

**Code of Conduct for Members and Guidance on the Code**

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## **Code of Conduct for Members and Guidance**

### **1. Introduction**

The Council is determined to provide excellent local government for the people of the Borough. It promotes and maintains high standards of conduct by Members and Co-opted Members and has adopted a Code of Conduct for Members, in line with its obligations under section 27(2) of the Localism Act 2011. The Code of Conduct is set out at pages 162 to 163. To help Members understand their conduct responsibilities, they should make sure they read and understand the General Principles (pages 162 to 163) and Guidance on the Code (pages 172 to 205).

### **2. General Principles of Conduct for Members and Co-opted Members**

The Code and the Guidance are based on the following General Principles.

#### General Principles

Members and co-opted Members must behave according to the highest standards of personal conduct in everything they do as a Member. In particular they must observe the following principles of conduct, some of which are set out in law.

#### Selflessness

Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

#### Honesty and Integrity

Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

#### Objectivity

Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

#### Accountability

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Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

#### Openness

Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

#### Personal Judgement

Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

#### Respect for Others

Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

#### Duty to Uphold the Law

Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

#### Stewardship

Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

#### Leadership

Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

### **3. Training**

3.1 All Members to undertake Code of Conduct/ethical standards training annually, and to make it compulsory for all Members to receive training on Safeguarding Level 1 and CSE, within 6 months of their election for New Members and within 6 months of this change being approved at Full Council (i.e. 22nd May 2018) for existing Members

3.2 All Members on Full Council determining a development control application and all Members appointed to the Development Control Committee must attend annual training on planning law and procedure. This training must take place within 1 month

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of the Annual Appointments Council or being appointed to the Development Control Committee before they can determine any development control application, and failure to do so may be a breach of the Code of Conduct.

However a Councillor could not be prevented from taking part in a development control decision at Full Council if they hadn't attended training, but could be prevented at Development Control Committee.

3.3. All Members appointed to the Licensing Committee must attend annual training on licensing law and procedure. This training must take place within three months of being appointed to the Licensing Committee. Members newly appointed to the Licensing Committee will not be eligible to sit on any of its sub committees unless they have completed this training. This is because of the quasi-judicial nature of the sub- committee which requires members who are sufficiently skilled to exercise their required powers and duties.

3.4 Records of attendance will be maintained by the Democracy Team and any apparent failure to attend will be notified in the first instance to the Member concerned and the relevant Group Leader, and if not rectified at the next available session will be referred thereafter to the Monitoring Officer or the Audit & Standards Committee who may recommend that the Member be removed from the Development Control Committee or Licensing Committee as is relevant..

## **THE CODE OF CONDUCT**

### **Part 1**

#### **General provisions**

Introduction and interpretation

1.—(1) This Code applies to you as a member of the Council.

(2) (2)It is your responsibility to comply with this Code. Failure to do so may result in a sanction being applied by the Council. Failure to take appropriate action in respect of a Disclosable Pecuniary Interest may result in a criminal conviction and a fine of up to £5,000 and /or disqualification from office for a period of up to 5 years. In this Code—

“meeting” means any meeting of—

- (a) the Council;
- (b) any of the Council's committees or sub-committees, joint committees or joint sub-committees;

“member” includes a co-opted member and an appointed member.

### Scope

2.—(1) Subject to sub-paragraphs (2) and (3), you must comply with this Code whenever you—

- (a) conduct the business of the Council (which, in this Code, includes the business of the office to which you are elected or appointed); or
- (b) act, claim to act or give the impression you are acting as a representative of the Council,

and references to your official capacity are construed accordingly.

(2) this Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) Where you act as a representative of the Council—

- (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority’s code of conduct; or
- (b) on any other body, you must, when acting for that other body, comply with this Code, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

### General obligations

3.—(1) You must treat others with respect.

(2) You must not—

- (a) do anything which may cause your authority to breach the Equality Act 2010
- (b) bully any person;
- (c) intimidate or attempt to intimidate any person who is or is likely to be—
  - (i) a complainant,
  - (ii) a witness, or
  - (iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority’s code of conduct; or

- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council.

4. You must not—

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is—

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the authority; or

(b) prevent another person from gaining access to information to which that person is entitled by law.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

6. You—

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and

(b) must, when using or authorising the use by others of the resources of your authority—

(i) act in accordance with your authority's reasonable requirements; and

(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

7. – (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by-

(a) your authority's chief finance officer; or

(b) Your authority's monitoring officer,

Where that officer is acting pursuant to his or her statutory duties.

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

## **Part 2**

### **Interests**

#### **Section 1**

##### **Disclosable Pecuniary Interests**

This Part explains the statutory requirements of the Localism Act 2011 (Sections 29-34) in relation to disclosable pecuniary interests. These are enforced by criminal sanction.

#### **1. Notification of disclosable pecuniary interests**

Within 28 days of becoming a member or co-opted member, you must notify the Monitoring Officer of any 'disclosable pecuniary interests'.

A 'disclosable pecuniary interest' is an interest of yourself or your partner (which means spouse or civil partner, a person with whom you are living as husband or wife, or a person with whom you are living as if you were civil partners) of the following descriptions:

- (a) Details of any employment, office, trade, profession or vocation carried on for profit or gain
- (b) Details of any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. (This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
- (c) Details of any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the Council under which goods or services are to be provided or works are to be executed; and which has not been fully discharged.
- (d) Details of any beneficial interest in land which is within the area of the Council.



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(e) Details of any licence (alone or jointly with others) to occupy land in the Borough for a month or longer.

(f) Details of any tenancy where (to your knowledge) the landlord is the Council; and the tenant is a body in which the relevant person has a beneficial interest.

(g) Details of any beneficial interest in securities of a body where that body (to your knowledge) has a place of business or land in the area of the Council; and either the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or if that share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

For the purposes of the above “relevant period” means the period of 12 months ending with the day on which you notify the Monitoring Officer of your disclosable pecuniary interest, and “relevant person” means you or your spouse or partner as defined above.

## **2. Register of interests**

Any interests notified to the Monitoring Officer will be included in the register of interests.

A copy of the register will be available for public inspection and will be published on the Council’s website.

## **3. Sensitive interests**

Where you consider that disclosure of the details of a disclosable pecuniary interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees, if the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have a disclosable pecuniary interest, the details of which are withheld under Section 32(2) of the Localism Act 2011.

## **4. Non participation in case of a disclosable pecuniary interest**

a) If you are present at a meeting of the Council, the Executive, or any committee, sub-committee, joint committee or joint sub-committee of the authority, and you have a disclosable pecuniary interest in any matter to be considered or being considered at the meeting:

- You must not participate in any discussion of the matter at the meeting.
- You must not participate in any vote taken on the matter at the meeting.

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- If the interest is not already registered, you must disclose the interest to the meeting.
- If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

In addition, as stated in Council Procedure Rule 20, you should leave the room where the meeting is held while any discussion or voting takes place, except when it applies to Strategic Plan Progress Reports at Full Council due to the various subject matters involved in the reports.

b) Where an Executive Member may discharge a function alone and becomes aware of a disclosable pecuniary interest in a matter being dealt with or to be dealt with by her/him, the Executive Member must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter.

## 5. Dispensations

The Audit and Standards Committee may grant you a dispensation, but only in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.

## 6. Offences

It is a criminal offence to

- Fail to notify the Monitoring Officer within 28 days of election of any disclosable pecuniary interest ;
- Fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register;
- Fail to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that you have disclosed to a meeting;
- Participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest;
- As an Executive Member discharging a function acting alone, and having a disclosable pecuniary interest in such a matter, fail to notify the Monitoring Officer within 28 days of the interest;
- Knowingly or recklessly provide information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting;

The criminal penalties available to a court are to impose a fine of up to £5,000 and disqualification from being a councillor for up to 5 years.

## **7. Notification of changes**

Whilst not a statutory requirement, the Council under this Code of Conduct requires you to notify the Monitoring Officer within 28 days of any new disclosable pecuniary interest, or any change to a disclosable pecuniary interest already notified/registered.

## **Section 2**

### **Other Interests**

#### **8. Notification of Other Interests**

(1) In addition to the above you must, within 28 days of this Code being adopted by or applied to your authority; or your election or appointment to office (where that is later), notify the Monitoring Officer in writing of the details of your interests within the following categories, for inclusion in the register of interests:

(a) Details of any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Council;

(b) Details of any body exercising functions of a public nature, any body directed to charitable purposes or any body one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;

(c) Details of any gift or hospitality with an estimated value of at least £25 that you have received, or is offered and refused, in connection with your role as a member of the Council and details of the donor.

(2) You must, within 28 days of becoming aware of any new interest or change to any interest registered under this paragraph notify the Monitoring Officer of the details of that new interest or change.

#### **9. Disclosure of Other Interests**

(1) Subject to sub-paragraphs (2) to (6), where you have an interest described in paragraph 8 above or in paragraph (2) below in any business of your authority, and where you are aware or ought reasonably to be aware of the existence of that interest, and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

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(2) You have an interest in any business of your authority where a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a member of your family or any person with whom you have a close association, to a greater extent than the majority of other council tax payers.

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

(4) Where you have an interest by virtue of paragraph 8(1) but, by virtue of paragraph 11, sensitive information relating to it is not registered in the register of members' interests, you must indicate to the meeting that you have an interest, but need not disclose the sensitive information to the meeting.

(5) Where you have an interest in any business of your authority by virtue of paragraph 8 or 9(2), and you have made an Executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

## **10. Register of interests**

(1) Any interests notified to the Monitoring Officer under paragraph 8 above will be included in the register of interests.

(2) A copy of the register will be available for public inspection and will be published on the authority's website.

(3) Where a disclosable pecuniary interest is notified to the Monitoring Officer it need not be separately notified or separately registered as an interest under this section of the Code.

## **11. Sensitive interests**

Where you consider that disclosure of the details of an interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees, if the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have an interest, the details of which are withheld.

## **12. Non participation in case of certain other interests**

(1) Where you have an interest in any business of the Council by virtue of paragraph 8 or 9(2) AND the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgment of the public interest AND where that business—

(a) affects your financial position or the financial position of a person or body through whom the interest arises ;or

(b) relates to the determining of any approval, consent, licence, permission or registration in relation to you or any person through whom the interest arises,

you must not participate in any discussion of the matter at the meeting, and you must not participate in any vote taken on the matter at the meeting.

Note: In addition, as stated in Council Procedure Rule 20, you should leave the room where the meeting is held while any discussion or voting takes place, except when it applies to Strategic Plan Progress Reports at Full Council due to the various subject matters involved in those reports.

(2) Where you have an interest in any business of the Council to which paragraph 12(1) applies, you 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, whether under a statutory right or otherwise, and provided that you leave the room where the meeting is held immediately after making representations, answering questions or giving evidence.

(3) Subject to you disclosing the interest at the meeting, you may attend a meeting and vote on a matter where you have an interest under paragraph 12(1) that relates to the functions of your authority in respect of—

(i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;

(ii) an allowance, payment or indemnity given to members;

(iii) any ceremonial honour given to members; and

(iv) setting council tax or a precept under the Local Government Finance Act 1992.

(4) Where, as an Executive Member, you may discharge a function alone, and you become aware of an interest under paragraph 12(1) in a matter being dealt with, or to be dealt with by you, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter, or seek improperly to influence a decision about the matter.

## **Guidance on the Code**

This Guidance is in two parts

- (1) General guidance (pages 172 to 195); and
- (2) Guidance for Members involved in Development Control decisions (pages 196 to 206).

### (1) **GENERAL GUIDANCE**

#### **Legal Requirements**

The Council is a public authority. Its decisions can be reviewed by a range of courts and tribunals and overturned if they are irrational, improper or unfair.

#### **Reasonableness**

Members have final responsibility for decisions of the Council. When taking part in the Council's decision-making processes, you should:

- take into consideration everything you regard as relevant, or which you are advised is relevant;
- disregard anything which you consider is not relevant, or which you are advised is not relevant;
- follow the correct procedure.
- not take part in the decision if you have a personal and prejudicial interest under the Code of Conduct.

Sometimes you may have to take decisions that you personally disagree with if these are the "right" decisions for the Council, taking account of the above factors.

#### **Fiduciary Duty**

In law, a fiduciary is someone who occupies a position of such power and confidence over the property of another that the law **requires** him or her to act solely in the interests of the person he/she represents. This is in contrast with an ordinary business relationship, in which each party is free to seek purely personal benefits from his or her transactions with the other. So, for example, a guardian, a trustee or an executor are all fiduciaries.

As a Member controlling the Council's assets and finances, you are in a position of trust. You have a **fiduciary duty** to act in the interests of the people of Burnley and, in some cases, in the wider public interest.

## **Fairness**

When you are a member of any Sub-Committee, Committee, Executive or a Council appointee on an outside body considering the case of individuals, you should act fairly at all times. This means:

- you must not have any personal interest in the case;  
(this means you must not stand to gain or lose personally by any decision on the case, and neither must your family or close friends)
- you must listen to what is said on behalf of all parties to the case before reaching your decision.

## **Equality**

A variety of laws require the Council not to discriminate and to provide equal opportunities for all with regard to access to employment, facilities and service delivery.

Public authorities have a **general duty** to

- tackle racial discrimination
- promote equality of opportunity; and
- promote good race relations

To meet our duties to promote equality all Members:

- should be fully aware of the Council's Equality Policy which outlines the Council's commitment to equality of opportunity in both employment and service delivery.
- should acknowledge that oppression, disadvantage and discrimination exist in society. They should recognise that they have the power to reduce the inequalities experienced by residents within the Borough and a responsibility to work actively to eliminate discrimination both within and outside the Council.
- should recognise and accept that particular individuals or groups, be they black and other minority ethnic members of the community, gypsies, travellers and asylum seekers, lesbians and gay men, young and old, disabled people and women are denied equality through intentional, and in some cases, unintentional discrimination.
- should value and be committed to celebrating the diversity of the local population.
- should actively oppose discrimination carried out on the grounds of age, colour, disability, ethnic origin, gender, gender reassignment, HIV status,

marital status, race, religious and cultural beliefs, sexuality, social background, political affiliation, spent convictions and trade union membership.

- should be committed to eliminating all forms of discrimination – direct and indirect, individual and institutional. Within the resources available to them and should work towards providing employment opportunities, facilities and services that are appropriate, sensitive and accessible.
- should always act as representatives of the authority and therefore should refrain from making any remarks both within and outside the council that may lead to conflict, divisions and hatred between different racial groups or geographical areas.
- recognise that discrimination and disadvantage have undermined the quality of life of many members of our community. Eradication of such discrimination and disadvantage is a necessary way of improving the quality of life for all Burnley residents
- take any necessary action to discharge their legal obligations to ensure equality of opportunities and the elimination of unjustified discrimination
- take action to ensure that equality is at the heart of all access arrangements to its facilities, employment and services and believe that this can be achieved through mainstreaming of equalities issues.
- ensure that all your plans, policies, practices, procedures and decisions reflect and incorporate equal opportunities objectives.

### **The Council as an Employer**

- ❖ Recruitment
- ❖ Discipline and Grievance
- ❖ Negotiations with Staff
- ❖ Setting Salaries and Grades

The Council is one of the Borough's largest employers and Members may be required to make, or can influence, decisions which profoundly affect employees.

In making employment decisions, the key principles to follow are:

- Members should not gain financially, nor should their family or friends;
- In making public appointments or recommending people for rewards or benefits, Members should make choices on merit, using objective criteria;



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- Members have a duty to declare any interest;
- Where friends, relatives or members of their household are in some way involved in an employment related matter, Members must not participate in any Committee, working party or panel dealing with that person or issues affecting that person's interest;
- Except when it is part of their remit to do so at Committees of the Council (e.g., Appeals Committees), Members should not seek to influence management decisions on individual staff training, disciplinary grievances, or salary matters;
- Members should be open about, and are accountable for, the decisions they make in the role of employer. However, some employment matters, e.g. personal information about employees, disciplinary procedures, should be dealt with in confidence. Unauthorised disclosure of personal data may be a breach of the Data Protection Act 1998, as well as a breach of the Code of Conduct.

In addition, Members should remember that although the law provides for any Member to have access to papers related to the work of the Council's Executive and Committees, unless they are Members of the relevant Committee, there is no automatic right to information about:

- any individual applicant to become an employee, or
- any individual who is an employee (this includes details of grade and pay, and any disciplinary, grievance or other employment issue that involves a particular employee); or
- consultations or negotiations over any labour relations matter.

When acting as employer, Members are bound by the complete framework of National and European employment law and may be personally liable for decisions which discriminate on the basis of race, gender, sexual orientation, age or disability.

### **The Council as an Employer – Recruitment and Redeployment**

The law and Constitution lay down rules for the appointment of staff. You must ensure that you observe these scrupulously at all times.

If you are called upon to take part in appointing an Officer, the only question you should consider is which candidate is the best one for the job. You should not let your political or personal preferences or prejudices influence your judgement.

In-house training in the law and procedure for recruiting staff is available. This training is compulsory, and only Members that have been trained can take part in Member level appointments.

Members may only make appointments to those posts which have been approved as subject to selection by Members – these are the Chief Executive, Chief Operating

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Officer and Heads of Service posts. The law does not permit the involvement of Members in appointments below that level.

The panel must use objective criteria and make its decision:

- with access to all the relevant facts;
- on the basis of merit.

Therefore, Members must not seek to influence:

- any appointment made by Officers;
- any appointment made by a Member panel to which they do not belong.

In both Officer and Member appointments, Members must:

- never ask colleagues to support or criticise any candidate;
- resist any attempt by others to seek their support or otherwise for any candidate;
- report to the Monitoring Officer any attempt to influence an appointment to the Council;
- be able to satisfy themselves that the Council's recruitment policies and procedures are properly applied;
- not participate in the recruitment process where friends, relatives or members of their household are applying for the post.

You must not favour an applicant for a job with the Council by giving him or her information not available to other candidates.

Members not participating in an appointment will not have access to the information about the applicants that the panel considers.

You must not give a reference for any applicant applying for a job with the Council (including internal applicants). It is, however, acceptable for you to give references for current or past employees of the Council who are applying for jobs outside the Council and unconnected with it. Also, Members may give references for job applicants if they are doing so not as a Member but as a former/existing employer or colleague. The reference must clearly state that this is the context in which it is given.

### **The Council as an Employer – Discipline and Grievance**

In-house training in the law and procedure relating to discipline and dismissal is available for Members. Members must attend this training before they can take part in hearing disciplinary appeals.

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When participating in disciplinary appeals a Member must declare to the Monitoring Officer any kinship or friendship with the employee who has been disciplined. This would include common membership of an association (or society or trade union), trusteeship or other kind of relationship. Once this interest has been declared the Member shall take advice as to whether or not it is such as ought to debar the Member from participating in the appeals process.

Staff have the right to be disciplined in accordance with the Council's laid down procedures, which stress impartiality and objectivity. Members may, of course, report apparent breaches of the Council's Code of Conduct by staff to an appropriate senior manager and give evidence at any hearing if requested to do so. But thereafter they must not seek to influence:

- any disciplinary matter heard by Officers;
- any disciplinary matter heard by an appeals panel to which they do not belong.

At disciplinary appeals, Members act in the role of employer. The employee, the manager who has disciplined him or her, and other staff who work for the Council have the right to have clear standards at work which are enforced consistently.

Member decisions must be based on the facts of the case. Political or personal considerations must not be allowed to influence the decision.

Because the information about disciplinary cases relates to particular employees, in law, Members, other than those hearing the appeal, have no right to see the papers.

All the principles in this section apply equally to Member involvement in employee grievance appeals.

### **The Council as an Employer – Negotiations with Staff**

Member level negotiations will normally be carried out by the Joint Consultative Committee, which will meet to deal with corporate industrial relations matters as required.

Industrial relations matters which do not have a corporate significance will be dealt with by the appropriate Head of Service.

At the Joint Consultative Committee, Members should act only in the role of employer. Members who are Members, officials or employees of a trade union must not serve on bodies which have a responsibility for negotiating with that trade union.

In the interests of openness and objectivity, Members should not "do deals" with the trade union side during private and informal meetings, especially if no Officer is present to advise on and record any agreement. Neither should they disclose confidential information to the trade union side in the course of any consultations or negotiations. This principle applies to all matters relating to staff in which staff representatives are involved, including disciplinary, grievance and recruitment matters.

### **Relationships with Officers – Personal Relationships**

Mutual respect between Members and Officers is essential to good local government. Close personal familiarity between individual Members and Officers can damage this relationship and prove embarrassing to other Members and Officers.

It is not enough to avoid actual impropriety. You should at all times avoid any occasion which might create suspicion or any appearance of improper conduct.

You must declare to your party whip any relationship with an Officer which might be seen as influencing your work as a Member. This includes any family, business or sexual relationships. Officers too have a duty to declare any such relationship to their Manager.

Members must not be the Executive Member with reporting relationship for the Service Unit for which an employee holding a politically restricted post works to whom they are:

- married;
- the partner;
- otherwise closely related such as sisters, brothers, parents, grandparents, aunts, uncles, nephews, nieces, cousins, and in-laws;

or take part in the consideration of any decisions where a Member's relationship with an Officer might be seen to jeopardise the work of the Council.

### **Relationships with Officers – Monitoring the Performance of Officers**

Members have the right to criticise reports or the actions taken by Officers but they should always:

- seek to avoid personal attacks on Officers;
- ensure that criticism is constructive and well-founded.

You should avoid undermining respect for Officers at Executive and Committee meetings, or in any public forum. This would be damaging both to effective working relationships and to the public image of the Council. Members need to be aware that an Officer could take unfounded or unfair criticism as grounds for resignation, and in extreme cases Officers could issue claims for slander or libel or constructive dismissal.

Members should not refer publicly to issues relating to the conduct or performance of employees if a disciplinary investigation is under way or if an internal or external appeal is still to be dealt with.

## **Enquiries and Complaints about Officers or Services**

Enquiries about services should be raised with the most appropriate officer. If in doubt refer to the A-Z, or to the list of enquiry/complaints officers in the front of the Handbook and Diary. The quickest way of raising an enquiry is over the telephone. Alternatively you may wish to e mail or fill in a Member Enquiry Form or send a letter. Out of hours enquiries can be made to a special telephone number (see page 178).

Complaints about Officers or Council services should be made to the relevant Complaints Officer of the service where you feel the fault lies. Your complaint will be dealt with in accordance with the Council's Complaints Procedure.

Members have a right to know if action has been taken to correct a matter, but for reasons set out in the section on the Council as an Employer, they must not, either:

- influence or try to influence the level of disciplinary action to be taken against an Officer, or
- insist (not be seen to insist) that an employee is disciplined.

Members must not sit on any appeal that hears a case in which they have been involved.

Members have a duty to raise any issues they have reason to think might involve fraud or corruption of any sort with the Monitoring Officer or Head of Finance and Property.

### **Be Positive**

Members should celebrate success and good work and thank the people responsible.

Members should be understanding about the difficulties that Officers have in dealing with increasing workloads and decreasing resources, just as Officers are encouraged to be understanding about the pressures on Members.

### **Relationships with Officers – Circumstances in which Officers can be Contacted Out of Office Hours**

If there is an emergency appropriate Officers can be contacted via the out of hours Emergency Service. This service is manned 24 hours per day, 365 days per year. The telephone number is 01757 244475.

If there is a situation which is not strictly an emergency but which cannot reasonably await the next working day, the Emergency Service will contact the Head of Service or a member of Management Team at home. He or she will decide whether it is necessary to contact other Officers. It should be noted that Emergency Service staff will not supply any Officer's home number direct.

For situations where Members simply wish to leave a message for a particular officer or Service Unit after office hours, they should use the Councils main switchboard number, 01282 425011 and leave a message when prompted. Messages will be

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checked every morning by a member of staff from Customer Services and passed on to the appropriate person that day.

Officers who regularly work from home can be contacted during the working day via their office. They are expected to deal with queries from Members in exactly the same way as if they were in the office.

Members may contact Officers direct at their homes by any special arrangement agreed between them.

**In all other circumstances the general rule is do not contact Officers at home.**

### **Relationships with Officers – Other Contacts with Officers**

Members are elected to represent the interests of their constituents, but you should not seek special treatment for any individual. When dealing with Council Officers, you must declare any special relationships with constituents, e.g. close personal friendship.

It is legitimate for Members and Officers to talk about Council business, even where matters have been delegated for Officer decision. However, Members should not put pressure on an Officer to decide those matters in a particular way. This might lead Officers to make decisions that:

- are not objective and cannot be accounted for;
- favour unfairly one member of the public over another

You should avoid bringing or attempting to bring undue influence to bear on an Officer to take any action which is:

- against procedure or policy;
- a breach of the disciplinary code for employees;
- in conflict with the Constitution including Standing Orders or Financial Procedure Rules

Officers have a duty to report any attempt to exert improper influence. The Monitoring Officer, or nominated Officer, will investigate any such report.

### **Chairs of Committees and Executive Members**

Senior Officers are expected to work closely with Executive Members and Committee Chairs and to meet regularly with them. It is legitimate for Officers to consult such Members about decisions delegated to Officers, but the ultimate decision can only be taken by the officer or Member/s given the delegated power to do so.

Executive Members or Chair should not seek to influence an Officer to reduce the options or withhold information which he/she should properly report to a Committee or the Executive.

**Relationships with Others; Dealing with the Media; and Disclosure of Information**

Try to help every resident who asks for help. If that person is not a constituent of your Ward, it may be that a Member for that Ward would be better able to help. However, you are not obliged to refer the constituent to another Member and, indeed, there may be circumstances where this is inappropriate, e.g. if the resident particularly wants your help rather than that of another Member.

Always be courteous to members of the public, even if you disagree with their views.

Find out who is the best person to deal with a query – sending it to the wrong person can only delay a response.

If you cannot do what people ask, explain clearly the reasons why.

Criticise political opponents only on the basis of what they have said or done, without being personal.

Abide by the rules of debate – they are there to help everybody.

**Dealing with the Media and Disclosure of Information**

Be wary of what you say to the media. It can sometimes be misquoted or taken out of context.

The proper spokesperson for the Council (i.e. the person with authority to speak on behalf of the Council) is either the relevant Officer, Executive Member or Leader of the Council, depending on the issue. If in doubt, seek advice from the Council's Public Relations Officer.

**N.B.** This does not prevent any Member of the Council speaking on his or her own behalf or on behalf of any individual or group of residents.

Many of the documents you will see as a Member and much of the information you receive will be confidential. You must not disclose that information to anyone else.

In particular you must not disclose to or discuss with the public and press:-

Any proceedings which take place in meetings from which the press and public are excluded

Any matters which disclose confidential information within the meaning of the Local Government Act 1972

Any matters which are contained in reports marked "exempt" within the meaning of the Local Government Act 1972.

If in doubt, ask the Head of the Chief Executive's Office or the Monitoring Officer.

## **Interests**

**The law relating to the classification of interests and speaking and voting rights has changed substantially and Members are recommended to read Part 2 of the Council's Code of Conduct very carefully.**

The law relating to Members who are two months or more in arrears on payments for Community Charge or Council Tax has not changed.

Section 106 of the Local Government Finance Act 1992 provides that no Member of the Council who is two months or more in arrears on payments for Community Charge or Council Tax is permitted to vote at any Council or Committee meeting on any matter affecting:

- The setting of the Council's budget; or
- The setting of the Council's Council tax; or
- The administration, including penalties and enforcement, of the Community Charge and the Council tax

It is the responsibility of any Member to whom Section 106 applies to:

- Disclose the fact; and
- Not vote on any matter specified in Section 106

It is ultimately the responsibility of Members to determine whether or not they have a declarable interest and whether or not they can speak and/or vote. Officers who know from previous dealings that a Member has such an interest may if the opportunity arises remind that Member of the rules but they are under no obligation to do so, and the fact that such an officer has not done so does not absolve the Member from his/her responsibility. If a Member is in any doubt he/she should actively seek advice from the Monitoring Officer, or the Head of Legal and Democratic Services. Err on the side of caution.

## **Members Acting as Directors, Trustees, etc. of Other Organisations**

Members are often appointed to outside bodies/organisations because of their status as a Member. These appointments are generally regarded as roles where members represent the Council and Members are bound by the Code of Conduct.

In some circumstances such an appointment may mean that a member, as an individual, has certain separate legal obligations placed upon him/her which are different or may conflict with their obligations to the Council. In these circumstances members play a useful role, as a Member, in the business of that body or organisation.

However, a member has an overriding legal duty to that body or organisation and not the Council. A member must always act in the best interests of that body or organisation, which may or may not coincide with the Council's.



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Examples of such appointments are Company Directors or Trustees of Charities. Another example are appointments to Review Boards for Council Tax and Housing Benefit. Where, under law, a Board is a separate legal entity from the Council Members are required to act without being influenced by that role as a Member or member of a political group. A Chair of a Review Board has a special legal responsibility for each decision made by a Board and must personally approve every written decision. Such duties include respecting any confidential information of the outside body/organisation.

Other appointments, for example as a member of a Management Committee, may not carry such personal or legal responsibility and members must always follow the Code of Conduct where the business of such bodies/organisations coincides with that of the Council.

This is not an exhaustive list of examples and Members should familiarise themselves on appointment to outside bodies and organisations with the relevant rules, procedures and legal requirements and continue to remain aware of such matters throughout their period of appointment.

### **Registering and declaring membership of the Freemasons.**

It is necessary for Freemasons to declare membership of the Freemasons Grand Charity under Part 2 of the Code of Conduct, which states that members need to register with their authority membership of bodies that are directed to charitable purposes.

All Freemasons pay an annual subscription fee to their own individual Masonic Lodge, part of which automatically goes to the Grand Charity. Therefore Freemasons are obliged under the Code of Conduct to register their membership of the Grand Charity and to declare this interest where appropriate.

### **Registering and declaring membership of political council associations.**

Membership of Member associations should be registered with the authority under Part 2 of the Code of Conduct.

Paragraph 8(1) (b) ) requires the registering of membership of bodies “whose principal purposes include the influence of public opinion or policy.”

Political party Member associations fall under this paragraph and membership of political party Member associations therefore need to be registered.

## **General guidance on Development Control functions**

### **Lobbying of and by Members**

Members who are not on Development Control Committee should avoid lobbying fellow Members who are members of that Committee. They may, however, speak on behalf of their constituents but only if the appropriate notice to speak has been given in line with the ‘Right to Speak’ procedures. The relevant forms for applying for a

Right to Speak at committee meetings are available from the Town Hall and must be filled in and returned to the Town Hall by the appropriate date.

### **Development Proposals by Members, Officers and the Council**

*Development proposals by Members and Officers of the Council must be handled in such a way which gives no grounds for accusations of bias, favouritism or disadvantage. Similarly applications for development made by the Council or for development on Council owned land must be dealt with in a way which is open to public scrutiny.*

An officer must not act as an agent for anyone pursuing a planning matter with the Council. Any Member who acts as an agent (paid or unpaid) must take no part in the decision making process for that proposal.

Should any Member or officer submit their own application for the Council's approval they must inform the Head of Housing and Development Control and must take no part in either processing or determining the application. Such planning applications must not be dealt with under delegated powers, no matter how minor an application it may be, and must be identified in the written report to Development Control Committee as being the application of a Member or officer.

Proposals for the Council's own development must not be treated under delegated powers and must be reported to Development Control Committee and identified as the Council's own development in the written report to Committee.

### **Declaration and Registration of Interests**

*The law and Model Codes set out guidance for Members generally on declaring interests, these must be followed scrupulously by Members of Development Control Committee. The national guidance advises that not only should impropriety be avoided but also any appearance, or grounds for suspicion of, impropriety. The responsibility for this rests with each Member.*

Members who have substantial property interests, or other interests which would prevent them from voting on a regular basis, should avoid serving on the Development Control Committee.

Advice on what constitutes an interest is set out in the Model Code. If it is perceived that a member may further a private or a personal interest, rather than the general public interest, through their membership of Development Control Committee, then that member should consider whether it is appropriate for them to continue to be a member of the committee.

Private interests could arise through family, friends, clubs, societies, football clubs, Freemasons, trade unions, special interest groups and voluntary bodies. The national guidance says that the test for deciding whether such an interest should be declared is whether a member of the public, knowing all the facts, would reasonably think that the member might be influenced by the interest. If so, then the interest must be disclosed and the Member must take no further part in the relevant

proceedings. It is for the Member, not officers, to decide whether an interest should be declared.

### **Committee procedures and decisions**

*Members of the public and Members who are not members of Development Control Committee who wish to speak in support of, or against, a development proposal will be allowed to do so.*

Members wishing to speak in support or against a development proposal for **personal** reasons, i.e. not in their role as Ward Members, must refer to the guidance on Declarations of Interest as set out in Part 1 of this Guidance.

### **General Role and Conduct**

Members whether on Development Control Committee or otherwise should not attempt to influence the content of the officers' consideration of a planning application or the recommendation.

### **The Distinctive Roles of Members and Officers**

Put simply, Members are responsible for determining policy; Officers are responsible and accountable for implementing policy and managing the organisation.

Given these roles, Officers are expected to work within and pursue Council policies. Equally, Members must not interfere with executive matters that are properly the responsibility of Managers.

### **Members' Role**

Members have a complex role and are required to act simultaneously in three capacities:

- **As Politicians** - in this capacity you will normally belong to a political grouping represented on the Council and will express political values and support the policies of the group to which you belong.
- **As Representatives** – in this capacity Members interpret and express the wishes of the electorate and seek to account for service priorities, allocation of resources and ultimate performance.
- **As Council/Committee/Executive Members** – in this capacity Members have personal, individual, and collective responsibility for the Local Authority organisation and its activities. You are responsible for ensuring that adequate management arrangements are in place; to develop and take decisions on the use of the Authority's physical, financial and human resources, and to concern yourselves with the performance, development, continuity and overall well-being of the organisation.

## **Officers' Role**

Officers of the Council have, in broad terms, the following main roles:

- They are the **managers** of the services for which the Council has given them responsibility. They are accountable for the efficiency and effectiveness of those services and for proper professional practice in discharging their responsibilities
- They are responsible for the appointment of officers below Deputy Chief Officer level. (In our structure terms this means Service Unit Managers and below)
- They are the **professional advisors** to the Council, its Committees and Members in respect of their service
- They may **initiate policy proposals** for Members to consider as well as being **implementers of agreed policy**
- They **ensure** that the Council always acts in a lawful manner

### **Protocol: Chief Executive / Chief Operating Officer and Political Groups**

#### **General**

- The Chief Executive and Chief Operating Officer are employees of the Council as a whole and their overriding responsibility is to the Council and not to any party political group or other grouping of Members (hereafter called "Group"). Their political neutrality should be respected
- All Members of the Council have an equal right of access to the Chief Executive and Chief Operating Officer
- The Chief Executive and Chief Operating Officer are expected to work closely with the political administration to give them information, assistance and advice. It is inevitable there will be more contact and more dialogue between the officers and the Leader, Deputy Leader, other Members of the Executive and Chairs and Vice-Chairs of Committees than with other Members but the officers will maintain political neutrality
- The Chief Executive and Chief Operating Officer need to develop good working relationships with minority groups. The Chief Executive and Chief Operating Officer will not reveal to other Members the content of the discussion with any Group, unless consent has been specifically given by the Leader of the Group concerned

#### **Briefings**

- It is a basic requirement of Officers that information, other than of a routine or trivial nature, given to one Group is offered to all Groups. It is also important for the effective conduct of Council business if the chief Executive and Chief

Operating Officers keep in regular contact with all Groups to provide information, give advice and answer questions on items of corporate importance. Accordingly, regular liaison meetings can be very valuable, offering a regular and confidential forum for dialogue and discussion

- The Chief Executive will also offer a briefing once a cycle to Group Leaders on an individual basis if they wish to take this up. Notes from any such meetings would be confidential and would not be shared with any other Members or officers (outside the Management Team). This regular briefing will be in addition to any ad hoc briefings or meetings on specific issues
- In addition, a Group Leader may request the Chief Executive or Chief Operating Officer to arrange a confidential briefing for the Party Group on any matter of relevance to the Council. In such cases, a similar briefing will be offered to other Groups. The role of Officers at such briefings will be to provide information and answer questions; any debate within the Party Group should take place after the Officer has left. Normally, only the Chief Executive and Chief Operating Officer or Service Unit Managers will attend briefings, although they may ask a colleague for 'technical' information to accompany them if required. Group Leaders should refer their requests for officer attendance to the Chief Operating Officer in the first instance. (Note: Officers will not attend Party Group meetings at which there are persons present who are neither elected Members of the Council, nor in the service of the Council)
- All Council media (press) releases will be sent automatically to each Group Leader (or nominated Committee spokesperson)
- The Chief Executive will, as far as possible, ensure that all Ministerial/VIP visits have cross-party involvement

### **Information**

- There is a long-standing arrangement that a copy of any information supplied by an officer to a Member is sent to the appropriate Executive Member or Committee Chair. If this information is requested on a confidential basis, however, officers will not pass this information to any other Member

### **Access to Information – Members of the Executive, a Committee or Sub-Committee**

As a Council Member you have all of the rights available to members of the public to inspect reports, minutes and background papers appearing on the public part of any Executive, Council Committee or Sub-Committee agenda.

However, background papers not usually available to the public would only be available to a Council Member who sits on the relevant Committee which considered the report, and providing it is not deemed to be highly confidential.

You also have additional rights as a Member. You are legally entitled to information that you need in order to carry out your work as a Member. But you are not entitled

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to confidential information which is not directly relevant to your role as Member, or information which relates to a particular person or a commercially sensitive matter.

You should not request confidential information in order to use it for a purpose not legitimate for your role as a Member, because you are in a position of trust. Your motive for requesting confidential information is, therefore, relevant and you should be prepared to disclose the reason for your request.

If, for example, you are pursuing an issue on behalf of a constituent, this would be a legitimate reason and should be made known to the Officers from whom you are seeking the information. You must not abuse this trust by disclosing information that is confidential or exempt from disclosure to the public.

This is particularly relevant to information which is commercially sensitive, related to a tendering process or personal information relating to staff or members of the public.

In addition to Committee and Executive reports and background papers you are entitled to see any papers the Council has which properly relate to the work of a Committee or Sub-Committee that you are on. However, because an issue has been considered by a Committee this does not mean that you may see all the papers that relate to it.

If the papers contain exempt or confidential information you will need to demonstrate “a need to know” and give reasons why you need to see the papers in order to perform properly your duties as a Member and this need must not be outweighed by any public interest requiring nondisclosure. You must not ask for information on a matter on which you would have to declare an interest.

If you are refused access to documents you feel you have the right to see, the dispute will be determined by the Head of Legal and Democratic Services.

### **Access to Information** **- Members not a Member of the Executive, a Committee or Sub-Committee**

As a Member, you have the right to see some information on Committee agendas which is exempt from disclosure to the public, on a “need to know” basis.

You have no automatic right of access to information about:

- any particular employee of the Council;
- applicants for employment with the Council;
- occupiers of Council accommodation;
- applicants for such accommodation;
- recipients of financial assistance from the Council;

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- applicants for such assistance;
- recipients of any Council service;
- applicants for any such service;
- the adoption, fostering, care or education of a particular child;
- items proposed during negotiations over a contract for property, goods or services;
- negotiations or consultations with the Council's trades unions;
- legal proceedings taken or defended by the Authority where the Council interest could be compromised;
- any action to be taken to prevent, investigate or prosecute a crime;
- the identity of a protected informant.

However, if you can establish that in order to carry out your duties as a Member, you need information to which you would not normally have access, then the Head of Legal and Democratic Services may provide access.

If you attend an Executive or Committee meeting on which you do not serve as a Member, you may remain in attendance even if the public have been excluded but only with the consent of the Executive/Committee. You must not attend if you have an interest in any matter being discussed.

#### **Use of Council Facilities**

A schedule of the services which the Council provides for Members is set out below.

1. Free photocopying facilities for Council and Ward matters, through the document copying office in the Burnley Town Hall. A shredding machine is also available for confidential documents if required.

A small photocopying machine is located in the Members' Room of the Burnley Town Hall.

2. Access to Information Technology facilities - via computers in the group office and many cases from Members' homes. All Members having such access are to sign an agreement to abide by the IT Security Policy.
3. Structured and formulated Member training both 'in house' and external.
4. Members' room and facilities:
  - i. Limited library - books journals, periodicals, reports and copies of Committee agendas.
  - ii. Newspapers - Burnley Express, Evening Telegraph and the Guardian.

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- iii. Telephone and additional 'phone in the kiosk on the Civic Floor opposite Committee Room number one.
  - iv. Small photocopying machine.
  - v. Letter writing facilities.
5. Provision of Group Offices for the political parties. Limited filing assistance provided for the majority Group Office as required.
6. Typing, diary and filing services provided for the Council Leader by staff in Support and Member Services.
- Typing facilities for other Council Members are also available from Support and Member Services.
7. Assistance with research and additional support available for Executive Members, Chairs and Vice-Chairs when requested.

### **Council facilities:**

You must use any Council facilities provided for you in your role as Member strictly for that purpose and no other. For example, you must not use rooms in the Town Hall or any of the Council's paper, computers, photocopiers, or printers for any personal, business-related or party-political matter (subject to the provisions below), nor on behalf of any community groups of which you are a member, unless a payment has been agreed for the service with the Head of Legal and Democratic Services.

Under Sections 95 and 96 of the Representation of the People Act 1983 (RPA), Candidates at both Parliamentary and local government elections are entitled to use publicly funded accommodation to hold election meetings.

Under the RPA:

1. Candidates at parliamentary or local government elections are entitled to the use of premises in a school or other community meeting room, at reasonable times.
2. Use is free of charge, but candidates must meet the costs of preparing, heating, lighting and cleaning and restoring it to its usual condition after the meeting.
3. Candidates must pay for any damage to the room or premises.
4. Reasonable notice must be given by or on behalf of the candidate.
5. At local elections, meetings must be for the purpose of promoting or procuring the giving of votes in the forthcoming election.
6. The meeting must be open to the public.
7. The council will keep a list of suitable rooms within as well as outside the constituency. The list must be available for inspection at reasonable hours by a candidate or their agent.



## **The Members' Support Service**

Secretarial assistance is available to help with work such as casework, meetings and correspondence that deals with Council matters. But you should not ask staff to assist you with any personal, business or party political matter, or decide how your casework will be dealt with although advice can be given. This is so even when the person being contacted is a constituent, an Officer, or a Member.

## **Advice from Council Officers**

Officers can only be asked to provide advice to Members on matters which clearly relate to those matters which arise from being an elected Member.

The Council can only provide legal representation to an individual Member where the action is taking place in the name of the Council and the individual deserves the protection of the Council. All such matters should be raised with the Head of Legal and Democratic Services in the first instance.

## **Political Party Workers**

Members are often assisted by political party workers. There is no objection to this, but no non-elected party worker has any legal entitlement to:

- information to which Members have access only in their role as Members; (although it is our normal practice to allow Group Observers to have the paperwork circulated to Group meetings)
- use Council facilities provided for the use of Members

The principles which apply to use of facilities provided for Members (and the Officers employed to assist them) apply equally to all Council property and facilities; and all Council employees.

## **Guidelines for use of Photocopying Services for Council Members**

The Council provides a photocopying service as part of its range of Support Services to Council Members. This comprises the small photocopier in the Members' Room, intended for use by individual Members, and the central photocopying service also in the Town Hall, which is operator controlled.

The Council also arranges for the copying and distribution of Agendas and reports, to Political Groups represented on the Council, as this is considered to be ancillary and incidental to the Council's activities.

Neither of these services (or any other Member Support Services) is to be used for the conduct of party political activities. The Council is expressly prevented by legislation and a Publicity Code from publicising, or assisting others to issue publicity on behalf of Political Groups or organisations.

Councils are usually politically controlled. In publicising the activities of the Council there will often be reference to the controlling Political Group. This is permitted if the intention is to publicise the Council's activities.

There will be occasions when documents produced by a political organisation, e.g. a briefing paper on a particular policy, or new initiative affecting Local Government, are to be considered at a Political Group Meeting, or even a Council Committee Meeting. If the document is intended to assist the Council's activities or is ancillary to them it is legitimate for that document to be copied and distributed.

It is important to make the distinction between where the document originates and its intended use. The fact that a document is produced by a Political Party is not sufficient in itself to prevent the Council arranging for it to be photocopied and circulated.

***If the document was intended to be used to affect public support for a political party then, by law, the Council cannot arrange for it to be copied or circulated.***

Given these considerations:

1. The Council will continue to photocopy for and distribute to Political Groups represented on the Council, documents to be considered at Political Group Meetings.
2. Political Groups are required to restrict their requests for the copying and distribution of documents to those items to be considered in connection with the Council's business.
3. No documents intended to publicise the work of Political Groups or organisations will be printed or published by the Council and Council Members or Political Group Officers are required **not** to contravene this guideline.
4. The Council can photocopy material for individuals or for Political Parties at a commercial charge but care must be taken to ensure that there is no breach of the law.
5. All documents intended to be copied and or distributed on behalf of Political Groups are to be handed to the Head of Legal and Democratic Services, or his representative. No Council Member or Political Group Officer should give those documents to the central photocopying operator or issue instructions for copying to the operator.
6. The photocopier in the Members' Room is available for use in connection with Council business. For example, taking copies of correspondence to and from constituents. It is not for use in connection with private business or Party Political activities, for example Election literature.
7. Any queries on these guidelines should be raised with the Head of Legal and Democratic Services.

### **Guidelines for use of Rooms by Political Groups**

The Council's Policy on the use of Council accommodation for Party Political meetings is:

*“The rooms shall not be used for the purpose of holding Party Political Meetings or Party Political exhibitions (other than meetings attended wholly or mainly by Members of the Council and which are ancillary to or incidental to the Council's activities).”*

The use of rooms at Burnley and Padiham Town Halls permitted under this policy will be free of charge. The policy also applies to the use of rooms in other Council accommodation but a charge may be made for that use if, in the opinion of the Head of Service responsible for that accommodation, it would result in a loss of income from other bookings.

This policy is intended to permit the use of Council accommodation for Political Groups represented on the Council.

Political Groups, whether or not represented on the Council will not be permitted to use Council accommodation for Party Political events or meetings.

All rules about use of rooms (e.g. No Smoking) must be observed.

### **Accepting Gifts and Hospitality**

The Code of Conduct says that a Member must within 28 days of receiving any gift or hospitality over the value of £25 provide written notification to the Monitoring Officer of the existence and nature of that gift or hospitality.

You must not:

- accept gifts or hospitality from an organisation that has dealings with the Authority, where this could be seen as likely to influence your work and decisions as a Member

This can include hospitality such as tickets to social or sporting events that are offered to you in circumstances where they are not available in the same way or at the same price to the general public.

Otherwise you may accept gifts that are:

- of a value up to £25; and
- appropriate to you as a representative of the Council

Any gifts or hospitality received over the value of £25 must be notified in writing within 28 days to the Monitoring Officer.

Because it can at times be difficult for a Member to judge what gifts and hospitality are appropriate to accept you are strongly advised to seek guidance from the Head of Legal and Democratic Services or the Monitoring Officer before acceptance.

**Members Allowances**

Members are entitled to claim various allowances in connection with their duties and responsibilities. Full details can be obtained from the Finance and Property Management Service Unit.

The Council's "Financial Procedure Rules" sets out rules as to how and in what circumstances allowances can be claimed.

It is very important that Members follow these rules carefully and take advice if needed. Nothing is more damaging to the credibility of the Council than an allegation that allowances have been falsely claimed.

Although it is a commonly held view that Members are not adequately compensated for the time and effort that they put into their Council work, it is not legitimate to try to increase that compensation either by outright falsehoods or by manipulating the system. An example of the latter is non-attendance at Conference sessions which have been paid for by the Council.

## **CODE OF CONDUCT FOR MEMBERS**

### **2. GUIDANCE FOR MEMBERS INVOLVED IN DEVELOPMENT CONTROL DECISIONS**

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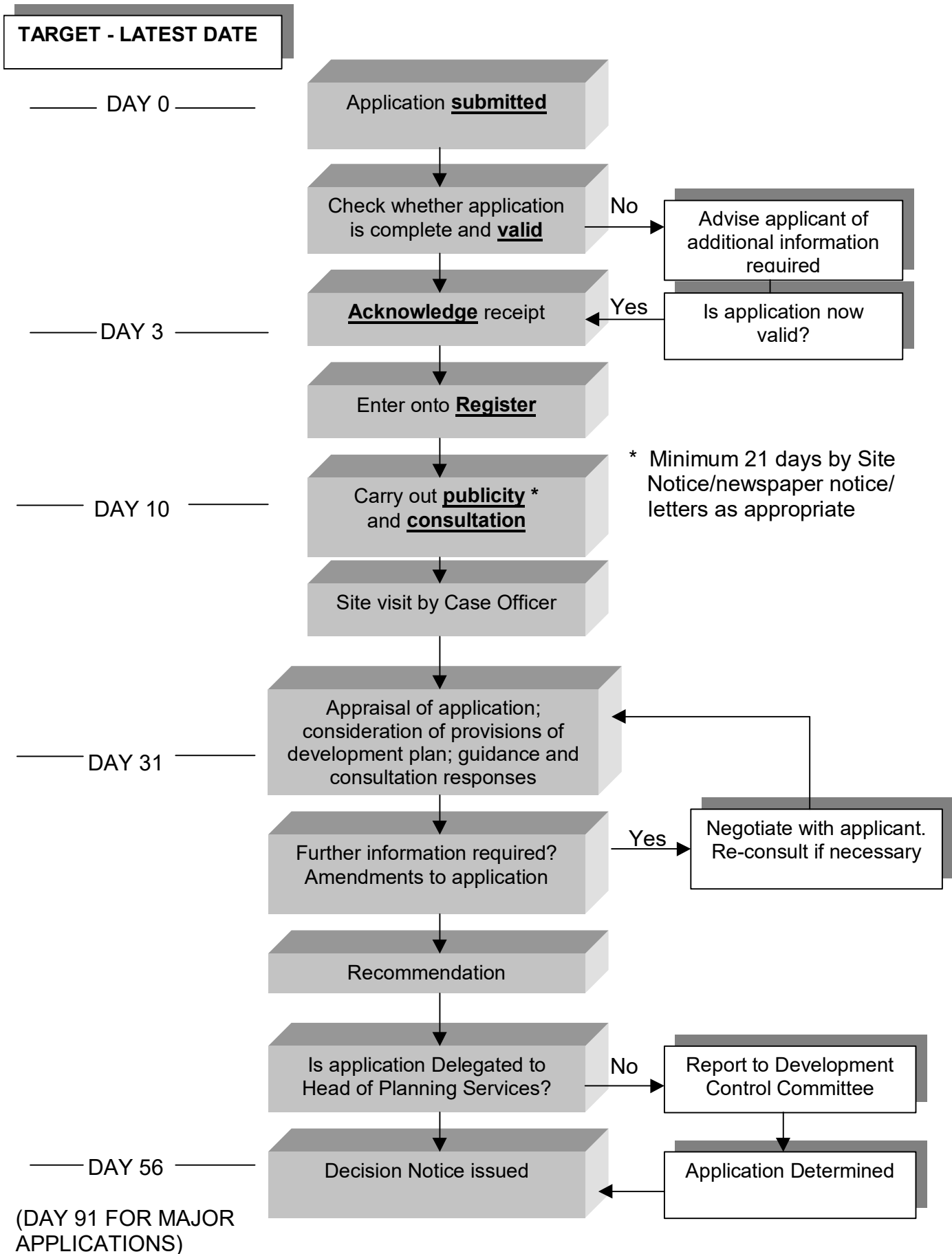
#### **1. Introduction**

- 1.1 *This guidance has been prepared to assist Members who are involved in Development Control decisions and is supplementary to the revised Code of Conduct for Members, which was adopted by the Council in July 2007*
- 1.2 This Council determines around 700 planning applications each year and each application must be dealt with in a manner which is fair, open and in accordance with national planning guidance. Achieving an open development control process depends on the integrity of all those involved, officers and members alike.
- 1.3 Membership of Development Control Committee brings with it special responsibilities over and above those carried by Ward Members. This guidance will assist Members of Development Control Committee in reconciling their roles as representatives of the community with the responsibility for ensuring proper planning of the Borough.

#### **2. Development Control in Burnley**

- 2.1 Burnley Borough Council determines around 700 planning applications each year. Over 80% of all applications are dealt with under the Scheme of Delegation and are determined by the Head of Housing & Development Control. Less than 20% of applications currently go before Development Control Committee for a decision. The applications which are placed before Committee are those which are controversial, or have given rise to objection, or are not in accordance with the current development plan and require the careful consideration of the Committee.
- 2.2 The attached flow chart shows the progress of a planning application from receipt to decision. At present 80% of all applications pass through this process and are 'determined' within eight or thirteen weeks, which is the current national target.

## PLANNING APPLICATION - PROGRESS



## **Guidance for Members involved in Development Control Decisions**

### **3. Discussions with Applicants**

- 3.1 Members who are members of Development Control Committee should, as far as is practicable, discourage any applicant or agent or other interested party from approaching them in relation to any individual planning application or any other matter which may give rise to a planning application. It is advisable to refer all queries to the planning officers.
- 3.2 From time to time meetings may occur between Members and potential developers, for the sake of openness the following guidelines must be followed:-
- a) the meeting shall be pre- arranged and shall be organised through or by an officer of Planning and Environment Services;
  - b) the meeting shall take place in Council Offices or on site in appropriate circumstances, in which code of practice for Site Visits (see section 5) must be followed;
  - c) an officer from Housing & Development Control must be present throughout the meeting;
  - d) a record of the meeting must be made by the Officer;
  - e) in the event of a planning application being made in respect of the development proposals discussed at the meeting, the record shall be made available for public inspection and shall form part of the planning application file.

### **4. Lobbying of and by Members**

*Once it becomes known that a Member is a Member of the Development Control Committee, he or she is likely to be lobbied from time to time by people who have submitted planning applications, or people who have an interest in seeing a planning application refused or approved. This guidance will help Members deal with these potentially awkward situations.*

- 4.1 Members of Development Control Committee should not encourage any applicant, agent, potential applicant, potential agent or other interested party from approaching them in any way in relation to any individual planning application, or any other matter which may give rise to a planning application. If an approach is made the Member should restrict themselves to giving advice about rules and procedure, including suggesting to those who are lobbying that they should speak or write to the relevant planning officer, or a Member who is not a member of the Development Control Committee.

- 4.2 If a member of Development Control Committee is approached by an applicant or agent or other interested party in relation to a particular planning application, the member should:-
- a) inform the applicant or agent or interested party that such an approach should only be made to officers of the Council or to elected members who are not members of Development Control Committee;
  - b) Tell the Head of Housing & Development Control or case officer that such an approach has been made; identifying the site, the nature of the approach, by whom it was made, and the action taken by the member concerned;
  - c) Keep an adequate written record so as to enable the member to disclose the fact of such an approach if and when the application is considered at Development Control Committee;
  - d) Disclose the fact and nature of the approach at the relevant meeting of the Development Control Committee.
- 4.3 Members of Development Control Committee must take care about expressing an opinion which may be taken as indicating that they have already made their mind up about an application, before having heard all the relevant arguments and evidence at committee. This is known as pre-determination.
- 4.4 If a member of Development Control Committee receives written representations directly relating to a planning application, the member should immediately pass the correspondence to the Head of Housing & Development Control so that the representation may be taken into account in the consideration of the application and in the report to Development Control Committee.
- 4.5 Members of Development Control Committee should take great care to maintain impartiality when attending public meetings in relation to planning applications. They should consider carefully whether it is appropriate to attend in the first place and should not agree to chair such meetings. If they wish to attend to hear the arguments raised at the meeting they should ensure that an officer from Housing and Development Control is available to attend the meeting with them. Members attending such a meeting must make it clear they are there to listen and must not give an opinion on the merits or otherwise of the development proposal.
- 4.6 If a member of Development Control Committee has had any personal involvement with an applicant, agent or interested party, whether or not in connection with the actual application before committee or not, which could give rise to a perception that the member's judgement may be affected, then the member must declare an interest in accordance with the Code of Conduct for Members.



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- 4.7 If a member is unsure about whether or not an interest should be declared, they should contact the Head of Legal and Democratic Services for advice.
- 4.8 Members of Development Control Committee should exercise care in their social contact with known developers and agents and should refrain altogether from such contacts when developments are known to be contemplated or proposed or where controversial decisions are likely to be needed.
- 4.9 Members of Development Control Committee should not use any political meeting prior to a Development Control Committee nor declared political stance to decide how to vote. The use of political 'whips' at group or other meetings is contrary to the National Code, and may amount to maladministration.
- 4.10 Members of Development Control Committee, or indeed any other Members, must not put pressure on officers for a particular recommendation.

## **5. Disclosable Pecuniary Interests and Other Interests**

**See Part 2 of the Code of Conduct**

## **6. Site Visits**

- 6.1 Deferring a decision to allow for a site visit shall only be used when, in the Committee's view, the expected benefit in assisting the Committee to determine the application is substantial. A site visit is only likely to be necessary when the impact of the proposed development is difficult to visualise from the plans, photographs and other supporting information provided at Committee. The reason for making the site visit must be minuted clearly.
- 6.2 A site visit will normally take place immediately preceding the next Committee meeting following the decision to make the visit. The applicant and the occupiers and owners of private land to which access is desirable to view the application shall be informed and prior agreement for access shall be obtained.
- 6.3 Code of practice for Site Visits (see below)

### **CODE OF PRACTICE FOR THE CONDUCT OF SITE MEETINGS**

- ***Site meetings shall be used solely to acquire information about the nature of the application or related issue and its implication. No debate on the planning merits of the case will be permitted***

- ***Members shall endeavour not to express their personal opinions in relation to the application or the contents of the Officer's report***
- ***During the course of site meetings Members and Officers should endeavour to keep together as a group rather than engage individually in discussions with applicants or objectors. Discussion shall be via the Chair***
- ***If during the course of a site meeting the proceedings are disrupted by the applicant or objectors, the Chair (or in his/her absence the Vice Chair) may terminate the meeting at his/her discretion***
- ***Any Member having a pecuniary or other interest shall disclose that interest at the start of the meeting. Where that interest is clear and substantial the Member concerned shall withdraw from the site meeting***
- ***At the end of the site meeting, the Chair will give the Officers an indication of how the Members wish the application to be dealt with. There will normally be an agreement for the Officers to determine the application under delegated powers in accordance with the Committee report or a referral back to Committee***
- ***A record of the proceedings shall be kept by an Officer from the Democracy Team***

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- 6.4 Members of Development Control Committee must not make their own private arrangements to make site visits, although they can view sites from the public highway or other such publicly accessible viewpoints.
- 6.5 Members of Development Control Committee must not enter any premises which are the subject of a planning application, or known to be likely to become the subject of a planning application, for any purpose in connection with such an application, save in the course of a site visit accompanied by officers.
- 6.6 A written record of Members attending organised site visits will be kept by the Democracy Team.

## **7. Training**

*Members must exercise their representational role on behalf of their constituents, at the same time the planning process requires them to take decisions within a legal framework which is continually evolving and changing through legislation and case law. In order to exercise these duties Members need to have access to good quality and relevant training, and regular advice sessions provided by officers.*

- 7.1 To remain eligible to serve on Development Control Committee, members must receive formal training in planning procedure and planning law. This formal training will be provided to members annually, with less formal training workshops and updating sessions offered as appropriate.
- 7.2 Records of attendance at the formal training will be maintained by the Democracy Team and any apparent failure to attend will be notified in the first instance to the Member concerned and the relevant Group Leader, and if not rectified at the next available session will be referred thereafter to the Monitoring Officer or the Audit & Standards Committee who may recommend that the Member be removed from the Development Control Committee .
- 7.3 All Members on Full Council determining a development control application and all Members appointed to the Development Control Committee must attend annual training on planning law and procedure. This training must take place within 1 month of the Annual Appointments Council or being appointed to the Development Control Committee before they can determine any development control application, and failure to do so may be a breach of the Code of Conduct.  
However a Councillor could not be prevented from taking part in a development control decision at Full Council if they hadn't attended training, but could be prevented at Development Control Committee.

## **8. Declaration and Registration of Gifts and Hospitality**

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- 8.1 Members of Development Control Committee may be offered gifts or hospitality from people with an interest in a planning proposal. Such offers must be declined. If receipt of hospitality is less than £25 in value and refusal would cause offence, Members should seek the advice of the Monitoring Officer or Head of Legal and Democratic Services

## 9. Committee procedures and decisions

*Reports to Development Control Committee will describe the proposed development, will summarise the objections and views of those consulted, and of those who have made representations, as well as the material considerations of the case. Reports will contain a full and considered justification and an officer recommendation. Amendments and additions to the reports, made following the writing of the reports, will be provided on a separate sheet available at the committee meeting – known as the Green Sheet.*

- 9.1 Members of Development Control Committee should seek to familiarise themselves with proposals and the written reports which form the agenda before the meeting. If members have detailed and technical questions which they feel they would like to raise regarding a particular report, they should give the officers concerned prior warning so that the information can be brought to committee and that all members of the committee can have benefit of the information provided.

9.2

### **THE RIGHT TO SPEAK AT DEVELOPMENT CONTROL COMMITTEE**

- ***Planning applicants and their agents, members of the public and Members, and any other interested party have a right to speak at Development Control Committee***
- ***Those wishing to speak must complete the prescribed form and return the form to the Town Hall no later than 5.00pm three days before the meeting (as Development Control committee meetings are usually held on Thursday evenings, forms must be returned to the Town Hall by 5.00pm on the Monday immediately preceding the meeting)***
- ***The form must include a summary of the points to be raised***
- ***Any person making representations at the committee meeting will be allowed to speak for no more than 5 minutes***

- ***If more than one person wishes to speak on the same issue the total time allocated for presentation of that issue may be restricted and divided between the speakers, this is subject to the discretion of the Chair of the Committee***

- 9.3 The Planning Officer will present the consideration of the planning proposal, using visual aids where appropriate. Members of the Committee may then speak and invite the guidance of officers as appropriate. The consideration will be followed by a vote on the proposal.
- 9.4 If it appears that the Committee may be minded to make a decision contrary to the officers' recommendations, the planning officer should be given the opportunity to explain the implications of the contrary decision before it is taken. Before making a decision contrary to officer advice the Committee should consider whether to defer the formal decision until a full draft of the reasons for the decision is available.
- 9.5 If a decision is taken contrary to officer advice, the members must give reasons for their decision. The reasons for the decision must be clearly minuted and a copy of the reasons placed on the application file. The name and vote of each Member present at the meeting will be recorded in the notes taken by the Committee Administrator.
- 9.6 Any additions, deletions or alterations to conditions imposed by Committee will be minuted and recorded on file.

## **10. Review of Decisions**

*In order to give members a better understanding of the impact of their decisions, to show examples of good and bad design, to develop an understanding of the role of the committee in guiding development.*

- 10.1 At least once a year the Development Control Committee will visit a sample of implemented planning permissions to assess the quality of its decisions. The Committee will use the opportunity to assess its contribution to the improvement of design quality, to consider the impact of decisions made and to assess whether it needs to review any policies or practices.

## **11. General Role and Conduct**

- 11.1 Members whether on Development Control Committee or otherwise should not attempt to influence the content of the officers' consideration of a planning application or the recommendation.
- 11.2 Members and officers have different, but complementary roles. Both serve the public, but Members are responsible to the electorate while officers are responsible to the Council as a whole. Officers advise Members and the Council and carry out the Council's work. They are employed by the Council

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not by individual Members, and it follows that instructions may only be given to officers through a Council or committee decision. A successful relationship between Members and officers can only be based on mutual trust and understanding of each other's positions. This relationship and the trust that underpins it must never be abused or compromised.

- 11.3 Any criticism of an officer by Members of Development Control Committee shall be made in writing to the Head of Housing and Development Control and not to the officer concerned. It is inappropriate for any member to publicly criticise or personally abuse an officer during a meeting of the Committee.
- 11.4 Decisions made in Development Control Committee must be made on sound planning grounds only. Party political issues must not be raised at Committee, nor used to influence the consideration of planning applications.
- 11.5 Members who sit on Development Control Committee are serving the town as a whole, and not just their ward constituencies. In dealing with planning applications Members must fulfill number of roles both as representatives of the people and as decision makers, objectively considering the facts and deciding upon them. This is particularly relevant to Members of Development Control Committee who must strike a balance between listening to and responding to the concerns of their constituents and making a decision in accordance with proper planning considerations.

## **12. Sanctions**

*If the Development Control Committee is found to have made what is termed an 'unreasonable' decision the Council may be faced with a financial penalty for having made that decision. If an individual Member of the Council is considered to have acted unreasonably he or she may be subject to a finding of maladministration, and may find that their actions result in disqualification from public office.*

- 12.1 An applicant who has been refused planning permission has a right of appeal to the Secretary of State, if an appeal is successful and it is shown that the Council's conduct in dealing with the matter was unreasonable, the appellant's costs may be awarded against the Council.
- 12.2 If objectors feel that the Council, in determining to grant an application, did not observe their statutory obligations to carry out all necessary procedures, base their decision on the development plan or take into account all representations, they may apply for a judicial review of the decision. In some circumstances this could result in the decision being reversed and if this were the case the applicant's cost may be awarded against the Council.
- 12.3 The Secretary of State possesses a range of powers which could be exercised where a local planning authority appears to be making inconsistent decisions or decisions which are seriously in conflict with national and development plan policies. This could involve a greater use of the power to 'call in' applications whereby the application would be determined by the Secretary of State, following a public inquiry, rather than the Development

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Control Committee. Where permission has already been granted by the Council, powers exist to revoke or modify permissions, or to require discontinuation of the land use, which if exercised would give rise to a liability to compensation by the Council.

12.4 If it appears to District Audit that a Council has been behaving inappropriately, either through a misuse of its powers or in a manner inconsistent with national and development plan guidance, the auditor will examine closely the relevant proceedings. If the auditor feels that the costs have been incurred through the willful misconduct of any member that member may be liable to disqualification from public office.