

Local Code of Good Practice – Members and Council Officers Involved in the Planning Process

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1. Introduction

- 1.1 Town and country planning is often highly contentious. It is seldom, if ever, an exact science: rather, it relies on informed judgement within a complex legislative and policy framework. Planning decisions frequently affect the daily lives of local people and the private lives of individuals. It is therefore essential that planning decisions be taken openly and impartially, with sound judgement and for justifiable reasons. The planning process must leave no grounds for suggesting that a decision has been partial, biased or not well-founded in any way.
- 1.2 An elected member on a Planning Committee has to balance representing the needs and interests of individual constituents and the community, with the need to maintain public confidence in the fairness and impartiality of the planning decision-making process. As the Nolan Committee (in its third report in 1997) acknowledged, this dual role can give rise to great tensions.
- 1.3 The purpose of this Local Code is to provide clarity in the way in which Members and officers of the Council will deal with planning matters and to set the standard of conduct, that other parties to the process are entitled to expect of the Council. Whilst this Local Code deals primarily with the determination of planning applications, the principles it endorses must be taken into account when considering forward planning (the Development Plan) and other planning policy issues, planning enforcement and all other planning matters.
- 1.4 In this Local Code, 'member' includes all elected members of the Council.
- 1.5 This Local Code is intended to ensure that the planning process is characterised by open and transparent decision making. Adherence to the Local Code will help to protect the Council against allegations of maladministration, legal challenges to its decisions and applications for costs based on grounds of 'unreasonable behaviour'. The Local Code's is based on the main principles are that decision-makers must:
 - (a) **not** favour unfairly (or appear to favour unfairly) any individual or group.
 - (b) **not** make decisions in advance of being presented with all the relevant facts.
 - (c) take into account all relevant considerations and not take into account irrelevant considerations
 - (d) not be biased in favour of any individual, bodies or locality or put themselves in a position where they appear to do so.
 - (e) by law determine all applications in accordance with the statutory development plans, unless material considerations indicate otherwise.
 - (f) have mutual respect for the positions of Officers and Members.

2. Relationship with the Council's Codes Of Conduct

- 2.1 This Code is concerned with the integrity of the planning process and maintaining public confidence in the planning system. Whilst there is a degree of overlap with the Council's Codes of Conduct for Members and Employees, this Local Code of Good Practice also imposes additional obligations in the specific context of Town

and Country Planning.

- 2.2 This Local Code contains advice based upon recommendations from the Local Government Association, the Royal Town Planning Institute (RTPI) and the Local government and Social Care Ombudsman ('the Ombudsman'). Failure to follow this Local Code may be taken into account in investigations into possible maladministration and may result in allegations that a Member or Council Officer has breached the Council's Codes of Conduct (and a Member being referred to the Monitoring Officer or an officer being subject to disciplinary action).

3. Application of this Local Code

- 3.1 This Local Code applies to both Members and Council Officers who become involved in the planning system. It applies to all planning decisions (whether taken at Council, committee, or by Council Officers under delegated powers).
- 3.2 The Code also applies to site visits, site review meetings and all other formal and informal contacts between Members, Council Officers, applicants, agents, objectors, landowners and other members of the public involved in the planning process. Whilst this Code primarily addresses the determination of planning applications, its underlying principles must also be applied to forward planning (the Development Plan process) and to the enforcement of planning control.
- 3.3 When determining whether there has been a breach of this Local Code the standard to be applied will be that of the reasonable member of the public with knowledge of the relevant facts and the standard of proof will be that of the balance of probabilities.

4. The Roles and Conduct of Members and Council Officers

- 4.1 Members and Council Officers have different but complementary roles. These are explored in detail in the Council's Local Protocol on Member and Officer Relations contained in Part 5 of the Council's Constitution. The guidance contained in that Protocol is relevant to the planning process.
- 4.2 Both members and Council Officers are subject to formal Codes of Conduct adopted by Torbay Council. In addition, Council Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's (RTPI's) Code of Professional Conduct, breaches of which may lead to disciplinary action by the Institute.
- 4.3 The Council's Codes of Conduct for Members and Employees cover issues central to the preservation of an ethical approach to Council business. In particular, Members must register and declare pecuniary and non-pecuniary interests (as defined in the Code of Conduct for Members). Similarly, certain Council Officers must register and declare personal interests (as defined in the Employees Code of Conduct). However, the Codes also govern relationships between Members, Council Officers and the public and these provisions will impact on the way in which Members and Council Officers participate in the planning process. Of particular relevance to Members and Council Officers involved in planning decisions is the requirement under the Code of Conduct for Members that they;

'must act solely in the public interest and should never improperly to confer an advantage or disadvantage on any person or act to gain financial or other material

benefits for themselves, a member of their family, close associate or relevant person'

- 4.4 The planning system involves the consideration of private proposals in the context of the wider public interest. Much is often at stake in this process and opposing views are frequently very strongly held by those involved. Whilst Members and Council Officers need to listen to these views, if they are involved in the **determination** of a planning matter, they must **not** unfairly favour (or appear to unfairly favour) any person, body or organisation, or any group or locality, nor put themselves in a position where they **appear** to do so. **Members or Council Officers who do not feel that they can act in this way must ensure that they do not take part in the determination of a planning matter.**
- 4.5 Members and Council Officers must be especially cautious about accepting gifts or hospitality in the context of the planning process. As a minimum standard, they must comply with the requirements of the Council's Codes of Conduct and the Local Protocol on Gifts and Hospitality (see Part 5 of the Council's Constitution).
- 4.6 It is wholly unacceptable for any Member or Council Officers ever to be offered, receive or seek any gift as part of the planning process. It exposes the recipient to the most serious allegations of impropriety and may result in criminal charges for corruption (punishable on conviction by a long prison term and/or heavy fine) and/or referral to the Monitoring Officer.
- 4.7 All offers of hospitality (greater than a cup of tea, or equivalent) from people with any interest in a planning proposal should also be politely but firmly declined. If the refusal of very modest hospitality is likely to cause real offence, Members and Council Officers should ensure that it is of the minimum level and declare its receipt as soon as possible. Occasionally, in appropriate circumstances, it may also be reasonable to accept hospitality by way of a modest working lunch (or other meal) if that is conducive to the effective and professional conduct of a matter. Any hospitality accepted (or offered) should be recorded in the relevant member or employee Hospitality Book.
- 4.8 The functions of Council Officers are:
 - (a) To carry out the administrative tasks associated with planning applications, listed building consent applications and inquiries, to negotiate, where appropriate (and in accordance with this Local Code), with consultees, applicants and their agents.
 - (b) To prepare a comprehensive and balanced report normally with a clear recommendation of either conditional approval and/or with a requirement for a planning obligation, or refusal of an application when it is to be determined by a Planning Committee. (For further information see Section 13).
 - (c) To determine planning matters as authorised by the Council's Scheme of Delegation and in accordance with planning law and policies.
 - (d) To advise and assist Members and the general public in respect of any queries falling within the planning function.
- 4.9 In carrying out these responsibilities, Council Officers will provide:

- (a) Impartial guidance to all parties including applicants, objectors, consultees and members and provide professional advice to the Council in accordance with the Royal Town Planning Institute's and the Institute of Historic Building Conservation Codes of Professional Conduct.
- (b) Ensure, so far as possible, that all information necessary to make a decision has been obtained, evaluated and properly taken into account (when making a decision or formulating a recommendation) and (if applicable) properly reported to the decision making person or body.

5. Registration and Declaration of Interests

- 5.1 The Council's Codes of Conduct for Members require pecuniary and non-pecuniary interests to be registered and declared. These requirements **must** be followed scrupulously. Responsibility for fulfilling the requirements rests individually with each member and includes an obligation to ensure that their entries in the Registers of Interests are kept up to date.
- 5.2 All relevant pecuniary and non-pecuniary interests must be declared by members at every Council, committee or working party meeting where the interest is relevant to an item for discussion and on all other relevant occasions (such as site visits).
- 5.3 As the Council's planning function is a quasi judicial one, Members are also required to consider whether they have interests other than pecuniary and non-pecuniary interests that would mean a reasonable member of the public might consider a conflict of interest to arise members need to ensure that there can be no question of predetermination or bias. Where a specific planning application might reasonably be regarded as affecting your well-being or financial position, or the wellbeing or financial position of a relevant person, to a greater extent than the majority of other council taxpayers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision, the Member should declare that interest and, depending on the nature of that interest, may wish to exclude him or herself from taking part in the decision.

(2) In the above paragraph "relevant person" would be –

- (a) a member of the Member's family or any person with whom he or she has a close association; or
 - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or
 - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000.
- 5.4 All Council Officers must comply with the Council's Employee Code of Conduct which is contained at Part 5 of the constitution and which imposes several requirements on employees including an obligation to declare any interests at meetings of the Council in which they are in attendance. When involved in the planning process Council Officers should also consider whether they should remain at meetings whilst a discussion and/or decision is taking place that relates to their interests and employees must always inform their line manager when any interest arises regardless of who is making the decision.

Where a Member has an interest in a planning application, which means that they will not be present when the application is under discussion (see part 7), he/she may attend the meeting, but only for the purpose of making representations, provided that the public are also allowed to attend the meeting for the same purpose. Having made his/her representations he/she must withdraw from the meeting room and can not vote on the matter.

Members and Council Officers are required to register requests to speak on a planning application, as set out in Standing Orders in relation to Council Meetings.

- 5.5 If a Member is a member in a personal capacity of an outside body that is making (or supporting or objecting to) a planning application it is very likely that they have a declarable non-pecuniary interest and quite likely that they have a pecuniary interest that will preclude them from taking part in the matter or even being in the room when the committee consider the matter. In these circumstances Members are strongly recommended to seek advice from the Monitoring Officer.
- 5.6 If a Member is a member of the Brixham Town Council, or Broadsands, Churston and Galmpton Neighbourhood Forum, or the Torquay Neighbourhood Forum (“relevant body”) then in any case where the relevant body is considering a planning application the Member needs to consider whether they can properly act as both member of the relevant body and a Member of the Planning Committee. If a Member wishes to consider a planning application at the Planning Committee they should not be seen as directing support for or objection to any planning application as a member of the relevant body. In these circumstances Members are strongly recommended to seek advice from the Monitoring Officer. As a minimum in any consideration of a planning application by the relevant body the Member should declare an interest which should be recorded in the minutes of the meeting and should declare that as a Member of the Planning Committee, they are required to keep an open mind and consider all relevant material planning considerations when the planning application comes before the Planning Committee. The Member ought to declare an interest as a member of the relevant body when the application comes before the Planning Committee. A Member must not determine a planning matter if it would render such decision liable to challenge in the courts on the grounds of bias or pre-determination.
- 5.7 If a planning matter under consideration relates to an outside body to which a Member has been nominated by the Council, careful thought must be given by the member before deciding that it is appropriate to rely the general dispensation provided by the Monitoring Officer that Members appointed to such bodies can take part in decisions affecting those organisations.
- 5.7 Due to the nature of planning it may not be appropriate for a Member who is a Council representative on an outside body to vote on a planning matter affecting that body if they are a director or trustee of the outside body. This is because those roles impose very onerous legal obligations to act in the best interests of the outside body and may create an inherent conflict with the member’s role as a councillor. If in doubt, the advice of the Monitoring Officer should be sought on this issue.
- 5.10 Where a Member who is a Council representative on an outside body (in whatever capacity, not just as a director or trustee) has taken a firm view on a planning matter,

either in meetings of the outside body or otherwise, they may be open to an accusation of predetermination and must **not** vote on the matter at any Council meeting. This is discussed more fully in part 6 below. Failure to follow this advice may result in a planning decision being challenged in the courts.

6. Bias, Pre-determination and Pre-disposition

6.1 Irrespective of whether a Member or Council Officer has a non-pecuniary or pecuniary interest in a planning matter, they must not determine (i.e. vote on, or take a decision in relation to) a planning matter if it would render such decision liable to challenge in the courts on the grounds of bias, pre-determination or pre-disposition. These are common law concepts which have been developed by the courts over the years and which are continuing to evolve.

6.2 The test for bias (or apparent bias) was summarised by Mr Justice Richards in the case of *Georgiou v. Enfield London Borough Council* in 2004 as follows:

‘ ... in considering the question of apparent bias in accordance with the test in Porter v Magill, it is necessary to look beyond ... personal interests and to consider in addition whether, from the point of view of a fair-minded and informed observer, there was a real possibility that the Planning Committee or some of its’ members were biased in the sense of approaching the decision with a closed mind and without impartial consideration of all relevant planning issues.’

6.3 The courts will quash a decision even if just one person involved in the decision is tainted by bias. This would have very serious financial consequences for the authority and very likely result in significant reputational harm to it and the member or employee in question.

6.4 Pre-determination is very like bias, but probably has a less pejorative connotation. The Localism Act 2011 states that a decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because—(a) the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter, and (b) the matter was relevant to the decision. **Regardless of this provision, Members must be aware that the courts can still determine a Member has not considered the application fairly and therefore quash any decision made. Should Members have any doubts as to whether they should take part in a decision of the Planning Committee they should seek advice from the Monitoring Officer in advance of the meeting.**

6.5 Pre-disposition is a more complex concept than pre-determination or bias. However, a Member who is associated with policy statements that are relevant to an application is at risk of being accused of having a pre-disposition to determinate that application in a certain manner. In these circumstances the Member should give very careful consideration before deciding that it is appropriate to vote on the matter at committee and if in any doubt seek the advice of the Monitoring Officer.

6.6 This situation might arise, for example, where a Cabinet Member is perceived as advocating certain types of development as part of their portfolio responsibilities. It would best preserve public confidence in the impartiality of the planning process if the member in question does not vote in the determination of planning applications that are relevant to his/her portfolio responsibilities. Members should seek advice at

the earliest possible stage from the Monitoring Officer but should avoid a potential conflict of roles wherever possible.

- 6.7 **The overriding principle is that a person should avoid being both an advocate for (or against) a planning proposal prior to the committee meeting and a member of the committee when the application is determined.**

7. Development Proposals by Members and Council Officers

- 7.1 Applications by Members, the Chief Executive, Directors, Divisional Directors, Heads of Service or Council Officers involved in the planning process (or by their friends or relatives as defined in the Codes of Conduct) will not be determined under powers delegated to Council Officers and must be determined by the Planning Committee unless they are of a minor nature and there are no objections. A record will be kept of such instances. The Divisional Director for Place Strategy may decide that this procedure will apply to any other officer of the Council on a case by case basis. The paramount consideration in exercising this discretion will be to maximise public confidence in the impartiality of the planning process.
- 7.2 Any Member or Council Officer to whom para 7.1 applies who makes an application (or who has any other interest in an application which means they will not be taking part in the decision) shall:
- (a) Promptly inform the Divisional Director for Place Strategy. The Divisional Director for Place Strategy shall ensure that a written record of such interest is placed on the application file.
 - (b) Take no part in the processing or determination of the application.
 - (c) At the meeting of the Planning Committee, exercise the same rights to speak as a member of the public. In these circumstances the Member or Council Officer with an interest in the planning application may **not** speak at committee unless the general public has a right to do so. Nor may they even remain in the public gallery to observe or listen to the committee debate (failure to adhere to this requirement has been found to be maladministration). In these circumstances, the Member or Council Officer with the interest which excludes them from the decision-making may request a spouse/partner/agent/friend to attend and speak on their behalf.
 - (d) If in any doubt as to the nature of any interest, take advice from the Monitoring Officer in relation to the matter.
- 7.3 A Member or Council Officer who has an interest that means they will not be taking part in the decision may:
- (a) make written representations in a private capacity, to the Planning Officer, disclosing the nature of the interest and not seeking any preferential treatment;
 - (b) use a professional representative, or arrange for a partner, close associate or family member, to make the application or representations; or
 - (c) in the case of Members, arrange for another Member to represent the views of the Member's constituents on such matters.

- 7.4 Where a Member or Council Officer has an interest in a planning matter, the Council's Codes of Conduct also require that they must not seek *improperly* to influence a decision about a matter.
- 7.5 It is important to emphasise that *improperly* does not imply that a Member or Council Officer is to be precluded from seeking to explain and justify their proposal to a planning officer (whether over the phone, face to face or in writing) in advance of consideration of the matter by committee.
- 8. Planning Applications by the Council**
- 8.1 The Council itself requires planning permission to carry out or authorise certain types of development on land it owns. These applications will generally be determined by the Planning Committee (or Council) and this Local Code will apply to such applications. The Divisional Director for Place Strategy may determine such applications if they are (a) applications of a minor nature and there have been no objections, (b) applications which are a repeat of, or contain only non-material amendments or material minor amendments
- 9. Lobbying of and by Members**
- 9.1 If Members are to undertake fully their constituency roles, it is inevitable that they will be subject to lobbying on planning matters. **Lobbying is a normal and perfectly proper part of the political process.** Local concerns about development proposals need to be adequately aired as part of the planning process. **However, a Member must not lobby or act as advocate for (or against) a planning proposal and vote on the determination of the matter.** Members must comply with the guidance in relation to pre-determination as set out in part 6 of this Local Code.
- 9.2 Members may organise support for or against a planning application or lobby other Members. However, whilst they may be able to speak at the committee meeting when the application is determined they must not vote on the item.
- 9.3 Great care is required by Members and Council Officers in order to maintain public confidence in the integrity and the impartiality of the planning process and the Council. A failure to follow the advice in this section may result in a finding of maladministration against the Council or a legal challenge to the Council's decision.
- 9.4 When being lobbied members in general, but members of the Planning Committee in particular, must take care about stating how they will vote before they have considered all relevant matters at committee. In such circumstances it is preferable for a Member to restrict their comments to procedural advice and to encourage those lobbying to speak or write to the planning officer in order that their opinions can be included as part of the decision-making process.
- 9.5 Where the Monitoring Officer (or his/her representative at committee) reasonably believes that a Member has prejudiced his/her position by expressing a conclusive view on an application before its determination by the committee, he/she will advise the member that it would be inappropriate for the member to vote on the application however **it is the Member's decision on whether to vote.**
- 9.6 Whilst lobbying is a normal and perfectly proper part of the political process, in order to protect their impartiality and integrity from being called into question, Members of the Planning Committee must so far as is practicable, minimise their contacts

(including social contacts) with known developers and agents.

- 9.7 Members shall normally avoid requesting information from professional applicants or objectors and direct their enquiries to the planning officer. If interested parties provide members with new information or additional documents they shall pass this to the planning officer as soon as possible. Where a person requires planning or procedural advice, he/she shall be referred to the appropriate officer but this will not preclude Members from giving information to general members of the public to assist them in understanding the planning process.
- 9.8 If a Member is approached in their role as ward councillor by a third party, neighbour, potential objector or supporter of a planning application, then it is natural that they will want to consider the representations. This can help Members' understanding of the issues and concerns associated with an application. However, Members must take care to avoid expressing an opinion which may be taken as indicating that they have already made up their minds on an issue before they have heard all the evidence and arguments at committee.
- 9.9 Unless a Member is prepared to refrain from voting on an application (i.e. to be regarded as an advocate for (or against) the proposed development) they must take great care to maintain impartiality when attending public meetings in relation to planning matters, or during telephone discussions with a constituent. During such meetings or discussions it is preferable for no view on the merits or otherwise of a proposal to be given
- 9.10 Where a Member is lobbied they shall explain clearly that whilst they can listen to what is said, it would prejudice their impartiality to express an intention to vote one way or the other. Where Members are invited to attend such meetings, wherever possible they shall only do so in the presence of a Council Officer and, in any event, shall always declare such attendance prior to the consideration of the item at committee. Any written representation received should be passed to the Planning Officer for inclusion on the application file and placing in the public domain. Requests for information on procedural advice relating to planning applications should be directed to the Planning Officer to avoid misrepresentation and the possibility of a poor perception being gained of the impartiality of the planning process.
- 9.11 Members are encouraged where practicable (and particularly if the application is highly contentious) to keep a dated written record of lobbying and the response given. Appendix 1 contains a form designed for this purpose. In accordance with this Local Code it will be considered to be good practice for members to hand in any completed form at the relevant committee meeting. All completed records must be made available to the Monitoring Officer on request.
- 9.12 Where a Member's ward may be affected by a planning application which is to be considered by the Planning Committee, but that councillor is not a member of the committee, he/she may address the committee in order to represent the views of residents. The procedure is laid down in the Council's Standing Orders.
- 9.13 Non-voting Members should remember that to be effective in representing the views of interested parties, and not mislead them about the planning decision process, they should be fair in their representations and not just act as an advocate for one point of view without considering the broader planning context. When lobbied, they should,

(and advise others to), consider all aspects of the development which includes the relevant planning policies and the wider interests of the community as a whole. Members should advise that local opposition to, or support for, a planning proposal is not in itself a ground for refusing or granting permission unless founded upon valid planning reasons which can be substantiated. Where opposition to/support for a scheme is not founded upon real planning argument they should avoid giving the impression that such representations can be given weight and be careful about promoting that opposition/support both before and at the Planning Committee. To do so may raise false expectations of a decision which cannot be justified when it comes to objective formal consideration, potentially resulting in disillusionment and confusion over both the decision process and the role of that Member.

10. Pre-application Discussions

- 10.1 It is both proper and important that Members involve themselves in discussions with developers, their constituents and others about planning matters. However, potential difficulties will be minimised if all members adhere to the general guidelines that are set out in Appendix 3. These have been derived from ‘Probity in Planning’ and ‘Positive Engagement – a guide for planning councillors’, produced collaboratively by a number of organisations including the Government, Local Government Association, Royal Town Planning Institute and Standards for England.

11. Discussions and Negotiations with Applicants

- 11.1 Formally convened pre-application meetings are organised by officers to negotiate, where possible, an acceptable scheme prior to a planning application being submitted.
- 11.2 In any discussions on planning issues, it will always be made clear at the outset that the discussion and any views expressed are based on the planning officer’s professional judgement but will not bind the Council to any particular decision. This is because, by the nature of such meetings, not all the relevant information will be to hand and consultations with interested parties will not normally have taken place.
- 11.3 Advice given will be consistent and based on the Development Plan, relevant national, regional and local planning policies and any other material planning considerations. Every effort will be made to ensure consistent interpretation of planning policies by different planning officers.
- 11.4 Written notes shall be taken at all such meetings detailing attendees, the nature of the proposal, advice sought and given and any other matters discussed. Notes shall be retained in a form readily retrievable by planning officers and their managers. Any request to inspect such notes shall normally be granted during the pre-application stage unless confidentiality has been requested (for example, if the developer’s interest in the site is commercially sensitive).
- 11.5 Confidentiality will not be expected to apply once a proposal has become the subject of an application. However, in exceptional circumstances, some limited information relating to the commercial viability of a development may need to remain confidential. Where appropriate more than one officer will attend meetings on major planning issues. As a matter of good practice, a follow-up letter will be sent recording the planning officer’s comments. In the event that a planning application is subsequently received any such letter shall be referred to in any committee report and included in the schedule of representations.

- 11.6 Members may request or be encouraged to take part in the pre-application discussions with potential applicants. When Members are involved, they will normally be advised by appropriate officers (which will normally include a senior planning officer). Member involvement in such discussions will be recorded on the planning file.

12. Officer Reports to Committee

- 12.1 Reports to committee on planning matters must be accurate and cover all relevant points and no irrelevant matters.
- 12.2 The planning officer's report will include a full description of the site and any related planning history. It will refer to the provisions of the Development Plan and all other relevant material planning considerations and, where appropriate, any relevant issues arising under the Human Rights Act 1998 and any other relevant legislation. It will include the substance of representations and the views of consultees. The only information which may be taken into account in determining planning application is that formally submitted to the planning officer in advance of the meeting date, so that he or she can assess it. This will prevent the Committee being misled or the decision being challenged on grounds of legality or maladministration. No papers shall be permitted to be circulated on the day of the meeting.
- 12.3 The report will clearly identify the key planning issues and material considerations to be taken into account. The report shall contain the merits for and against the application and will give a technical appraisal that clearly justifies the stated recommendation. Oral reporting to the committee (other than to up-date an existing report), will not normally occur unless a late representation identifies a material planning consideration which has not been addressed in the report in which case it will be reported by the planning officer together with any response by the applicant.
- 12.4 All reports will normally have a written recommendation either to conditionally approve or refuse the application. A planning officer may recommend that the matter is deferred if information needed for the meeting has not arrived or if significant issues have arisen since the preparation of the report which warrants deferment.
- 12.5 Where the recommendation is one of conditional approval, then all the proposed conditions will normally be attached to the report unless there is some substantial and exceptional reason preventing this. To be lawful a planning condition must meet the six tests specified in the National Planning Practice Guidance.

To be lawful a condition must be:

- (a) Necessary; and
- (b) Relevant to planning; and
- (c) Relevant to the development to be permitted; and
- (d) Enforceable; and
- (e) Precise; and
- (f) Reasonable in all other respects.

- 12.6 The report must also give full details of any requirement for a Planning Agreement under Section 106 of the 1990 Act (as amended). The subject matter of the planning obligations to be included in the Agreement should be justified in order to facilitate discussion at the Planning Committee. The National Planning Practice Guidance provides advice on the use of planning obligations.
- 12.7 Planning obligations mitigate the impact of unacceptable development to make it acceptable in planning terms. Planning obligations should not be used where the development proposed could be made acceptable through the use of planning conditions. A planning obligation may only be sought where all of the following tests are satisfied:
- (a) it is necessary to make the proposed development acceptable in planning terms; and
 - (b) it is directly related to the proposed development; and
 - (c) it is fairly and reasonably related in scale and kind to the proposed development.
- 12.8 The Secretary of State emphasises that the use of planning obligations must be governed by the fundamental principle that planning permission may not be bought and sold. It is not legitimate for unacceptable development to be permitted because of benefits or inducements offered by a developer which are not necessary to make the development acceptable in planning terms.
- 12.9 The officer's recommendation must specify the reasons for refusal/approval and refer to all Development Plan policies and all relevant policy guidance which justify that decision.
- 12.10 Where the planning officer's recommendation is contrary to the provisions of the Development Plan this must be clearly stated together with the material considerations which justify the recommendation.

13. The Decision-Making Process - General

- 13.1 In determining all types of applications submitted pursuant to the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Hazardous Substances Act 1991, the Council will follow the relevant Government guidance, as interpreted by the courts.
- 13.2 The planning system involves making decisions about the use and development of land. Section 38(6) of the Planning and Compulsory Purchase Act requires that all planning applications are determined in accordance with the Local Development Plan/Framework unless material planning considerations indicate otherwise.
- 13.3 When determining planning matters Members and Council Officers must approach each application with an open mind and carefully weigh up material planning considerations, particularly with reference to the Development Plan and national policy guidance. They must disregard all considerations that cannot lawfully be taken into account (for example that a planning application has been made retrospectively).
- 13.4 No group of Members (for example, from the same political group, or from the same

ward) and no informal meeting of a particular group on a committee may be used to decide how Members shall vote in a committee determining an application. **It is unlawful for a planning decision to be subjected to the discipline of the political whip and to do so would also constitute maladministration.** This does not preclude the holding of pre-meetings prior to the commencement of a formal planning related meeting in order to discuss the business management of the forthcoming public meeting (but **not** the merits of individual agenda items). However, such pre-meetings must be open to **all** members entitled to attend the subsequent public meeting and the rules relating to the declaration of interests must be strictly applied.

- 13.5 Where an application is to be determined by the Planning Committee there will be an opportunity for interested parties to address the committee prior to the determination of the application. The procedure is laid down in Council's Standing Orders. No papers shall be permitted to be circulated on the day of the meeting.
- 13.6 Members and Council Officers with a personal interest in an application must declare the interest in accordance with the Council's Codes of Conduct and this Local Code and, if required by the relevant Code of Conduct, they shall then withdraw from the meeting before any discussions take place on the matter.
- 13.7 Members and officers will address one another during the debate in a proper manner and through the Chair. Members shall respect the impartiality and integrity of officers.
- 13.8 Senior legal and planning officers shall always attend meetings of the Planning Committee to ensure that procedures have been properly followed and planning issues properly addressed.
- 13.9 In discussing and determining a planning application, Members will confine themselves to the planning merits of the case and the reasons for making a final decision shall be clear, convincing and supported by planning evidence.
- 13.10 On occasions the Planning Committee will disagree with the planning officer's recommendation. Planning committees are entitled to reach their own decisions by attaching different weight to the various planning criteria which are relevant to the application. However, the same strict legal requirements have to be met, as the reasoning in the planning officer's report will no longer apply.
- 13.11 Where Members propose approval with conditions or wish to impose additional conditions, they must apply the same criteria referred to at paragraph 12.5 above. They must be of the opinion that if the condition were not applied then the planning application ought to be refused. Conditions shall be tailored to tackle specific problems rather than impose general control. Where Members are of the view a planning agreement is appropriate, then the same considerations as outlined in paragraph 12.7 above shall be applied.
- 13.12 The committee shall not approve any application (or other matter) which would (in the opinion of the Divisional Director for Place Strategy) not be in accordance with the Development Plan unless the Divisional Director has recommend approval and the decision of the Committee is consistent with the Divisional Director's recommendation.

- 13.13 If, contrary to the recommendation of the Divisional Director for Place Strategy, the Committee consider that an application (or other matter) shall be approved and such approval is not in accordance with the Development Plan, then the item shall be referred to Council for determination.
- 13.14 Where a Member proposes to recommend approval contrary to an officer's recommendation of refusal, the Chair will give the planning officer an opportunity to respond to that recommendation and to discuss any appropriate conditions (and/or Planning Agreement). The planning officer may request further time in order that appropriate conditions (and/or the terms of a Planning Agreement) may be drafted.
- 13.15 Where a Member moves refusal of an application contrary to the officer recommendation, the Member must give reasons based upon planning grounds as the Member may be required to speak at any subsequent appeal hearing. Such reasons must be sufficiently clear and precise to enable the planning officer to apply relevant Development Plan policies to those reasons.
- 13.16 Where it is the planning officer's professional view that a proposal for refusal is improper, this advice will be given to the committee and, where necessary, further advice shall be given by the Solicitor as to the potential implications of such a decision.
- 13.17 Before any matter is put to the vote any member of the committee may request the Chair to ask the clerk to read to the meeting the full text of the proposal to be voted upon. This is a mandatory requirement if a proposal does not follow the officer recommendation.

14. Planning and Human Rights

- 14.1 The Human Rights Act 1998 requires all public bodies to exercise their powers and duties in ways that do not breach the rights of individuals, as identified in the European Convention on Human Rights.
- 14.2 The following provisions of the European Convention on Human Rights are most likely to be relevant to the planning system:

Article 6: the right to a fair trial. In the context of planning, this means that where their property or life is affected by a decision, everyone is entitled to a fair and public hearing (within a reasonable time) by an independent and impartial tribunal established by law. This is provided for applicants who are dissatisfied with a planning decision through the appeals process and for objectors through the availability of judicial review. However, the principles underpinning this Article also require openness and transparency throughout the decision-making process.

Article 8: the right to respect for private and family life. Everyone has the right to respect for his or her private and family life, home and correspondence. This may only be subject to interference by a Public Authority in accordance with the law and only *so far as is necessary in a democratic society*. This means that any such interest must be justifiable on the grounds of national security, public safety, the national economic well being, the prevention of disorder or crime, the protection of health or morals or for the protection of the rights and freedoms of others.

The First Protocol – Article 1: protection of property. Every person (including

legal persons, such as companies) is entitled to the peaceful enjoyment of their possessions. This may only be restricted or prevented in the public interest in accordance with the law. Accordingly, whilst the Council may enforce planning laws where it is necessary to control the use of property in accordance with the general interest, its action must be *proportionate* in all the circumstances.

15. Decision Making – Delegation to Council Officers

- 15.1 The Council's Scheme of Delegation specifies clearly the categories of applications that may be determined by officers; those that will be referred to the Planning Committee; and those that must be determined by Council. The Chair or (in his/her absence) the Vice-chair of the Planning Committee may in exceptional circumstances request the Divisional Director for Place Strategy to refer a planning application which would normally be delegated to Council Officers to the Planning Committee. The terms of reference of the Planning Committee are set out in Part 3, Schedule 5 of the Council's Constitution.
- 15.2 Where officers are determining applications under their delegated powers, the Case Officer processing the application will complete an officer report which must record that all material planning considerations have properly been taken into account. The Case Officer will then make a recommendation to the Team Leader. The Team Leader will assess the report and recommendation and make the final decision on behalf of the Divisional Director for Place Strategy.
- 15.3 In the case of a divergence of view and the rejection of the Case Officer's recommendation, the Team Leader's decision and planning justification must be recorded in full on the file. In the event that the Case Officer is a team leader then any delegated decisions taken by that officer will be referred to the Divisional Director for Place Strategy for the final decision, which shall be recorded in the same manner.

16. Public Speaking and presentation at Planning Committees

- 16.1 Members of the public are entitled to speak at meetings of the Planning Committee and Council when planning applications are being considered. Details of this procedure are set out in Standing Orders in relation to Council Meetings.
- 16.2 Members of the public may not present any written materials, photos or mock-ups at the Planning Committee meeting. Members of the public are able to submit written representations through the Council's website at torbay.gov.uk/planningapp and searching for the property or by emailing planning@torbay.gov.uk up to 4 pm the Friday before the meeting, which Members of the Planning Committee will be able to view prior to the meeting, this includes photos or attached documents. Members of the public who have registered to speak may refer to such documents when speaking at the Planning Committee meeting (Note: where speakers intend to refer to submitted documents at the Planning Committee meeting this must be agreed with the Planning Officer in advance of the meeting so that they can include it in their presentation).
- 16.3 Members of the public may submit models for consideration at the Planning Committee meeting:

- a. provided they are submitted to the Case Officer ten clear working days before the date of the Committee meeting;
- b. provided they are undertaken by a professional with an accurate scale and fair representation of the existing and proposed changes;
- c. subject to the Case Officer, in consultation with the Chair, determining that they are a fair interpretation of the planning application; and
- d. where models are accepted they will be available for inspection in the Committee meeting room at 5 pm to enable all parties to access them prior to the start of the meeting (this will be noted on the Committee agenda for that item).

17. Role of Council Officers Where a Recommendation is not Followed

- 17.1 The Nolan Report considered the role of officers in the planning process and concluded that *“Planning Officers exist to advise Planning Committees, which are entitled to reach their own decisions, by attaching different weights to the various planning criteria which are relevant to an application”*.
- 17.2 Council Officers shall, therefore, give full support to the Council’s case where an appeal is made against the Local Authority’s decision whether it be by written representations, informal hearing or public inquiry. However, in doing so, planning officers shall adhere to the good practice advocated by the Royal Town Planning Institute and ‘shall not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions’. The same principles shall apply to other Council Officers who have to act in accordance with their own professional codes.
- 17.3 Where, however, a planning officer believes that a committee decision is based on no reasonable planning grounds and is therefore “improper” they will normally seek to draw this to the attention of the Committee and must draw this to the attention of the Council’s Divisional Director for Place Strategy and the Monitoring Officer.
- 17.4 Where a planning officer has advised a committee that its decision is, in their professional opinion, improper then that officer will only be required to give evidence on appeal in exceptional circumstances and having regard to any limitations imposed by the Royal Town Planning Institute’s Code of Professional Conduct. The advice of the Council’s Monitoring Officer will be sought if such a situation arises. In such circumstances members may be asked to give evidence on behalf of the Council at any appeal.

18. Committee Site Visits

- 18.1 Council Officers will make arrangements for site visits by all committee members prior to the scheduled committee meeting. Site visits can be requested by a Member but shall only be requested where a site visit will clearly assist the Members in determining the planning application. For example:-
 - (a) When the impact of the proposed development is difficult to visualise from the plans and supporting material.

- (b) There is a good reason why the comments of the applicant or objectors or consultees cannot be adequately understood from written or verbal presentation at the Committee meeting.
 - (c) When the proposal is particularly contentious.
- 18.2 Efforts will be made to ensure that all Members involved in the decision and the Planning Officers attend each site at the same time. This is because:-
 - (a) Members have no right of access to land.
 - (b) Members may be subject to lobbying or to accusations of bias.
 - (c) Separate visits are likely to result in confusion about the material planning considerations.
 - (d) Planning officers will be able to explain the plans and answer any technical questions.
- 18.3 Site visits will only be used for gathering factual information, seeking clarification from the planning officer and making a visual assessment. Therefore, Members must not discuss the merits of the case at the site inspection with any applicants, agents, objectors (or supporters) or members of the public who are present. The site visit is not part of the formal consideration of the application and public rights of attendance do not apply.

19. Site Review Meetings

- 19.1 The overwhelming majority of planning applications can be dealt with quite appropriately by Council Officers under delegated powers. However, given the inherently controversial nature of planning it is sometimes the case that even very straight forward applications excite strong feelings and generate objections. In an attempt to increase public confidence in the transparency and fairness of the planning system the Council has adopted a system of holding informal Site Review Meetings as a mechanism for hearing concerns from local residents and deciding whether an application will be determined under delegated powers or referred to the Planning Committee for determination.
- 19.2 The Council has adopted a protocol in relation to Site Review Meetings and this is set out in Appendix 2.
- 19.3 The requirement to hold Site Review Meetings may periodically be suspended by the Divisional Director for Place Strategy in exceptional circumstances, including for example during a pandemic.

20. Reviews of Decisions

- 20.1 The Planning Committee will review, at least annually, a sample of the implemented decisions made by that committee to assess the quality of those decisions. Visits will be incorporated into the schedule of site visits arranged for that committee. The purpose is to improve the quality and consistency of decision making and will assist in reviews of planning policy and monitoring the quality of decisions as required by Best Value Performance Indicators. Members and officers will undertake reviews

together and include consideration of whether there is a need to initiate a review of any policies or practices.

- 20.2 At quarterly meetings of the Planning Committee, the results of recent Planning Inspectorate decisions will be reported. A short report will be provided to identify whether the decision was a delegated officer decision or one taken by the committee and briefly outlining the main issues.

21. Enforcement of Planning Control

- 21.1 The Council has various powers to take enforcement action in respect of breaches of planning control. These powers may arise for example if development has been carried out without the requisite planning permission or a person has failed to comply with a condition imposed on a planning permission. Enforcement powers also exist in relation to special controls such as planning obligations, listed buildings, Tree Preservation Orders and untidy land.
- 21.2 The Council has dedicated Planning Investigation Officers who can be contacted by a Member or member of the public if they believe a breach of planning control has occurred. The Planning Investigation Officer will need the address of the planning site and brief details of the alleged breach in order to undertake initial inquiries. The Planning Investigation Officer has specific powers under the 1990 Act to investigate breaches of planning control and therefore once the matter has been referred to the officer he/she will take responsibility for the investigation. The officer will keep the Member or member of the public informed as to progress as appropriate.
- 21.3 The completion of the Planning Investigation Officer's investigation may lead to one or more of the following:
- A finding of fact that no breach of planning control has occurred;
 - A finding that although there has been a breach of planning control it is purely technical in nature or so minor that it is not expedient or in the public interest that it does not justify any further action being taken;
 - Where there has been a breach of planning control, but the officer considers a conditional grant of planning permission might be acceptable, an invitation to the landowner/developer to submit an application for planning permission;
 - In controversial or difficult cases, or those cases outside officers' delegated powers, a report being submitted to the Planning Committee for determination
 - Where the planning merits of the case so justify, instructions to the Council's Legal Services Manager to take enforcement action.
- 21.4 Starting development in anticipation of receiving planning permission (premature development) is not in itself a ground for justifying refusal of planning permission or the taking of enforcement action. However, the Divisional Director for Place Strategy are notified of instances of premature development and the landowners/developers advised in writing that such activity is carried out at their own risk and may be the subject of planning enforcement action.

22. Training in the Planning Process for Members

- 22.1 All members of the Council on being elected must undertake initial training on the planning process. This will be provided by the Council in a seminar and/or workshop programme. This training will include guidance on Town and Country Planning with particular reference to the material considerations which Members have to take primarily into account. Members of the Planning Committee will be given refresher training when changes are made to planning law or procedure and will also receive ongoing training in relation to development management.
- 22.2 All elected Members are required to comply with the core requirements of the Council's annual Members' Development Programme which includes Development Management training.
- 22.3 Members who have not undertaken the relevant Development Management training shall not be permitted to be a member of or substitute for other Members on the Planning Committee, or take part in consideration of any Development Management matters referred to full Council, and should not make themselves available for attending Site Review Meetings.(See Para 19).
- 22.4 Any failure to comply with the core Development Management training requirements may be referred to the Monitoring Officer and to the appropriate Group Leader.

23. Complaints

- 23.1 Any issues of concern arising from this Code may, in the interest of speed, be raised informally with the Monitoring Officer in the first instance. Should a member of the public wish to make a formal complaint within the framework of the Council's complaints system then they shall write to the Divisional Director for Place Strategy, Torbay Council, Town Hall, Castle Circus, Torquay, Devon, TQ1 3DR.
- 23.2 Where a Member alleges a breach of this Code in respect of another Member, they will refer the matter to the Council's Monitoring Officer.
- 23.3 Where there are issues of maladministration, these can be referred to the Local Government Ombudsman.

Appendix 1

Planning Attendance Note

Planning application Number:
Development Site:
Enquiry from:
Nature of Representations:
Response Given:
Member:
Date:

Appendix 2

Site Review Meetings Protocol

1. The Government has made it clear to Local Planning Authorities that in order to speed up the planning process the vast majority of planning applications should be determined by officers using delegated powers.
2. Most planning applications are now initially identified as being appropriate for determination by the Divisional Director for Place Strategy under delegated powers. Only major applications (those for 10 or more residential units, or over 1000 square metres of new floor area) will automatically be referred to the Planning Committee. The Divisional Director for Place Strategy may refer other applications to the Committee for determination if he considers it appropriate. In determining whether to refer other applications to the Committee for determination the Divisional Director for Place Strategy may consult with the Chair of the Planning Committee and/or any relevant Ward Members.
3. In deciding whether or not to refer a planning application to the Planning Committee for determination, the Divisional Director for Place Strategy will have regard to the number and complexity of planning issues the application raises. This is not necessarily reflected in the number of objections received and no particular number of objections (or letters of support) will ensure that any particular application is referred to Committee.
4. Where officers are recommending approval of an application and there are objections on valid planning grounds made within the 21 day period for response, the Ward Councillors will be advised of the objections by e-mail and be given 5 working days to respond to officers, either by telephone or e-mail. Having considered the merits and significance of the application, Ward Members may, in exceptional circumstances, request that a Site Review Meeting (SRM) is arranged. The Ward Member must be available in the next 7-10 days so that the SRM can be arranged in that timeframe. Officers will proceed to arrange the meeting unless in exceptional circumstances there are clear differences of opinion between the officers and the Member about whether such a meeting is necessary. In these circumstances the matter will be referred to the Chair of the Planning Committee for decision.
5. Where there are 5 or more objections to an application and officers are recommending approval, the same procedure as described above will apply in relation to the need for an SRM. Officers will however automatically discuss with the Chair of the Planning Committee whether the application should be heard at Committee. Again, it will be the decision of the Chair as to whether that application should be determined at Committee or under delegated powers.
6. The purpose of a Site Review Meeting is to decide whether a decision should be made under delegated powers or referred to the Planning Committee for determination. The meeting is not intended to debate or argue about the issues but to allow everyone to look at the site, view and understand fully the proposals and hear the views of the applicant and the objector(s).
7. After the Site Review Meeting, the Senior Planning Officer present will discuss the matter with the Ward Councillor(s) in attendance and then make a recommendation to the Divisional Director for Place Strategy as to whether or not the matter should be

referred to Committee for determination. If in exceptional circumstances the Divisional Director for Place Strategy is not minded to agree with the views expressed by any Ward Member as to whether or not to refer the matter to Committee, he will consult with the Chair of the Planning Committee who will make a decision.

8. All parties will be informed in writing of the outcome of the Site Review Meeting.
9. Site Review Meeting may be terminated by the Planning Officer in attendance in the event that any person present fails to adhere to the principles of this Protocol or fails to treat other people present with courtesy and respect.
10. In all cases, Officers will continue to make recommendations in reports either for signing off by team leaders or for consideration at Committee, and Officer Reports will highlight and discuss the merits of objections, indicating how the objections raised have been considered in reaching the decision.

Appendix 3

Discussions with Third Parties – Do's and Dont's

It is important that members involve themselves in discussions with applicants, their constituents and others about planning matters. The Audit Commission has recommended that councils should develop effective approaches to pre-application discussions involving councillors, to ensure the issues relating to proposed planning applications are identified, discussed and, if possible or necessary, accommodated early in the process. Such discussions have no binding effect on either party; the Council encourages developers to engage in full and transparent public consultation at an early stage so that both the Council and the applicant are aware of issues arising and members can observe and listen to a range of points of view. Potential difficulties will be minimised if all members adhere to the following general guidelines.

Do

- Read the Council's Local Code of Good Practice in relation to Planning Matters
- Attend discussions organised by officers before a planning application is made, **not** after it has been submitted to the Council
- Structure discussions and always be accompanied by a planning officer
- Keep an open mind; refrain from expressing strong views directly to a prospective applicant rather than via the planning officer during the pre-determination stage; preface any discussion with appropriate and clear disclaimers; keep a dated note of meetings and calls; and make **clear at the outset** (and in subsequent contacts) that discussions are **not** binding
- Adhere to policies included in adopted plans, but also pay heed to any other considerations relevant to planning
- Where appropriate encourage positive outcomes
- Request and participate in training on planning and probity issues
- Refuse any gift however insistentlly offered
- Attend developer presentations to be fully informed prior to an application being submitted
- Attend public consultation meetings as part of your role in taking fully into account public opinion and relevant planning issues emerging

Do Not

- Meet applicants alone, or put yourself in a position where you may appear to favour unfairly any person, body or group or may be misinterpreted. Even a 'friendly' private discussion with an applicant may cause others to question your impartiality
- Accept hospitality unless refusal of minimal hospitality would be impolite
- Expect to lobby and actively support (or resist) an application and still vote at Committee
- Remain in any public meeting where you have a pecuniary interest
- Seek improperly to influence others or put pressure on them to support a particular outcome in relation to a planning matter
- Invent local guides on probity in planning which are incompatible with current national guidance and best practice
- Advise, correspond or negotiate (or give the appearance of so doing) with applicants

This list of do's and don'ts is derived from a range of national documents including

principally “Positive Engagement” (a guide for planning councillors), and “Probity in Planning” produced collaboratively by a number of organisations including the Government, LGA, RTPI and Standards for England.