



ITEM NO: 4

REPORT TO:	STANDARDS COMMITTEE
DATE:	24 June 2014
REPORT OF:	Sandra Stewart - Borough Solicitor (Monitoring Officer)
SUBJECT MATTER:	PROBITY IN PLANNING
REPORT SUMMARY:	To consider a revised draft planning code setting out how the Council will maintain high standards of probity in its planning function, in the light of changes to the local government standards regime.
RECOMMENDATION(S)	<ul style="list-style-type: none">(i) That the Committee supports the proposal to revise the local 'Probity in Planning' Protocol in Tameside.(ii) That the Committee consider the draft 'Planning Code for Members' appended to this report and recommends its adoption by Full Council.
FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)	There are no significant financial issues arising from this Report.
LEGAL IMPLICATIONS: (Authorised by Borough Solicitor)	As set out in the Report.
RISK MANAGEMENT:	In the light of changes to the standards regime it is appropriate to keep under review the planning protocol to ensure that the guidance around standards of behaviour in planning is clear and up to date.
LINKS TO COMMUNITY PLAN:	The policy supports the current arrangements for ethical and corporate governance of the Authority to ensure that the public can have confidence in local government.
ACCESS TO INFORMATION	NON-CONFIDENTIAL This report does not contain information which warrants its consideration in the absence of the Press or members of the public
REFERENCE DOCUMENTS:	The Local Government Association document entitled 'Probity in Planning' can be found at: http://www.lga.gov.uk/lga/aio/1940404 The background papers relating to this report can be inspected by contacting the report writer, Aileen Johnson Head of Legal Services by:  Telephone: 0161 342 2024  e-mail: aileen.johnson@tameside.gov.uk

1. INTRODUCTION AND BACKGROUND

- 1.1 The Council is the local planning authority for the Metropolitan Borough of Tameside, responsible for taking decisions about a wide range of planning issues – from setting the planning policies for Tameside in the local development framework to deciding planning applications large and small, to taking enforcement action against unauthorised development.
- 1.2 Planning can be a contentious area for the Council. It always involves balancing competing factors in the public interest. Planning issues can have a great impact on people's lives and businesses and can have a large financial impact on landowners and the public alike.
- 1.3 Most planning applications are decided by Council staff under delegated powers, but major or controversial applications are decided by the Councillors who are members of the Speaker's Panel (Planning).
- 1.4 The aim of the current protocol was to ensure that everyone would benefit from the rules by which the Panel operated being set out in a single document. Councillors would clearly know what was expected of them and when to seek advice and the public would be better able to understand why members of the Speaker's Panel sometimes do not get involved in planning issues in their ward. They would also know who to approach if they had a concern about the planning system.
- 1.5 In addition, the protocol helped to explain how the planning process works to the public and to new councillors.
- 1.6 The Lawyers in Local Government Group (LLG) (formerly Association of Council Solicitors and Secretaries) through the Local Government Association (LGA), has published a draft model code/protocol on the subject of probity in planning, in the wake of the revisions to the Code of Conduct for Members and the standards regime following the Localism Act 2011, which is substantially reproduced here for Members' consideration.
- 1.7 The drafting of this model code/protocol was subject to consultation and comment from a number of local authorities, the LGA, the Local Government Ombudsman, the Audit Commission and from firms of solicitors or counsel acting on their behalf.
- 1.8 Historically the original need for a nationally recognised planning code came in response to a series of successful court challenges around the country arising out of Members' conduct or conflicts of interest when engaged on the work of local planning authorities, and helped to provide consistency in approach from individual councils. It is therefore sensible to adopt a code developed in this way to help protect the Council against challenge in the courts or to the Local Government Ombudsman.
- 1.8 This updated draft code / protocol takes into account the update to the Seven Principles of Public Life (the 'Nolan Principles'), and commentary from the Committee on Standards in Public Life, the changes in the approach to codes of conduct and also to predetermination introduced by the Localism Act 2011, and the Guide on 'Openness and transparency on personal interests' published by the Department for Communities and Local Government in 2013.
- 1.9 If adopted, the Planning Code for Members should be read alongside 'Tameside Council's Code of Conduct for Members', adopted by the Council in September 2012, together with 'Probity in Planning for councillors and officers', produced in April 2013 by the Local Government Association and the Planning Advisory Service.

1.10 It is proposed that the attached draft code replaces the current protocol considered by Members in 2011, and that Members recommend to Council its adoption going forward.

4. RECOMMENDATIONS

4.1 As set out at the front of the report.

TAMESIDE METROPOLITAN BOROUGH COUNCIL

DRAFT PLANNING CODE FOR MEMBERS

Tameside Council's Planning Code for Members should be read alongside 'Tameside Council's Code of Conduct', adopted by the Council in September 2012, together with 'Probity in Planning for councillors and officers', produced in April 2013 by the Local Government Association and the Planning Advisory Service.

If you have any doubts about the application of the Codes to your own circumstances, or have concerns about how any publications, case law, legislation or guidance affects you, you should seek advice early from the Borough Solicitor or one of her staff, and preferably well before any meeting takes place.

1. INTRODUCTION

1.1 **The aim of this Code:** to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way. One of the key purposes of the planning system is to regulate the development and use of land in the public interest. **Your role as a Member of the Planning Authority is** to make planning decisions openly, impartially, with sound judgement and for justifiable reasons. You are also a democratically accountable decision-taker who has been elected to provide and pursue policies. You are entitled to be predisposed to make planning decisions in accordance with your political views and policies **provided** that you have considered all material considerations and have given fair consideration to relevant points raised.

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

2. RELATIONSHIP TO THE MEMBERS' CODE OF CONDUCT APPROVED 18 SEPTEMBER 2012

2.1 **Do** apply the rules in the Members' Code of Conduct first, which must always be complied with. This is both the rules on all interests, Disclosable Pecuniary Interests Personal Interests and Personal and Prejudicial Interests, and the general rules giving effect to the seven principles of public life: **selflessness, integrity, objectivity, accountability, openness, honesty and leadership.**

2.2 **Do** then apply the rules in this Planning Code for Members, which seeks to explain and supplement the Members' Code of Conduct and the law on decision making for the purposes of planning control. If you do not abide by this Members' Planning Code, you may put:

- The Council at risk of proceedings on the legality of the related decision or maladministration; and
- Yourself at risk of being named in a report made to the Council or, if the failure is also likely to be a breach of the interest provisions of the Localism Act 2011, a complaint being made to the police to consider criminal proceedings.

3. DEVELOPMENT PROPOSALS AND PERSONAL INTERESTS

- 3.1 **Do** disclose the existence and nature of your interest as required by Tameside Council's Member Code of Conduct.
- 3.2 **Do take into account when approaching a decision** that the Principle of Integrity is defined in terms that "*Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships*".

It is therefore advisable that you:

- **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a disclosable or other personal conflict of interest in a proposal, using your position to discuss that proposal with officers or Members when other members of the public would not have the same opportunity to do so.
- **Do** note that you are not prevented from seeking to explain and justify a proposal in which you may have a conflict of interest to an appropriate officer, in person or in writing, but that your role as a councillor may place additional limitations on you in representing the proposal in which you have a personal interest.
- **Do** notify the Monitoring Officer in writing where it is clear to you that you have a disclosable pecuniary interest or other personal conflict of interest in a planning application and note that:
 - * you should send the notification no later than submission of that application where you can;
 - * the application will always be reported to the Speakers Panel and not dealt with by officers under delegated powers;
 - * you must not get involved in the processing of the application; and
 - * it is advisable that you employ an agent to act on your behalf in respect of the proposal when dealing with officers and in public speaking at Committee.

4. FETTERING, DISCRETION IN THE PLANNING PROCESS

(natural justice, predisposition and predetermination)

- 4.1 **Don't** fetter your discretion by approaching the decision with a closed mind.
- 4.2 **Do** be aware that in your role as an elected Member you are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the Localism Act 2011.
- 4.3 **Do** keep at the front of your mind that, when you come to make the decision, that you
- Are entitled to have and to have expressed your own views on the matter, provided you are prepared to reconsider your position in the light of all the evidence and arguments;
 - Must keep an open mind and hear all of the evidence before you, both the officers' presentation of the facts and their advice as well as the arguments from all sides;

- Are not required to cast aside views on planning policy you held when seeking election or otherwise acting as a Member, in giving fair consideration to points raised;
- Are only entitled to take into account a material consideration and must disregard considerations irrelevant to the question and legal context at hand; and
- Are to come to a decision after giving what you feel is the right weight to those material considerations.

4.4 **Do** be aware that you can be biased where the Council is the landowner, developer or applicant if 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.)

4.5 **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, or for example, a councillor representative on Transport for Greater Manchester), provided:

- The proposal does not substantially affect the well-being or financial standing of the consultee body;
- You make it clear to the consultee body that:
 - * your views are expressed on the limited information before you only;
 - * you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Panel 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 Panel.

4.6 **Do** explain that you do not intend to speak and vote as a member of the Consultee Body because you will be perceived as having judged (or you reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes. (Use the disclosure form provided for disclosing interests.)

4.7 **Do** take the opportunity to exercise your separate speaking rights as a Ward/Local Member at the Panel where you have represented your views or those of local electors and fettered your discretion but do not have a disclosable or other personal conflict of interest. Where you do:

- Advise the Democratic Services Officer or Chair that you wish to speak in this capacity before commencement of the item;
- Remove yourself from the seating area for members of the Panel for the duration of that item; and
- Ensure that your actions are recorded.

5. CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS

- 5.1 **Do** refer those who approach you for planning, procedural or technical advice to officers.
- 5.2 **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 issues, you should seek to arrange that meeting through a request to the Head of Planning or in his absence his manager or authorised representative to organise it. The officer 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 Panel.
- 5.3 **Do** otherwise:
- Follow the Authority's rules on lobbying;
 - Consider whether or not it would be prudent in the circumstances to make notes when contacted, and
 - Report to the Head of Planning or in his absence his manager or authorised representative any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ask them to ensure that this is recorded on the planning file.

In addition in respect of presentations by applicants/developers:

- 5.4 **Don't** attend a planning presentation without requesting an officer to be present.
- 5.5 **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- 5.6 **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 Speakers Panel.
- 5.7 **Do** be aware that a presentation is a form of lobbying and, whilst you may express any view on the merits or otherwise of the proposal presented, you should never state how you or other Members would intend to vote at Panel.

6. LOBBYING OF COUNCILLORS

- 6.1 **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it may subsequently prejudice your impartiality, and therefore your ability to participate in the Panel's decision making, to make any sort of promise to vote one way or another or to express such a firm point of view that it amounts to the same thing.
- 6.2 **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 favour, any person, company, group or locality.
- 6.3 **Don't** accept gifts or hospitality for 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 its acceptance is declared as soon as possible, including its addition to your register of interests where available.

- 6.4 **Do** copy or pass on any lobbying correspondence you receive to the Head of Planning at the earliest opportunity.
- 6.5 **Do** promptly refer to the Head of Planning or in his absence his manager or authorised representative any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- 6.6 **Do** inform the Borough Solicitor 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.
- 6.7 **Do** note that, unless you have a disclosable or overriding other personal conflict of interest, you will not have fettered your discretion or breached this Planning Code through:
- Listening or receiving viewpoints from residents or other interested parties:
 - Making comments to residents, interested parties, other Members or appropriate officers (making clear that you must keep an open mind when it comes to making the decision);
 - Seeking information through appropriate channels;
 - Receiving circulated material from applicants or objectors;
 - Being a vehicle for the expression of opinion of others in your role as a Ward Member.

7. LOBBYING BY COUNCILLORS

- 7.1 **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby or promote or oppose planning proposals unless it is your intention to openly campaign on the matter and will therefore step away from the Panel when it comes to make its decision.
- 7.2 **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals (such as the Victorian Society, CPRE, Ramblers Association or a local civic society), but you should normally seek to disclose that interest on the grounds of transparency where the organisation has made representations on a particular proposal.
- 7.3 **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.
- 7.4 **Don't** decide or discuss how to vote on any application at any 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.

8. SITE VISITS / INSPECTIONS

- 8.1 **Do** try to attend any site visits organised by the Council where possible.
- 8.2 **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

8.3 **Do** ensure that you report back to the Committee any information gained from the site visit that you feel would benefit all Members of the Committee.

8.4 **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.

8.5 **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.

8.6 **Don't** hear representations from any party. 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.

8.7 **Don't** express opinions or views.

8.8 **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 Head of Planning or in his absence his manager or authorised representative about your intention to do so and why (which will be recorded in the file) and
- You can ensure you will comply with these good practice rules on site visits.

9. PUBLIC SPEAKING AT MEETINGS

9.1 **Don't** allow members of the public to communicate with you during the Panel's proceedings (orally or in writing) other than through the scheme for public speaking or through the Chair, as this may give the appearance of bias.

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

10. OFFICERS

10.1 **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 Head of Planning or in his absence his manager or authorised representative, which may be incorporated into any committee report).

10.2 **Do** recognise that officers are part of a management structure and you should therefore only discuss a proposal, outside or any arranged meeting, with a Head of Service or those officers who are authorised by their Head of Service to deal with the proposal at a Member level.

10.3 **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 Panel or its Members.

11. DECISION MAKING

- 11.1 **Do** ensure that, if you request a proposal to go before the Panel rather than be determined through officer delegation, that your planning reasons are recorded and repeated in the report to the Panel.
- 11.2 **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- 11.3 **Do** comply with section 38 of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- 11.4 **Do** come to your decision only after consideration of all of the information reasonably required upon which to base a decision. If you feel there is not sufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.
- 11.5 **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.
- 11.6 **Do** have recorded the reasons for Panel's decision to defer any proposal and that this is in accordance with the Council's protocol on deferrals.
- 11.7 **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.
- 11.8 **Do** note that the Chair of the Committee is entitled to vote as any other member on the merits of the application and has a second or casting vote in the event of an equality of votes cast.

12. TRAINING

- 12.1 **Don't** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.
- 12.2 **Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.
- 12.3 **Do** participate in any review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations.