that you have predetermined the issue or are biased

**Do** be aware that you are likely to have fettered your discretion 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:

- 
- 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; and

- (1) you disclose the personal interest regarding your membership or role when you address Committee and (2) consider whether that personal interest may also be a prejudicial interest

**Don't** speak and vote on a proposal where you have fettered your discretion. You do not also have to withdraw, but you may prefer to do so for the sake of appearances.

**Do** explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.

**Do** take the opportunity to exercise your separate speaking rights as a Ward/Local Member (*where this has been granted by the consent of the Chairman and Committee*) where you have represented your views or those of local electors and fettered your discretion, but do not have a personal and prejudicial interest. Where you do:

- advise the proper officer or Chairman that you wish to speak in this capacity before commencement of the item;
- remove yourself from the member seating area for the duration of that item; and
- ensure that your actions are recorded.

#### **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 never seek to arrange that meeting yourself but should request the Planning Control Manager or Executive Manager Planning and Development Services 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 Planning Control Manager or Executive Manager Planning and Development Services 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.

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



- **Don't** attend a planning presentation unless an officer is present and/or it has been organised by officers.
- **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 you must not express any strong view or state how you or other Members might vote.

## 5. Lobbying of Councillors

**Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and therefore your ability to participate in the Committee's decision making to express an intention to vote one way or 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 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, and remember to (1) declare a personal interest where the hospitality has an estimated value of at least £25 and (2) record the hospitality within the Register of Personal Interests

**Do** copy or pass on any lobbying correspondence you receive to the Planning Control Manager or Executive Manager Planning and Development Services at the earliest opportunity.

**Do** promptly refer to the Planning Control Manager or Executive Manager Planning and Development Services 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 personal and prejudicial interest, you will not have fettered your discretion or breached this Planning Code of Good Practice through:

listening or receiving viewpoints from residents or other interested parties;

making comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;

seeking information through appropriate channels; or

being a vehicle for the expression of opinion or speaking at the meeting as a ward Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

## 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 have fettered your discretion and may be considered to have a personal and prejudicial interest and have to withdraw.

**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 disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that 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

**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

- **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 any information which you gained from the site visit is reported back to the Committee, so that all Members have the same information
- **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 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 to anyone.
- **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 Planning Control Manager or Executive Manager Planning and Development Services 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 or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- **Do** ensure that you comply with the Council's procedures in respect of public speaking.

## 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 Planning Control Manager or Executive Manager Planning and Development Services, which may be incorporated into any committee report).
- **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 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.

- **Do** have recorded the reasons for Committee's decision to defer any proposal.
- **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. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.



**From:** Rowe, Gill **AGENDA ITEM: 7**  
**Sent:** 07 April 2008 17:01  
**To:** Cabinet; Legal Services-Lawyers; OMB; Member Services; Councillor Dereli;  
Councillor Grant; Councillor Mrs Atherley; Councillor Nolan; David Kitson; Dr  
Peter Hayman; John Cailes; Mike Hammond; Roy Chester  
**Subject:** LOCAL ASSESSMENT - CURRENT POSITION - MINISTERIAL STATEMENT  
**'WRITTEN PARLIAMENTARY STATEMENT FOR BOTH HOUSES**

### **Local Government**

The Local Government and Public Involvement in Health Act 2007 provides for a reformed conduct regime for local authority members in which responsibility for standards of conduct and dealing with allegations of misconduct by members is largely devolved to each council's independently chaired standards committee. The Standards Board for England will have the role of a light touch regulator, providing guidance to councils and their standards committees, monitoring the handling of misconduct allegations, and itself dealing with the most serious misconduct cases.

We intend this reformed conduct regime should be in force this May, following the local government elections. From this point all allegations of misconduct by council members will in the first instance be considered by the council's standards committee, which may thereafter pass the most serious cases to the Standards Board.

Accordingly, we will shortly be making the necessary Order to commence the relevant provisions of the 2007 Act, and laying before Parliament regulations making provision about the procedures standards committees must follow when considering allegations of misconduct by members.

Earlier this year we consulted local authorities and stakeholders about the provisions for such regulations. I am today placing in the Library of the House a summary of the 571 responses that we received together with the Government's response to the issues which have been raised.

Having regard to the consultation responses, we intend the procedure regulations will in particular make provision to ensure that standards committee members avoid any conflicts of interest when considering allegations; that given the personal nature of allegations which might be unfounded, there will be no public access to standards committee meetings or papers when allegations are being initially assessed; and to increase the maximum sanction available to standards committee from 3 to 6 months suspension from office'

**The above statement indicates that 1st May remains the likely start date, I will keep you informed of developments**

**Kind Regards**  
**Gill**

**Gill Rowe**  
Council Secretary and Solicitor  
West Lancashire District Council

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**"Excellent" as rated by the Audit Commission.**





**Standards Committee Work Programme 2008/9**

	<b>Timescale</b>
1 Lessons to be learned from reported complaints/monitoring of compliance with the Code	As and when required
2 New/Revised Protocols	As and when required
3 Annual Monitoring of Training Report	Summer 2009
4 Code of Conduct Seminar for Officers, District and Parish Councillors (Press Release to be issued – Details on website)	Autumn 2008
5 Report on Annual Standards Board Conference (Para for 7 Days)	November 2008
6 Update on visits by individual Members to District and Parish Council Meetings (Press Release to be issued and put on website)	Autumn 2008
7 Update on Whistleblowing Code	Summer 2008
8 Hearings and Investigations	As and when required
9 Consideration of applications for dispensations	As and when required
10 Standards Committee annual meeting inviting Parish Clerks to discuss Code (Press Release to be issued)	Summer/Autumn 2008

11 Standards Committee – Annual Report	Summer 2008
12 Annual Meeting Standards Committee and the Chief Executive and Leaders of 2 Political Groups to discuss importance of ethical governance and Annual Report (Press Release to be issued and Para for 7 Days and on website explaining how much the Chief Executive and Leader support and encourage high ethical standards)	Autumn 2008
13 Consider involvement of the Standards Committee in the Officer Code and Political Restrictions	Autumn 2008
14 Consider use of the ethical governance toolkit	Summer 2008
15 Look at conducting Peoples Panel research in relation to opinions of conduct in West Lancashire	Summer 2008
16 Look at the potential involvement of the Standards Committee in complaints handling and review of Ombudsman decisions	Autumn 2008
17 Local Filter - implementation	Summer 2008

StdsctteeWP0809