

## **Section B**

# **Planning Protocol for Members and Officers**

## PLANNING PROTOCOL FOR MEMBERS

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## PLANNING PROTOCOL FOR MEMBERS AND OFFICERS

### Introduction

1. The aim of this Planning Protocol is 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.
2. In this Planning Protocol wherever references are made to the Council's "Planning Committees", this includes the Planning and Highways Committee and any other committee(s) to which planning functions are delegated. No member should be appointed to the Planning Committees unless they have agreed in writing to take part in training in planning matters, including the operation of this Planning Protocol. No member appointed to a Planning Committee should participate in the business of the Planning Committee unless they attend annual training in planning matters.
3. In this Planning Protocol, the expression "planning matter" means any planning application, development, development proposal or plan within the City of Manchester or which materially affects the City and includes the enforcement of planning control. This Planning Protocol sets out the practices and procedures that members and officers of the Council should follow whenever they are involved in planning matters in order to comply with the Code of Conduct for Members (as adopted by the Council **from time to time**) ('the Code') and the Employee Code of Conduct, respectively.
4. The sections of this Planning Protocol relating to the declaration of interests also apply to members who are not members of the Planning Committee. In making written representations to Planning Committee all members must serve only the public interest and should never seek to improperly confer an advantage or disadvantage on any person.
5. Planning affects land and property interests, including the value of land and the quality of the environment. Decisions affect people's daily lives and the private interests of individuals, landowners and developers. The role of the planning system is to regulate the use and development of land in the public interest. Accordingly planning decisions must be seen to be impartial and properly justified. The planning system can only operate effectively if there is trust among the various stakeholders: the public, applicants, developers, members and officers.
6. Failure to abide by this Planning Protocol may place the Council at risk of proceedings concerning the legality or maladministration of the related decision.

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### Role and conduct of members and officers

7. Members and officers have different but complementary roles. Both serve the public but members are accountable to the electorate and officers accountable to the Council as a whole.
8. The main duty of members is to represent their constituents as a whole, including those who did not vote for them. This is especially relevant to planning matters where often decisions are taken against the interests of individuals but for the benefit of the wider community. However, case law has established there may be occasions where the need to uphold public trust and confidence in the impartiality of planning decision making requires a restriction of members' representative capacity.
9. The role of members of the Planning Authority is to make planning decisions openly, impartially with sound judgement and for justifiable **planning** reasons.
10. Although members may take into account the views of others they should not discriminate in favour of any particular group or individual or put themselves in a position where they appear to do so.
11. Members are advised to treat with extreme caution any offer, gift, favour or hospitality that is made to a member personally. Members are referred to the Code and to the Gifts and Hospitality Guidance for Members.
12. Officers who are chartered town planners must act in accordance with the Royal Town Planning Institute's (RTPI) Code of Professional Conduct and breaches of that code may be subject to separate disciplinary action by the Institute. All officers are expected to follow the Council's own Code of Conduct for Employees, or any statutory code which may come into force or be adopted by the Council.
13. Members are free not to follow the advice of the professional officers. Professional officers may also have a change of opinion but this must be on the basis of professional judgement; they must not be allowed to be influenced by members or other officers to change an opinion where this does not genuinely represent their professional view. The Council endorse the RTPI's statement that its members "shall not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions".
14. The Council has a designated head of the planning service, who is qualified for election to membership of the RTPI and who has direct access to elected members as their professional adviser on planning matters.

### *Declaration of disclosable pecuniary interests*

15. Part 2 of the Code incorporates the provisions in the Localism Act 2011 concerning the disclosure of pecuniary interests.

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16. A “Disclosable Pecuniary Interest” is fully defined in the Code and includes, in relation to both members and their partners:
- Employment, office trade, profession or vocation
  - Sponsorship
  - Contracts
  - Land
  - Licences
  - Corporate tenancies
  - Securities
17. It is a criminal offence, if a Member without reasonable excuse:
- a. fails to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election
  - b. fails to declare a disclosable pecuniary interest at a meeting if it is not on the register
  - c. fails to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that s/he has disclosed to a meeting
  - d. participates in any discussion or vote on a matter in which s/he has a disclosable pecuniary interest
  - e. knowingly or recklessly provides false or misleading information relating to disclosable pecuniary interests in notifying the Monitoring Officer or in disclosing such interest to a meeting.
18. Part 2 of the Code also advises members that, if they are present at a meeting and have a disclosable pecuniary interest in any matter to be considered at that meeting:
- members must disclose the interest to the meeting whether or not it is registered
  - members must not participate in any discussion of the matter or in any vote taken on the matter at the meeting and must withdraw from the room of the meeting whilst the matter is being considered.

Members with a disclosable pecuniary interest in a planning matter may apply to the Monitoring Officer for a dispensation to make representations, answer questions or give evidence relating to the relevant planning matter at a meeting, provided that the public are also allowed to attend the meeting for the same reason. Members must declare their interest at any meeting which they attend with a dispensation and must make it clear that their representations are made in a personal capacity rather than in their role as a councillor.

### **Declaration of personal interests**

19. Part 3 of the Code states that, in addition to disclosable pecuniary interests, members must also register other personal interests defined in the Code.

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20. Subject to the circumstances outlined in the Code, where members have a personal interest in any business of the Council and attend meetings such as Planning Committee at which the business is considered, they must disclose the existence and nature of that interest at the meeting.

### **Declaration of prejudicial interests**

21. A member with a personal interest in any business of the Council also has a prejudicial interest if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice the member's judgement of the public interest. A full definition of 'prejudicial interest' appears in Part 3 of the Code.
22. A member with a prejudicial interest must disclose the interest to the meeting and must withdraw from the room where the meeting is held unless s/he is making representations, answering questions or giving evidence relating to the relevant planning matter provided that the public are also allowed to attend the meeting for the same reason. The member must leave the room immediately after making representations, answering questions or giving evidence and must not participate in any discussion of the matter at the meeting or in any vote taken on the matter at the meeting.

### **Bias and predetermination**

23. The law on bias and predetermination may apply at times when the member concerned does not have a disclosable pecuniary interest or a personal or prejudicial interest as defined by the Code.
24. Predetermination is a principle developed by the courts which has established that a decision taken by a public body is unlawful if the decision maker approaches the decision with a closed mind.
25. Section 25 of the Localism Act 2011 applies when a Court has to consider whether a decision has been validly made. It provides that a "decision taker" is not to be regarded as having a closed mind just because the decision taker had previously done anything that directly or indirectly indicated what view the decision-maker took or would or might take in relation to a matter that was relevant to the decision. The use of the qualifying words 'just because' in Section 25 indicates that some decisions will still be invalid by reason of predetermination notwithstanding the enactment of the section, because all the circumstances surrounding the decision have to be taken into account. Regardless of any predisposition of members to determine an application in accordance with their political views and policies, the members of Planning Committees must approach decision making with an open mind, must listen to the evidence and arguments on both sides and must make decisions with regard to material planning considerations. Members should not have, or appear to have, a closed mind on a planning application prior to its full consideration at Planning Committee.

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26. Where bias or predetermination or a risk of the perception of bias or predetermination arises, a member of Planning Committee who has, or appears to have, a closed mind about a planning matter in advance of Committee should not participate in the decision making part of the meeting. Members may, in their representative capacity, address the Committee on the planning merits of the application for the same period of time as any member of the public with a right to speak. Members should declare that they cannot participate in the decision taking as a result of having a closed mind in advance of the meeting and withdraw as soon as they have addressed the Committee.

### **Development proposed by the City Council or a Council controlled company or agency**

27. Planning legislation allows councils, and bodies controlled by them, to submit and determine development proposals which they intend to carry out themselves. These shall be considered in the same way as those put forward by private developers.
28. Decisions shall be taken strictly on planning merits and without regard to any financial gain that the Council - e.g. in its capacity as land owner - may accrue, if the development is allowed. The Council should treat such applications on an equal basis with all other applications.
29. Members of the Planning Committees who hold a position of control or management in another public authority or are appointed by the Council as its representative to another body need to consider their position where such bodies submit planning applications to the Council. In such cases the Code provides that members have a personal interest and need only disclose the nature or existence of that interest when they address the meeting on the business which relates to their public authority or other body, unless the interest is a prejudicial interest. Members should always consider whether it is appropriate to regard themselves as having no prejudicial interest in the light of the specific facts. In addition, because of the appearance of bias, a member should always consider whether it is appropriate to take part in the decision making process. For example, where the member has been or is perceived as being the chief advocate for the proposal *or* has had a significant personal involvement in preparing or promoting the proposal by which s/he may be perceived as being unable to act impartially or determine the proposal purely on its planning merits and in the public interest *or* has, or appears to have, a closed mind about the application, this would give rise to an appearance of bias. If the circumstances would give rise to potential allegations of bias, members are advised to explain their involvement and not take part in the decision (see paragraph 26 above).

### **Development proposals by individual members or officers or persons related to them**

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30. Serving members or officers should never act as agents for another in pursuing a planning matter. If members or officers submit their own proposal to the Council they should take no part in the processing and determination of that proposal. The Council's Head of Planning should be informed of all such proposals as soon as they are submitted.
31. Proposals for development by members or officers shall be reported to the Planning Committees and should not be determined under delegated authority unless they relate to the residence of a member or officer *and* there are no objections to the application.
32. Officers should not deal with development proposals and planning applications in which they have a personal interest.

### *Lobbying of and by members*

33. Lobbying is a necessary and legitimate element of the political and democratic process. Those affected by a development proposal often try to canvass support from one or more members of a planning committee. The time for individual members of the Planning Committees to make a decision on a proposal is at the committee meeting when all the relevant information is available and has been properly considered. Members should not close their minds or give the appearance of having closed their minds, particularly in relation to an external interest or lobby group, prior to the Planning Committee meeting. Members who commit themselves in advance to a fixed view as to how the proposal should be determined **must** withdraw from the room in which the meeting is held and not participate when the Committee is discussing or voting on the application. They may, in their representative capacity, address the Committee on the planning merits of the application (see paragraph 26 above).

(Note: Where a matter is discussed and then deferred from one meeting to another, members may continue to take part in the decision at the second meeting, even if they have expressed views at the first meeting. Members should always keep an open mind and take into account new information presented at the second meeting when they vote)

34. Members are free to listen to a point of view about a particular proposal and to provide procedural advice, (e.g. by referring the person to a particular officer). They should be careful however to reserve their own final judgement on the matter until the Planning Committee meeting.
35. Members should not circulate unofficial papers not previously considered by officers at Planning Committee meetings.
36. Members should not use mobile telephones or hand held devices during the Planning Committee meeting to discuss the progress of the application with any other person.

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### Membership of lobbying groups

37. If a member is in a position of general control or management of an organisation that has made representations on a particular planning matter then s/he is likely to have a personal interest under the Code. Such membership may also give rise to a perception of bias or predetermination (see paragraph 26 above).
38. Whether membership constitutes a prejudicial interest will depend on the individual case. Where their lobby group has expressed a public view on a matter, members must consider whether a member of the public with knowledge of the relevant facts would reasonably regard the member's judgement of the public interest as prejudiced. In deciding whether they have a prejudicial interest, members should consider:
- the nature of the application
  - the nature of their involvement with the organisation
  - the publicly expressed views of the organisation
  - what the member has said or done in relation to issues relevant to the application
39. A personal interest may also be prejudicial where it relates to the determining of any planning application in relation to any persons or bodies described in paragraph 12.3 in Part 3 of the Code (see paragraph 21 above)

### *Pre and post application discussions*

40. Members of Planning Committees need to uphold their position as impartial decision makers and it would not be appropriate for them to take part in pre or post application discussions with applicants, developers or groups of objectors regarding the proposed development even if they find it desirable as a ward member to attend such meetings<sup>1</sup>. If it is necessary that they do so in order to fulfil some role other than ward member, this should be part of a structured arrangement agreed with a senior planning officer, who will arrange the meeting and the attendance of an officer at the meeting.
41. **Councillors should not participate** in pre-application meetings **without Officers also being present**. Councillors should avoid giving separate advice on the development plan or material considerations as they may not be aware of all the issues at an early stage. Neither should they become drawn at any stage of the planning process into any negotiations, which should be done by officers.

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<sup>1</sup> "Pre and post application meetings" refer to meetings between applicants, developers or groups of objectors and members of Planning Committee, attending in their capacity as a councillor. It does not refer to such meetings where the member is attending in a personal capacity, such as consultation events for proposed development in the vicinity of their home, though members should still be mindful of the provisions in this protocol on interests, bias and predetermination in such circumstances.



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42. During any pre-application discussions or meetings with the applicant, developers or group of objectors that may take place, it shall be made clear by an officer at the outset that the Council will not - as a result of anything during the course of such communication - be bound to make a particular decision and further that any views expressed are provisional only and not those of the Council.
43. A written note shall be made of pre-application **meetings at which Councillors are present**. At least two officers should be present at meetings likely to arouse controversy as to what took place.
44. Officers and serving councillors must not act as agents for people pursuing planning matters within their authority even if they are not involved in the decision making on it.

### ***Officer reports to committee***

45. Officers' reports to the Planning Committees (except to present and update a report) shall be in writing except in the most exceptional circumstances. Oral reports which are material to the Committee's decision shall be minuted.
46. Officers should seek to apply and interpret national and local planning policies in a consistent and objective manner.
47. Reports to the Planning Committees shall be accurate and provide all relevant information. They shall contain a reasoned assessment of the proposal and justification of any recommendation. If an officer's recommendation is contrary to the Development Plan the material considerations which justify this shall be set out clearly.

### ***Decisions contrary to officer recommendation***

48. Members shall take decisions on planning matters in accordance with the Development Plan (or its statutory replacement) where relevant unless material considerations indicate otherwise. The reason for a contrary decision should be clear and convincing and fully minuted.
49. In order to ensure an accurate minute of decisions contrary to officer advice, members should ordinarily make a resolution that they are minded to grant or refuse permission. When such a resolution is made, officers will report to the next committee on the proposed course of action and shall produce a written record of the proposed decision and reasons for adoption by the Committee.
50. A senior officer **shall be invited** to explain to the Committee the implications of a contrary decision before the decision is taken.
51. If the Committee asks for additional planning conditions to be imposed or requests that amendments be made to proposed conditions, officers should prepare the draft condition. Standard conditions may be delegated to officers. Drafting of non-standard conditions which significantly depart from officers'

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recommendations as set out in the committee report should be delegated to officers in consultation with the Chair.

### **Committee site visits**

52. Site visits will be decided upon and carried out in accordance with the provisions of the Site Visit Protocol annexed to this Planning Protocol for Members.

### **Complaints and record keeping**

53. Any complaints made about the planning process should be recorded accurately, and would normally be dealt with in accordance with the Council's established Complaints Procedure, unless it is a complaint which is appropriate to be dealt with as a Standards or Conduct issue, in which case it should be reported to the Council's Monitoring Officer in the first instance.

### **Breach of the Members' code**

54. Breaches of the Code and/or this Planning Protocol by members should be reported to the Monitoring Officer.

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## ANNEX

### SITE VISIT PROTOCOL

#### INTRODUCTION

In order to ensure that all Planning Committee site visits relating to planning matters are dealt with consistently and fairly, the following protocol will apply.

#### THE DECISION TO HOLD A SITE VISIT

1. A decision to carry out a site visit may be made where a proposal is contentious or complex and the impact is difficult to visualise or assess from the plans or any supporting presentation, **including photographs taken by officers**. The visit is intended to enable members to gain knowledge of the proposal and its physical context.
2. The purpose of the site visit is to obtain information relevant to the determination of the application only. The decision should not be arbitrary, unfair or be used as a lobbying device.
3. Site visits can, however, cause delay and additional cost, so should only be used where the expected benefit is **clear and** substantial.
4. A site visit will be held following a majority resolution of the Planning Committee. In reaching its decision, the Planning Committee, having heard the application and representations, must consider that such a visit would be of substantial benefit to the decision making process. Members should bear in mind that officers will have visited the site prior to writing their report and forming their recommendation.
5. A site visit should not be used as an opportunity to defer consideration or determination of an application.
6. The reason for a site visit based on sound and proper planning reasons must be recorded and minuted.

#### PRACTICAL ARRANGEMENTS FOR THE SITE VISIT

7. The site visit may take place at any reasonable time during any working day (including the day of the Committee) before the Committee meeting at which it is proposed to determine the application.
8. Wherever possible, a site visit should be attended by all members of the Planning Committee.
9. The appropriate Council officers will attend the site visit. This would include the Planning Officer and other officers who may be required to provide specialist advice and information relevant to the application.

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10. The applicant will be notified of the date and time of the site visit.
11. If it is proposed to enter onto private land as part of the site visit, it will be necessary to obtain permission from the landowner first.
12. **A site visit is ordinarily to be attended only by Officers and Members of the Committee.**

### PROCEDURE AT THE SITE VISIT

13. **The Planning Officer will explain the proposal to members and provide a summary of the objections.**
14. **Members can ask any questions concerning the proposal to the respective officer(s) in attendance.**
15. **In the event that anyone other than Officers or Members of the Committee is in attendance**, the Chair or Planning Officer (as appropriate) will inform those attending the site visit that they should not approach or attempt to speak to or engage with any member or officer of the Council about the application during the site visit and that this is not an opportunity for lobbying, representations, public address or debate.
16. In order to ensure transparency of public dealing by members, members shall keep together as a group and shall not engage individually in discussion with local members, applicants, objectors and other interested parties present at the site visit.
17. Members should not express an opinion on the planning application or on its merits (or otherwise) at the site visit. Members should be mindful at all times of the need to avoid allegations of predetermination or bias, or the fettering of the Council's discretion in relation to the application.
18. No hospitality may be accepted by members and officers from any party present at the site visit.
19. A note shall be taken by the Planning Officer of any significant events occurring during the site visit.

### PROCEDURE AT COMMITTEE FOLLOWING THE SITE VISIT

20. Officers will provide a brief update to members of any significant additional information or issues raised at the site visit.
21. Following the update, members of the Committee who were not able to attend the site visit should consider whether they have sufficient information before them to enable them to take part in determining the application and, if not, they should take no part in the deliberation and should abstain from the vote on the proposals.

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- 22. Particular care should be taken by members who have proposed or voted in favour of a site visit**