

Wolverhampton City Council

OPEN DECISION ITEM

Standards Committee

Date 26 April 2010

Originating Service Group(s) **CUSTOMER & SHARED SERVICES**

Contact Officer(s) **FIONA DAVIS**

Telephone Number(s) **4932**

Title **PLANNING CODE OF CONDUCT FOR MEMBERS AND OFFICERS
AND REVIEW OF THE PUBLIC SPEAKING PROCEDURE**

RECOMMENDATION

(i) That the revised Planning Code of Conduct for Members and Officers be endorsed and referred to Council for approval.

(ii) That the revised Guide to Public Speaking at Planning Committee be endorsed and referred to Council for approval.

1. PURPOSE

- 1.1 To approve a revised Planning Code of Conduct for Members and Officers and revised Guide to Public Speaking at Planning Committee.

2. BACKGROUND

- 2.1 The Planning Committee considered the report attached at Appendix 1 on 30 March 2010 and approved the revised Code of Conduct and Guide for consideration and approval by the Standards Committee and Council. The revisions have taken note of information in recent Local Government Association (LGA) Guidance.

3. FINANCIAL IMPLICATIONS

- 3.1 Implications are outlined in the report attached at Appendix 1.

4. LEGAL IMPLICATIONS

- 4.1 Implications are outlined in the report attached at Appendix 1.

5. EQUAL OPPORTUNITIES IMPLICATIONS

- 5.1 Implications are outlined in the report attached at Appendix 1.

6. ENVIRONMENTAL IMPLICATIONS

- 6.1 There are no environmental implications in connection with this report.

Wolverhampton City Council

OPEN DECISION ITEM**Committee** **PLANNING COMMITTEE** **Date: 30th MARCH 2010**Originating Service Group(s) **REGENERATION & ENVIRONMENT**Contact Officer(s) **STEPHEN ALEXANDER / LOUISE BENNETT**Telephone Number(s) **5610 / 4921**Title/Subject Matter: **PLANNING CODE OF CONDUCT FOR MEMBERS AND OFFICERS, AND REVIEW OF THE PUBLIC SPEAKING PROCEDURE**

Recommendations

Committee are recommended to:

- (i) Endorse a revised Planning Code of Conduct for Members and Officers (Appendix 1) and refer this to the Standards Committee and Full Council for consideration and approval;
- (ii) Note the advice in the revised code of conduct on Members and officers own applications;
- (iii) Note the outcome of a review of the public speaking procedure including the issue of developer presentations (Appendix 2);
- (iv) Approve the proposed changes to the public speaking procedure as set out in paragraph 7.2;
- (v) Endorse the revised Guide to Public Speaking at Planning Committee (Appendix 3) and refer this to the Standards Committee and Full Council for consideration and approval;
- (vi) Agree to receive a further report on developer presentations to include a draft protocol.

PLANNING CODE OF CONDUCT FOR MEMBERS AND OFFICERS, AND REVIEW OF THE PUBLIC SPEAKING PROCEDURE

1.0 Purpose of Report

1.1 The purpose of this report is to:

- (i) Set out a revised Planning Code of Conduct for Members and officers (Appendix 1);
- (ii) Advise Members that the code will require the approval of both Standards Committee and Full Council if it is to be formally adopted;
- (iii) Draw attention to the advice in the revised code of conduct on Members and officers own applications. Propose that a letter will be sent to all Members annually reminding them of this advice.

1.2 The report also sets out the outcome of a review of the public speaking procedure including the issue of developer presentations. The purpose of this section of the report is to:

- (i) Advise Members of the outcome of a review of the public speaking procedure including the issue of developer presentations (Appendix 2);
- (ii) Seek endorsement of the proposed changes to the public speaking procedure as set out in paragraphs 7.2;
- (iii) Seek endorsement of the revised Guide to Public Speaking at Planning Committee (Appendix 3);
- (iv) Advise Members that they will receive a further report on developer presentations to include a draft protocol.

2.0 Background

2.1. A training session for Members was held on the 8 December 2009 on “Planning Committee Procedures and Fire Safety”. This reflected on information from the Local Government Association (LGA) document that provides revised guidance on good planning practice for councillors and officers dealing with planning matters.

2.2 Subsequently Members received a report to Planning Committee on the 2 February 2010 on “Probity in Planning”. Members agreed to note the LGA guidance and receive a further report to seek approval of a revised code of conduct for Members and officers and the outcome of a review of the public speaking procedure including the issue of developer presentations.

2.3 The planning system works best when the roles and responsibilities of the many players essential to its effective operation are clearly understood. It is vital that elected Members and officers understand their roles and the context and constraints in which they operate.

2.4 Planning decisions involve balancing:

- (i) The needs and interests of individual constituents and the community, with;
- (ii) The need to maintain an ethic of impartial decision-making on what can be highly controversial proposals.

- 2.5 The challenge of achieving the balance between these dual roles led the LGA to issue its original Probity in Planning Guidance note in 1997. However, since then a comprehensive ethical framework for local government has been introduced following the Local Government Act 2000. A revised national code of conduct for councillors was introduced in 2007. The 2009 update provides refreshed advice on achieving this balance in the light of such changes.
- 2.6 In the light of this revised guidance the Council's existing planning code of conduct has been reviewed and a draft amended Code of Conduct for Members and Officers is attached (Appendix 1). This has taken account of the LGA document. It will require the approval of both Standards Committee and Full Council if it is to be formally adopted.
- 3.0 **Revised Planning Code of Conduct for Members and Officers**
- 3.1 Planning decisions are not based on an exact science. Rather, they rely on informed judgement within a firm policy context. Decisions can be highly controversial as they affect the daily lives of everyone. This is heightened by the openness of the system (it actually invites public opinion before taking decisions) and the legal nature of the development plan and decision notices. It is important, therefore, that the process is characterised by open and transparent decision-making.
- 3.2 Amongst other matters the revised guidance advises on registration and declaration of interests, pre-application discussions, attendance at public meetings, and how to avoid predetermination or bias in decision making. It also deals with development proposals submitted by councillors and officers, lobbying of and by councillors and Committee site visits.
- 3.3 The revised Code of Conduct for Members and officers is attached and should receive careful consideration by all officers and Planning Committee Members.
- 4.0 **Member Applications**
- 4.1 There are occasions when a Member of the Council may wish to submit a planning application for determination by the local planning authority. In relation to Member applications our Constitution requires that the applications of all Members and certain officers (senior officers and those involved in the planning process) come to Committee.
- 4.2 The attached draft revised Code of Conduct advises that Members and officers should never act as agents for individuals (including a company, group or body) pursuing an application. If Members or officers submit their own development proposals to the Council they should take no part in its processing or the decision making. In addition the Council's monitoring officer should be informed by the Member of all such applications as soon as they are submitted.
- 4.3 The LGA document also recommends that we have a system to identify such applications. The standard national application form, however, which we cannot change, does not ask this question.
- 4.4 Consequently it is proposed that a letter will be sent to all Members annually, quoting the Constitution and Para 13.1 of the Planning Code of Conduct for Members and Officers, asking them to ensure that they identify themselves as a Councillor if they make a planning application.

5.0 **Review of the Public Speaking Procedure**

- 5.1 A review of the public speaking paperwork and procedure has been undertaken. A report setting out the findings of the review is attached at Appendix 2. These have been incorporated into a draft guide for Public speaking which is set out at Appendix 3.
- 5.2 The review found that generally the public speaking procedure works well. However there is a need to update and amend the guidance sent out to the public to make it more accurate, clear and helpful. Also the review suggests the following changes to the existing procedure.
- 5.3 Some speakers have stated that three minutes is not enough. This is also suggested by the fact that some speakers try to speak fast to cram as much in as they can. Many local planning authorities allow speakers to talk for four or five minutes. It is considered that, given the usually small number of speakers, the three minutes rule could be increased without making meetings too long. Therefore it is proposed that the speaking time should be increased to four minutes.
- 5.4 The second is the notification arrangements. In accordance with the current guidance we write to applicants/agents and neighbours informing them that they have three weeks in which to request to speak. This is done in the acknowledgement letter to agents and the neighbour notification letters. Applicants/agents and neighbours are then allowed to request to speak five working days prior to Planning Committee. Whilst many interested parties ask when an application is going to Committee they are not informed automatically in writing.
- 5.5 It is proposed that all agents/ applicants and objectors are informed when an application will be reported to Committee. This will have some cost implications and slightly increases the complexity of the application process. However it would represent an improvement to the service to our customers that is considered to be justified.
- 5.6 Also it is proposed that the guidance be revised regarding the 21 day limit for applicants and neighbours to notify the Council of their intention to speak and the second opportunity to notify us five days before Committee. It is proposed to replace these with a simpler rule that people may request to speak up until the application is determined. However people will need to be advised that they should let us know if possible within 21 days if they wish to speak. If they do not, the application may have already been determined. This is simpler and makes it clear that the applicant/agent and an objector have the opportunity to speak on an application. Also they will be informed in writing if and when an application is to be reported to Committee.
- 5.7 This may mean that a few more applications are reported to Planning Committee and in certain circumstances an applicant could be frustrated if their application is delayed because it has to go to Committee whereas previously it may have been dealt with by officers. However, the proposed change would make for a fairer, simpler system that is more in tune with the ethos of open decision making suggested by the Planning Code of Conduct for Members and officers. On balance, it is likely to be an improvement to the service to our customers.

6.0 **Developer Presentations**

- 6.1 Occasionally a developer may make a request to make a presentation to the Planning Committee prior to the application being considered by the Committee. In the past these requests have been rare and have related to significant major applications such as Summer Row and the redevelopment of New Cross. These presentations have been held without difficulty and have been useful for imparting information on complex schemes. However they may have the potential to raise concern about treating applicants differently or departing from public speaking time limits for developers at planning committee.

6.2 It is proposed that a protocol will be developed for publication that deals with developer presentations advising that the decision is not made at these meetings and they are just for information giving and not a lobbying exercise. It will also include advice for Members in respect to the management of such presentations and limitations in respect to avoiding any potential for pre-determination.

7.0 **Conclusion**

7.1 Members are requested to endorse the revised Planning Code of Conduct of Conduct for Members and Officers (appendix 1) and refer this to the Standards Committee and Full Council for consideration and approval.

7.2 Following the review of public speaking it is proposed to:

- (i) Increase the speaking time limit at Planning Committee from three to four minutes;
- (ii) Amend the procedure to allow people to request to speak, in certain circumstances, until the application is determined;
- (iii) Inform all agents/ applicants and objectors in writing when an application will be reported to committee.

7.3 Members are requested to agree the revised Guide to Public Speaking at the Planning Committee (Appendix 3). It is proposed that, if and when this is agreed, it will be professionally formatted through the Corporate communications team and made available on the Council's website and sent to people who request to speak.

7.4 It is proposed that a letter will be sent to all Members annually asking them to ensure that they identify themselves as a Councillor if they make a planning application.

7.5 It is proposed that a protocol will be developed for publication that deals with developer presentations and this will be subject to a further report to Planning Committee.

8.0 **Legal Implications**

8.1 Legal matters are dealt without throughout the report.

9.0 **Financial Implications**

9.1 It is proposed that all agents/ applicants and objectors are informed in writing when an application will be reported to Planning Committee. This will have minor cost implications which can be met through the existing development control budgets.

10.0 **Equal Opportunities and Environmental Implications**

10.1 This report has equality and environmental implications as it considers matters relating to the roles and responsibilities of Members and officers in the decision making process and how these are currently managed.

Appendix 1

WOLVERHAMPTON CITY COUNCIL

Planning Code of Conduct for Members and Officers

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1. INTRODUCTION

- 1.1 This Code has been written to advise all those concerned with planning matters of Wolverhampton City Council's standards in its operation of the town and country planning system within the City. The Code applies to all Members and Officers involved in operating the planning system.
- 1.2 Planning is not an exact science. Rather, it relies on informed judgement within a firm policy context. It is also highly contentious because its decisions affect the lives and the private interests of individuals, landowners, and developers. This is heightened by the openness of the system (it actively invites public opinion before taking decisions) and the legal nature of development plans and decisions notices. It is important, therefore that the process is open and transparent.
- 1.3 One of the key purposes of the planning system is to control development in the public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of land holdings and the quality of their settings. It is important, therefore that the Council should make planning decisions affecting these interests openly, impartially, with sound judgement, and for justifiable reasons. The process should leave no grounds for suggesting with any justification, that a decision has been partial, biased, or not well-founded.
- 1.4 Thus the successful operation of the planning system in Wolverhampton depends upon the Council always acting in a way which is clearly seen to be fair and impartial. This requires a shared understanding of the respective roles of Members and Officers and trust between these parties.
- 1.5 The aim of this Code of Conduct is to ensure that the Council operates an open and fair system. Failure to follow this Code of Conduct, without good reason, could be taken into account during investigations by the Standards Board for England or the Council's Standards Committee and/or the Local Government Ombudsman.
- 1.6 Members and Officers are requested to read this Code thoroughly and put it into practice consistently. It is intended to review the Code regularly so that it remains useful and relevant. If any points are unclear or need review, please contact the Chief Legal Officer or the Chief Regulatory Services Officer.

2. GENERAL PRINCIPLES

- 2.1 Members are reminded that they are required to comply with the statutory provisions on the disclosure of interests (personal and prejudicial) the Local Code of Conduct for Members, this Council's Constitution and its Limits to Delegation.
- 2.2 Officers involved in the processing and determination of planning matters must also act in accordance with the council's Constitution, Limits to Delegation and with the relevant sections of the Royal Town Planning Institute's Code of Professional Conduct and the Officers' Code of Conduct.
- 2.3 Whilst this Planning Code deals primarily with planning applications, its principles also apply to consideration of the Local Development Framework, Development Briefs, enforcement cases and all other planning matters. An

overriding principle is that when local authorities are dealing with planning matters they should only take into account material planning considerations and ignore irrelevant matters (Appendix “A”). This is considered further in paragraph 10 below.

- 2.4 This Local Code is supplemental to the provisions referred to above and provides further specific advice and guidance for Members and Officers involved in planning matters. A key principle is that Members should represent their constituents as a body and vote in the interests of the City as a whole. Members should take account of all views expressed, they should not be biased or appear to be partial towards any person, company, group or locality.

3. GENERAL ROLES OF MEMBERS AND OFFICERS

- 3.1 Members and Officers have different, but complementary roles. both serve the public but Members are responsible to the electorate, whilst Officers are responsible to the Council as a whole. A successful relationship between Members and Officers can only be based upon mutual trust and understanding of each other’s position. This relationship, and the trust which underpins it, must never be abused or compromised.

- 3.2 Members of the Planning Committee determine planning applications, enforcement issues and other planning matters. When Members come to make a decision on a planning matter they must:

- (i) Act fairly and openly;
- (ii) Approach each application with an open mind;
- (iii) Carefully weigh up all relevant issues;
- (iv) Determine each application on its own merits;
- (v) Avoid contacts with interested parties which might be taken to indicate that they were unduly influenced by one party or another;
- (vi) Ensure that there are clear and substantial reasons for their decisions, and that those reasons are clearly stated;
- (vii) Avoid expressing a fixed view on a case before it is heard by the Planning Committee;
- (viii) Declare any personal or prejudicial interests.

- 3.3 The Officers’ function is to advise and assist Members in matters of planning policy and in their determination of planning applications, enforcement issues and any other planning matters by:

- (i) Providing impartial and professional advice;
- (ii) Making sure that all the information necessary for the decision to be made is given;
- (iii) Providing a clear and accurate analysis of the issues;

- (iv) Setting planning applications, enforcement issues and other planning matters against the broader Development Plan policies and all other material considerations;
- (v) Giving a clear recommendation;
- (vi) Carrying out the decisions of Members in Committee.

4. **REGISTRATION AND DECLARATIONS OF INTEREST**

- 4.1 The Local Government Act 2000 and the national code place requirements on members on the registration and declaration of their interests, as well as the consequences for the member's participation in consideration of an issue, in the light of those interests. For full guidance on personal and prejudicial interests reference should be made to the Standard's Board *Code of Conduct guidance* 2007. In addition, advice may be sought from the Council's monitoring officer. The requirements must be followed scrupulously and councillors should review their situation regularly. However, ultimate responsibility for fulfilling the requirements rests individually with each councillor.
- 4.2 The provisions of the code are an attempt to separate out interests arising from the personal and private interests of the councillor and those arising from the councillor's wider public life. The emphasis is on a consideration of the status of the interest in each case by the councillor personally, and included in that judgement is a consideration of the perception of the public, acting reasonably and with knowledge of the facts.
- 4.3 A register of members' interests will be maintained by the Council's monitoring officer, which will be available for public inspection. A member must provide the monitoring officer with written details of relevant interests within 28 days of their election, or appointment to office. Any changes to those interests must similarly be notified within 28 days of the member becoming aware of such changes.
- 4.4 An interest can either be personal or prejudicial. The 2007 national code defines personal and prejudicial interests in any matter under discussion, and should be referred to for the appropriate detail. A useful test to determine whether a position or view could be considered to be biased is to think about whether a fair minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias. Predetermination goes beyond predisposition and essentially evades the process of weighing and balancing relevant factors and taking into account other viewpoints.
- 4.5 A prejudicial interest would require withdrawal of the councillor from the committee. However, an exception has been included in the 2007 code. Where a councillor has a prejudicial interest in any business of the authority, they may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose. Paragraph 5.3 of this guidance advises on this when a councillor is submitting a planning application to their authority.

- 4.6 If a councillor with a prejudicial interest speaks at a committee, they should withdraw from the meeting after they have spoken. This is to ensure that members of the committee do not, by their presence, influence or seek to influence the remainder of the decision-making body.
- 4.7 The exceptions made to the definition of personal interests in the code, relating to membership of outside bodies, are attempts to clarify the nature of such interests and to encourage participation in such cases. It appears that too often in the past, members had been prevented from participation in discussions in such circumstances, on the basis that mere membership of another body constituted interest that required such a prohibition, even in cases where the member was only on that body as a representative of the authority. In addition, this clause was intended to allow councillors to exercise their representative function and make representations on behalf of their constituents, in cases where they have a personal and prejudicial interest.
- 4.8 A personal interest will not require withdrawal. Where a member considers they have a personal interest in a matter, they must always declare it, but it does not follow that the personal interest debars the member from participation in the discussion.
- 4.9 In addition to declaring any personal or prejudicial interests, members of Planning Committee need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application. The Standards Board has provided guidance on predetermination, predisposition and bias. Avoidance of bias or predetermination is a principle of natural justice which the decision maker is expected to embrace by the courts. But councillors will often form an initial impression or view.
- 4.10 A distinction is drawn by the courts between a planning councillor having clearly expressed an intention to vote in a particular way before a meeting (predetermination), and a predisposition to an initial view, but where the councillor is clear they are willing to listen to all the material considerations presented at the committee before deciding on how to exercise their vote on behalf of the community. In the latter case there is no predetermination. This distinction is helpfully explained by the Standards Board for England in an occasional paper.
- 4.11 If a planning committee councillor has been lobbied by friends or others and wishes to pre-determine their position to promote or oppose a planning application, they will need to consider whether this has become a personal interest or not. Whether or not it is a personal interest, they need to consider if their view is likely to be regarded as pre-determined and against the fair determination of the planning application. If they have predetermined their position, they should avoid being part of the decision making body for that application.
- 4.12 A ward councillor who is also a member of the planning committee wishing to campaign for or against a proposal could speak at a planning committee on behalf of their constituents, having declared their pre-determined position. The councillor can continue to represent those ward interests as a spokesperson for their local community, notwithstanding their normal planning committee membership. However they would have to declare their position and not take part in the vote to avoid accusations of bias.

- 4.13 Cabinets and executives have created an interesting situation for cabinet members, portfolio holders and leaders who are also members of the planning application or local development document planning decision body. Authorities will typically have a member responsible for development. If that member is on the authority's planning committee or other decision-making body for planning matters, there may be occasions when that member will wish to press for a particular development which the member regards as beneficial to the development of the area. Should that executive member be able to vote on any planning application relating to that development?
- 4.14 The appropriate action is not clear cut, and will depend on the circumstances of a particular case. However, the general advice is that a member in such circumstances may well be so committed to a particular development as the result of their cabinet/executive responsibility that they may not be able to demonstrate that they are able to take account of all material considerations before a final decision on a planning application is reached. The member may be seen as the chief advocate on behalf of the authority for the development in question. In that sense, the member almost represents the 'internal applicant'. In such circumstances, the appropriate approach is likely to be that the member is able to argue for the development but should not vote on the relevant applications.
- 4.15 Members who have substantial property interests or other interests which would prevent them from voting on a regular basis should avoid serving on the Planning Committee.
- 4.16 Gifts and hospitality give rise to particular problems in respect of the credibility of the planning process and the acceptance of gifts or hospitality by Members or Officers can be a very serious criminal offence. Members should have particular regard to the provisions of the Council's Local Code of Conduct for Members. In particular, they must immediately report to the Monitoring Officer any offer of gifts or hospitality and they should avoid any behaviour which might be taken as indicating that they are open to such offers. Officers should strictly comply with the Council's adopted Employee Code of Conduct.
- 4.17 Officers must seek permission from the appropriate senior officer for any private work or interest which they wish to take up as required by the Officers' Code of Conduct.

5. PRE-APPLICATION DISCUSSIONS

- 5.1 Discussions between a potential applicant and the Council prior to the submission of an application can be of considerable benefit to both parties. Discussions can take place for a variety of reasons, for example: to establish whether an application can be improved in design, to overcome planning objections, or to meet relevant neighbour concerns.
- 5.2 It should always be made clear at the outset that pre-application discussions will not bind the Council to making a particular decision and that any views expressed are provisional, until all relevant information is submitted and consultations on it have taken place.
- 5.3 Planning Officers will ensure that their advice is not partial, nor seen to be. This is because a consequent report could be seen as advocacy for a

particular point of view. A written attendance note should be made of pre-application discussions and important telephone conversations and placed on the relevant planning file.

- 5.4 To ensure professional advice and maintain impartiality it is highly desirable that Members do not take part in pre-application discussions other than in cases of minor development. If there are other occasions when Members are involved they must be accompanied and advised by professional officers of the Council including a senior officer. The involvement of Members in such discussions will be noted by Officers in a written attendance note which must be placed on the relevant planning file.
- 5.5 For the avoidance of doubt, Members are prohibited from negotiating with the applicant.

6. ATTENDANCE AT PUBLIC MEETINGS

- 6.1 Officers who are wholly or partly involved in the processing or determination of planning matters should not attend public meetings in connection with pre-application development proposals or submitted planning applications, unless their attendance has been agreed by the Chief Regulatory Services Officer. To do so could lead to allegations of prejudice or bias to a particular point of view.
- 6.2 When attending public meetings, Members must be accompanied by a senior officer and they should take great care to maintain their impartial role as a Councillor, listen to all the points of view expressed by the speakers and the public and not state a conclusive decision on any pre-application proposals and submitted planning applications.

7. LOBBYING AND PREDETERMINATION

- 7.1 It is likely Members will be approached by prospective and actual applicants (and agents) or members of the public with a view to them lending support to the proposal, or indeed opposing it. When Members are lobbied they need to exercise great care to maintain the Council's reputation and the Member's own integrity and the public perception of the planning process.
- 7.2 If they are approached, Members should use all reasonable endeavours to refer the person to another Member who is not a Member of the Planning Committee. If, however, the lobbying persists then Members should expressly state that whilst they can listen to what is said, they cannot give any commitment (for or against) in respect of the application/proposal for to do so without all relevant information, evidence and views would be unfair, prejudicial and may amount to maladministration.
- 7.3 Members must therefore avoid expressing an opinion in advance of the determination of an application which may be taken as an indication that they have made up their minds before hearing all the evidence, advice and arguments at the Committee meeting.
- 7.4 If a Member considers that an ordinary member of the public believes that s/he held a conclusive view in respect of an application or other planning matter before the relevant meeting then s/he should advise the Monitoring

officer in writing prior to the meeting, and not take part in the debate or vote on the issue.

- 7.5 If approached by a constituent a Member should refer the person making the approach to either the Development Control Duty Officer or the Development Control Case Officer.
- 7.6 Other than for formal site visits, Members should not enter premises or sites which are, or are likely to be, the subject of a planning application.
- 7.7 Members should not organise support, opposition or put undue pressure on other Councillors or Officers for a particular decision/recommendation.
- 7.8 A decision in respect of any planning matter or application can only be taken at the Planning Committee when all relevant information is to hand and has been carefully considered. Individual Members should reach their own conclusions at the meeting rather than be influenced by others. In this regard, any political group meetings prior to Committee meetings should not be used to decide how Members should vote.

8. THE PARTY WHIP

- 8.1 Members cannot accept an instruction from anyone to determine an application in a particular manner, but must determine the issue on its merits. Accordingly they must determine the application on its merits and should not take into account any factor which they are not prepared to state in open Committee. Therefore, it is inappropriate for any Party Group to instruct its Members to vote in a particular manner on an application or to apply or threaten to apply any sanction to any Member who votes contrary to the Group's collective views.
- 8.2 Where such a "Whip" has been applied, Members should declare it in exactly the same manner as they would declare any other attempt at lobbying.

9. PUBLIC PARTICIPATION

- 9.1 Applications for planning permission are determined either by Officers in accordance with the Council's Constitution and the Limits to Delegation, or by Members who form the Planning Committee. Each application is subject to a public consultation/notification exercise which includes local residents and other bodies being invited to comment in writing on the application before it is determined.
- 9.2 However the Council is committed to extending public involvement in the planning and development process by giving the following an opportunity to address in certain circumstances Members of the Planning Committee at the meeting before Members take their decision:-
 - (a) The applicant (or his agent) and supporters
 - (b) Objectors
 - (c) Ward Councillors or other appropriate elected representatives raising material planning issues on behalf of those they represent

10. REPORTS BY OFFICERS

10.1 Reports to the Planning Committee on applications and other planning matters must be clear and accurate and comprise:

- (i) A description of the site;
- (ii) Any relevant planning history;
- (iii) Any relevant policies of the Development Plan and other material considerations;
- (iv) An appraisal and conclusion which clearly justifies the written recommendation;
- (v) A written recommendation;
- (vi) Clear and unambiguous reasons for granting planning permission (with conditions to be attached) or refusal (with reasons).

10.2 The Chair, at the request of any Member of the Committee, shall adjourn the meeting for a reasonable period of time to enable the Members to have an opportunity of reading any information which has been tabled by the officers at the meeting.

10.3 As a general rule the Members of the Committee will not take into account any written information at the meeting which has not been submitted by the developer/applicant or any consultees (including local residents) as part of the application process. However in exceptional circumstances the chair, in consultation with the officers present, may exercise his/her discretion to consider new information if it is appropriate to do so.

10.4 The Head of Development Control and/or a Section Leader must be available at the Planning Committee to answer any questions or clarify any queries raised by Members.

11. THE DECISION MAKING PROCESS

11.1 In determining applications submitted pursuant to the Town and Country Planning Act 1990, and other planning or planning related legislation, the Council will follow the Guidelines adopted as part of this Planning Code. These adopted Guidelines will be subject to changes from time to time to reflect the latest government guidance and case law (see Appendix A).

11.2 Members should not take part or vote on any application or matter if they have not read the committee report and have not been present throughout the consideration of such application or matter unless the item has been deferred from a previous meeting after being partially considered.

11.3 In discussing and determining a planning application enforcement issue or other planning matter, Members should confine themselves to the planning merits of this case. The reasons for making a final decision should be clear, convincing and supported by materials considerations and the planning merits. The Planning Committee's decisions should be properly minuted.

- 11.4 From time to time Members of the Planning Committee will disagree with the professional advice given by the Chief Regulatory Services Officer or his representative. As indicated in paragraph 1.2 above planning is not an exact science and there can be genuine disagreement about the implications of a particular proposal. A senior legal officer will be present at Committee and will be able to advise if the facts simply cannot support the conclusion which the Members have drawn and the Committee is in danger of acting unreasonably.
- 11.5 If the Committee makes a decision contrary to the officers' recommendation a detailed minute of the Committee's reasons should be made and a copy placed on the application file.
- 11.6 Such reasons should be clear and convincing and based on sound planning grounds. The personal circumstances of an applicant will rarely provide such grounds.
- 11.7 Where Councillors wish to add or amend conditions or reasons for the refusal, the general content will be agreed at the meeting before the vote is taken and the final wording will generally be delegated to the Head of Development Control and/or a Section Leader.
- 11.8 If the report of the Planning Case Officer recommends approval of a departure from the Development Plan, the full justification for this recommended departure should be included in the report.

12. COMMITTEE SITE VISITS

12.1 A site visit is private and its purpose is for Members to gain knowledge of the development proposal and to observe the characteristics of the site and its relationship to its surroundings. A site visit may only be called by the Planning Committee itself:

- (i) Where the impact of a proposed development is difficult to visualise from the submitted plans and any additional supporting material;
- (ii) Where there is a good reason why the comments of the applicants and/or any objectors to, or supporters of, the proposals cannot be expressed adequately in writing;
- (iii) Where the proposal is particularly contentious.

All Members of the Planning Committee will be invited to the site visit.

12.2 Site visits are:-

- (i) Fact finding exercises;
- (ii) Not part of the formal consideration of the application and therefore public rights of attendance do not apply;
- (iii) To enable Officers to point out relevant features;

- (iv) To enable questions to be asked on site for clarification. However, discussion on the application will only take place at the subsequent Committee as all relevant parties may not be in attendance on site.
- 12.3 At the site visit Members shall be accompanied by the Head of Development Control and/or a Section Leader. Members may ask factual questions of the Officers. However, representations on the merits of the application will not be heard.
- 12.4 The site visit shall take place during normal working hours as far as is practicable unless there are reasons which dictate otherwise.
- 12.5 No decision is to be made at the site visit. It is essential that Member and Officers ensure that those attending, or making comments, are not led to believe that a decision has been taken on the visit, or that conclusive views have been reached.

13. DEVELOPMENT PROPOSALS OF MEMBERS, OFFICERS AND THE COUNCIL

- 13.1 Members and Officers should never act as agents for individuals (including a company, group or body) pursuing an application, enforcement issue or other planning matter. If Members or Officers submit their own development proposal to the Council they should take no part in its processing or the decision-making. The Council's Monitoring Officer should be informed by the Member of all such proposals as soon as they are submitted and shall ensure that such applications and/or matters are dealt with in a correct and open manner. Such applications will be dealt with by the Planning Committee and not by Officers under delegated powers.
- 13.2 Applications made on behalf of the Council for its own development must be determined in an identical manner to applications made by the general public and the same planning policy considerations applied. The Council's current practices and procedures achieve this with identical consultation and publicity in relation to the application. Decisions must be made strictly on planning merits and without regard to any financial or other gain which may accrue to the Council if the development is permitted. Applications for development by the Council are considered by the Planning Committee for decision or in accordance with the Council's Scheme of Delegation. This scheme gives clear guidelines on when applications will be determined under delegated powers. Provided these are met, there should be no grounds for allegations of unfairness.

14. PLANNING AGREEMENTS

- 14.1 Applications which propose or require planning obligations by agreement will be determined by the Planning Committee. The heads of agreement will be included in the Officers' written report, and a copy of the agreement, when made, will be publically available.

15. TRAINING

- 15.1 No Member should be appointed to the Planning Committee without having agreed to participate in educational training programmes directed towards the role of Members in making planning decisions.

15.2 The Council will, from time to time, consider and review the form of education and training that is most appropriate.

15.3 Initially, there will be a short training session by the Council's Solicitors and Planning Officers on the following topics:-

- The Role of the Government in Planning
- The Development Plan and Material Considerations
- Section 106 Planning Obligations/Planning Conditions
- Enforcement of Planning Control
- Certificates of Lawful Use
- Planning Procedures

15.4 This training will be open to all Members and brief handouts will be provided where appropriate. The Council welcomes suggestions from Members on any other subjects which they would like to see covered and any other training procedures that they would wish to adopt.

16. COMPLAINTS & RECORD KEEPING

16.1 In order that planning procedures are undertaken properly and that any complaints can be fully investigated, record keeping will be complete and accurate. Every planning application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings, significant telephone conversations and any declarations of interest by Members.

16.2 The same principles of good record keeping will be observed in relation to all enforcement and Development Plan matters. Monitoring of record keeping will be undertaken regularly by the appropriate managers.

APPENDIX “A”
(To Planning Code of Conduct)

COUNCIL GUIDELINES FOR DETERMINING PLANNING APPLICATIONS

1. **APPLICATIONS UNDER THE TOWN & COUNTRY PLANNING ACT 1990**
(TCPA)

(i) S70 of the Town and Country Planning Act 1990 provides that where a local planning authority is called upon to determine an application for planning permission it may grant the permission, either conditionally or unconditionally or subject to such conditions as they think fit or they may refuse the planning permission. However, this is not without further restriction, S70(2) of the Town and Country Planning Act 1990 requires that the authority shall have regard to the provisions of the development plan so far as material to the planning application and to any other material considerations. Further, Section 38(6) of the Planning and Compulsory Purchase Act 2004 that determinations of planning applications must be made in accordance with the development plan unless material considerations indicate otherwise. Officers will give guidance on what amounts to be a material consideration in individual cases but in general they are matters that relate to the use and development of the land.

(ii) The term “other material considerations” has a wide connotation as expressed by the following judicial comment:

“.....I find it impossible, however, to accept the view that such considerations are limited to matters relating to amenity..... it seems to me that any consideration which relates to the use and development of land is capable of being a planning consideration”.

(iii) Material considerations include national planning guidance in the form of Government Circulars, Planning Policy Statements, Wolverhampton’s non-statutory supplementary planning documents and case law. A ministerial statement may be a material consideration.

(iv) Examples of material consideration are:

- (a) Appearance and character of development;
- (b) Traffic generation, highway safety and parking;
- (c) Overshadowing, overlooking and loss of privacy;
- (d) Noise, disturbance or other loss of amenities;
- (e) Layout and density of buildings;
- (f) Relevant planning policies.

(v) Matters which are not material considerations include:

- (a) Boundary disputes, covenants or other property rights;
- (b) Personal remarks (eg the applicant’s motives);
- (c) Reduction in property values;
- (d) Loss of private view over the land.

- (vi) The personal circumstances of an applicant for planning permission are not generally a material consideration because they do not relate to the character or use of the land. However, in exceptional circumstances they may outweigh other material planning considerations. Where this is the case specific and valid reasons must be given to justify the exception.
- (vii) What constitutes a material consideration is a matter of law. The weight to be attached to the consideration is a matter of planning judgement for the decision-maker having regard to the planning evidence. In attaching weight to any offers of community benefit accompanying any planning application, Members must be mindful of the advice in Circular 05/2005 Planning Obligations (Section 106 Agreements) as to the legality and materiality of such offers.
- (viii) It is essential to consider thoroughly any advice given by a statutory consultee or relevant Government Department, including views expressed by English Heritage or the Environment Agency.
- (ix) The view of local residents are relevant when determining a planning application, but it must be recognised that such opposition cannot be a reason in itself for refusing or granting planning permission. Decisions must be founded on valid planning reasons, which are supported by substantial evidence.
- (x) Account should be taken of previous Council decisions, appeal decisions in relation to the site, or other related appeal decisions.
- (xi) It is not permissible to prevent, inhibit or delay development which could reasonably be permitted.
- (xii) Planning Conditions should only be imposed for a planning purpose and not for any ulterior one. They must fairly and reasonably relate to the development. Thus it is essential to avoid conditions which are unnecessary, unreasonable, unenforceable, imprecise or irrelevant.

2. **APPLICATIONS UNDER THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990 (PLBCA)**

- (i) It is now established that the determination of planning applications and applications for PLBCA are two separate statutory duties. The provisions of the TCPA do not override those of the PLBCA.
- (ii) The Unitary Development Plan contains policies that deal with development in Conservation Areas and applications for Listed Building Consent under the PLBCA to enable the local authority to consider the desirability of preserving the building or its setting or any feature of special historic interest or the Conservation Area.
- (iii) Members will also have regard to the replies of statutory consultees, e.g. English Heritage and amenity societies.
- (iv) Planning Policy Guidance Note 15 (Planning of the Historic Environment) will be relied upon.

- (v) Any other material consideration, e.g. appeals decisions and relevant case law will also be taken into account.

Appendix 2

Review of Public Speaking at Planning Committee

1.0 **Introduction**

1.1 This report sets out the outcome of a review of the procedure for public speaking at Planning Committee including the issue of “Developer Presentations”.

1.2 Text for a proposed revised guidance document for the public on “Public Speaking at the Planning Committee” is appended.

2.0 **Review process**

2.1 The review has taken into account the views of DC officers as well as Legal Services and Democratic Support officers. The review also takes into account responses to questionnaires which are given to all speakers at Planning Committee. The revised draft guidance will be amended as necessary to take account of Members’ comments.

3.0 **Findings**

3.1 Officers’ views are that generally the public speaking procedure works well. However there is a need to update and amend the guidance sent out to the public to make it more accurate, clear and helpful. One suggestion was that we need to inform applicants/agents and objectors when we know which Planning Committee an application is likely to be reported to.

3.2 The questionnaire given out to speakers asks for general comments and suggestions as well as in particular asking about:

- (i) Length of notice given of Committee date;
- (ii) Information about arrangements sent before the meeting;
- (iii) Arrangements for speaking at the Committee meeting;
- (iv) The sound/speaker system;
- (v) The length of time available to speak.

3.3 The responses were generally positive (especially bearing in mind that some of the authors may have just been disappointed if a decision did not go the way that they had hoped). The small number of responses (eight in a year) reflected the relatively low numbers of speakers at each Committee. However the survey was particularly useful in identifying two particular issues.

3.4 The first is that some speakers feel that three minutes is not enough. This is also suggested by the fact that some speakers try to speak fast to cram as much in as they can. Many local planning authorities allow speakers to talk for four or five minutes. It is considered that given the usually small number of speakers that the three minutes rule could be increased without making meetings too long. Therefore it is proposed that the speaking time should be increased to four minutes.

3.5 The second is the notification arrangements. In accordance with the current guidance we write to applicants/agents and neighbours informing them that they

have three weeks in which to request to speak. This is done in the acknowledgement letter to agents and the neighbour notification letters. Applicants/agents and neighbours are then allowed a “second chance” (if the application is going to Planning Committee for some other reason) to request to speak five working days prior to Committee. This corresponds with the publication of the Committee agenda. Whilst many interested parties ask when an application is going to Committee they are not informed automatically in writing.

- 3.6 It is proposed that all agents/ applicants and objectors are informed when an application will be reported to Committee. This will have some cost implications and slightly increases the complexity of the application process. However it would represent an improvement to the service to our customers that is considered to be justified.
- 3.7 Also it is proposed that the guidance be revised regarding the 21 day limit for applicants and neighbours to notify the Council of their intention to speak and the second opportunity to notify us five days before Committee. It is proposed to replace these with a simpler rule that people may request to speak at anytime up until the application is determined. However people will need to be advised that they should let us know if possible within 21 days if they wish to speak as if they do not the application may be determined. This is simpler and makes it clear that the applicant/agent and objector have the opportunity to speak on an application that affects them. Also they will be informed in writing if and when an application is to be reported to Committee.
- 3.8 The acknowledgement letter to agents and the neighbour notification letters will need to be amended accordingly. A new letter to inform applicants/agents and objectors when we know which Planning Committee an application is likely to be reported to will be prepared.

4.0 **Developer Presentations**

- 4.1 This review also considers the issue of "Developer Presentations" on significant schemes. We have had them before without difficulty but they have the potential to raise concern about treating applicants differently or departing from public speaking time limits for developers at Planning Committee. A protocol will be developed for publication that deals with “Developer Presentations” advising that the decision is not made at these meetings and they are just for information giving and not a lobbying exercise and also giving advice to Members in respect of the management of such presentations and limitations in respect to avoiding any potential for pre-determination.

5.0 **Conclusion**

- 5.1 Appendix 1 sets out proposed revised guidance for the public on “Public Speaking at the Planning Committee”. It is proposed that if and when this draft report is agreed it will form the basis of a document that will be professionally produced through the Council’s Corporate Communications Team and made available on the Council’s website.

6.0 **Recommendations**

- 6.1 Increase the speaking time limit at Planning Committee from three to four minutes.
- 6.2 Amend the procedure to allow people to request to speak, in certain circumstances, at anytime until the application is determined.

6.3 Inform all agents/ applicants and objectors when an application will be reported to committee.

Appendix 3

DRAFT GUIDE TO PUBLIC SPEAKING AT PLANNING COMMITTEE

1.0 Who is entitled to speak?

- 1.1 The opportunity to speak at meetings of the Planning Committee is available, in certain circumstances, to all people who submit written objections to development proposals and also to applicants, agents and supporters of those proposals.
- 1.2 One person may speak in favour of the application. This will normally be the applicant or their agent.
- 1.3 One person may speak objecting to an application. If there are a number of objectors who wish to speak, it is normal for them to agree amongst themselves a spokesperson to represent all objectors.
- 1.4 If a complex application has raised a diversity of views amongst objectors (or supporters) and they have been unable to agree to a spokesperson, the Chair may allow more than one person to speak.
- 1.5 Any speaker will be allowed to address Committee only once on any particular application, when that application is first considered by Committee. If an application is deferred, only written representations are permitted subsequently, which officers will draw to the attention of the Committee when it determines the application.

2.0 Do I have to speak?

- 2.1 No. The decision whether or not to do so is yours. If you have submitted a letter commenting on the planning application, it will be reported to the Planning Committee in the usual way and will be given appropriate consideration. You may therefore be content for the Members of the Committee to determine an application on the basis of your written representations. The Officers' recommendation may be in line with your views and you may feel there is little point in adding to it. However, Officers' recommendations are not always followed by the Committee.

3.0 How do I make a request to speak?

- 3.1 Anyone may have the opportunity to speak (in the circumstances set out in section 1) providing their written request has been seen by the relevant authorised planning officer prior to the application being determined by that officer. Please note most applications are determined by a senior planning officer having considered all representations.
- 3.2 If you wish to speak please submit your request as soon as possible. We should receive your request within 21 days of you receiving your notification of the application. If you do not request to speak within 21 days please note that the application may have already been determined by Officers.
- 3.3 Those who request to speak at the Planning Committee meeting will be notified of the date, time and place of the meeting and the procedure to be followed.
- 3.4 If an application is to be reported to Planning Committee all requests to speak should be lodged by 12 noon on the Monday before the meeting of the Planning

Committee, at the latest. We will try and accommodate late requests if we can but it is sensible to submit the request in good time.

- 3.5 A copy of the relevant Committee report will be available on the Council's web site (<http://decisionmaking.wolverhampton.gov.uk/CMISWebPublic/>) five working days before the day of the Committee. Sight of these reports will assist you in preparing your presentation.

4.0 What do I do when I arrive before the meeting?

- 4.1 Before the Planning Committee meeting starts, the Democratic Support Officer will be on hand to help. The officer will explain where to sit and the location of the timer clock. This is used to ensure that a speaker has a maximum of four minutes. You do not have to speak for the full four minutes if you do not want to. The officer will also explain where Members and Officers of the Committee sit during the meeting.

5.0 What is the procedure during the meeting?

- 5.1 In due course the Chair will introduce the relevant planning application by reading out the site address and the description of the proposal at the top of the report. Officers will outline their report and give a verbal update, if necessary, to the written report.
- 5.2 The Chair will invite the first speaker to come forward and sit at the table with the public microphone. **The objector speaks first. The applicant/agent/supporter speaks last.**
- 5.3 Before you begin to speak please press the square black button on the base of the microphone to turn it on.
- 5.4 As soon as you begin to speak the Democratic Support Officer will start the timer clock which will count down from four minutes to zero. Please try not to exceed the four minutes as you would be interrupted and asked to stop by the Chair of Planning Committee.
- 5.5 You should only speak about the planning merits of the application being considered. Please avoid making any personal remarks or raising matters not directly related to the planning application (see paragraph 6.4 below).
- 5.6 Please do not submit any written material, drawings or photographs at Planning Committee as this is not permitted. You will not be allowed to ask any questions or make any other comments after the four minutes has finished. There will be no questioning of speakers.
- 5.7 Officers may then respond to any points made by the speakers.
- 5.8 Members of the Planning Committee, sometimes with further advice from Officers, will then discuss the planning application. Please do not interrupt or speak during Members discussions. Normally Members will then come to a decision on the application.
- 5.9 There may be occasions when, after listening to the various speakers, it may be decided to defer an application for a site visit by the Committee at a later date. If this happens the Chair will inform you of the date of the next Committee site visits. Please note that no one is able to address the Committee at their site visits.

6.0 What can Members of Planning Committee consider in making a decision?

6.1 The Planning committee will come to a decision only on the planning merits of a particular case.

6.2 The Committee will be guided by, amongst other things:

- (i) Planning law;
- (ii) Wolverhampton's Unitary Development Plan;
- (iii) Government planning policy;
- (iv) Wolverhampton's supplementary planning documents;
- (v) Considerations of residential amenity, environmental issues and highway safety;
- (vi) The need to secure good and locally sensitive design.

6.3 Matters which are not relevant in making a planning decision include:

- (i) Impact on property values;
- (ii) Property rights such as boundary or access disputes;
- (iii) Morality issues or the personal opinions of the applicant;
- (iv) Loss of a distant view;
- (v) Procedural issues including how your planning application may have been handled;
- (vi) Speculation as to future development proposals.

6.4 You should remember that the laws of defamation are very strict. If you say something at the Planning Committee about a person that is not true, even if you believe it to be true, you may be at risk of legal action.

7.0 What happens after the meeting?

7.1 Speakers will be sent written notification of the Planning Committee decision.

8.0 Contacts

8.1 The Council has tried to make arrangements for public speaking fair and straight forward. If you have any queries please call 01902 551155 and ask for Development Control or Democratic Support.

8.2 If you wish to speak at the Planning Committee and have special access needs, or English is not your first language and you need help with interpretation, please let us know. Contact us on 01902 551155 and ask for the Democratic Support.

8.3 The addresses for all correspondence are:

development.control@wolverhampton.gov.uk

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