

Supplementary Committee Agenda



**Epping Forest
District Council**

Standards Committee Tuesday, 16th October, 2007

Place: Committee Room 1, Civic Offices, High Street, Epping

Room: Committee Room 1

Time: 7.30 pm

Committee Secretary: G Lunnun, Research and Democratic Services
Tel: 01992 564244 Email: glunnun@eppingforestdc.gov.uk

4. PLANNING PROTOCOL (Pages 3 - 30)

(Monitoring Officer) Results of consultation exercise and revised Protocol attached.

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PLANNING PROTOCOL - CONSULTATION

| Protocol Para/Section | Respondent | Representations |
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| 5.3/5.4 | Mary Marshall Standards Committee | <p>Omit final sentence of paragraph 8 if the Code is not relevant to 5.3.</p> <p>Omit final two sentences of paragraph 5.4 for the same reason.</p> |
| 10.5/10.6 | Barry Land Assistant Head of Planning and Economic Development | <p>Wording of these paragraphs has been adjusted to take account of the Council's recent decision to charge for pre-application advice in respect of major schemes.</p> |
| 21.8 - 21.12 | Graham Lunnun Democratic Services Manager | <p>Omit existing paragraphs 21.8 - 12 and substitute new paragraphs 21.8 - 11.</p> <p>The new paragraphs reflect changes in the Code of Conduct regarding personal and prejudicial interests. The new wording is drawn directly from Standards Board for England advice.</p> |
| 22 | Mary Marshall Standards Committee Barry Land Assistant Head of Planning and Economic Development | <p>A number of points have arisen in this paragraph:</p> <p>BL (a) That the wording of the protocol should match the terms of the delegation to the Head of Planning and Economic Development (HOPED).</p> <p>This delegation requires that HOPED should not determine planning applications of Councillors (including cases where they are objection) and Planning Staff. Currently, the protocol includes Chief Officers, Staff engaged as planning agents in a personal capacity and, by implication, all other staff. It is not thought necessary to embrace the latter groups as reports are prepared in Planning Services alone and would be unable to influence officers' reports. It would also be unlikely that Planning Officers would necessarily recognise applicants as staff members where this occurs.</p> <p>MM (b) The headings within Section 22 have been revised to make the content clearer, to avoid confusing requirements for Councillors and Officers being confused.</p> |

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| | | <p>MM (c) The references to Area Plans Sub-Committees in relation to planning applications by Councillors has been amended to refer to District Development Control Committee. This is a change that the Council is actively considering in order to avoid the problem outlined in existing paragraph 22.9 which is now recommended for deletion.</p> <p>MM (d) In line 5 of 22.8, it is suggested that "declare a prejudicial interest" be substituted for "take no part in the decision".</p> |
| <p>Section 23</p> | <p>D Borton Standards Committee G Lunnun Democratic Services Manager</p> | <p>Both respondents raised issues regarding situations where Councillors with prejudicial interests in a planning matter seek to exercise their right under the Code to make representations to the Committee before withdrawing.</p> <p>The representations emphasised:</p> <ul style="list-style-type: none"> (a) that the Councillor's manner of presentation of those views should be consistent with those of any member of the public who wishes to speak; (b) that the representations are made by the Councillor from the public desk not from among the Committee membership; (c) that any Councillor should be asked first, to avoid undue influence, and leave immediately thereafter. <p>Paragraphs 23.4 - 23.7 have been changed on this basis.</p> |
| <p>Appendix 1 - Flowchart (Member/ Officer Interests)</p> | <p>Mary Marshall Standards Committee</p> | <p>It is proposed that Box 1 be amended to refer to paragraph 8(1)(a) (organisations/individuals which constitute a personal interest).</p> <p>It is proposed that Box 2 be amended to refer to paragraph 8(1)(b) of the Code (other circumstances creating a personal interest).</p> <p>In relation to Box 12, it is suggested that this box be amended to accord with paragraph 9(2) of the Code in relation to declarations of personal interests.</p> |

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| <p>21.8 - 2.12 and Appendix 2 - Flowchart on Lobby Groups</p> | <p>Mary Marshall Standards Committee Graham Lunnun Democratic Services Manager</p> | <p>The new Code of Conduct changes the position regarding Lobby Groups. Paragraphs 21.8 - 21.10 have been replaced with new advice from the Standards Board. The flowchart in Appendix 2 to the Protocol is considered superfluous.</p> |
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**PROTOCOL FOR
COUNCILLORS AND OFFICERS
ENGAGED IN THE DETERMINATION OF
PLANNING APPLICATIONS AND OTHER
PLANNING DECISIONS**

Revised Version:

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1. Purpose of Protocol

- 1.1 This protocol has been prepared to guide Councillors and officers on the manner in which the Area Plans Sub-Committees, the District Development Control Committee (and where appropriate the full Council) will consider planning applications and related planning matters. It applies whether a Councillor is serving as a member of these bodies, as a substitute or as a non-member in attendance.
- 1.2 The protocol also deals with the involvement of Councillors and officers of the Council in the operation of the planning system outside the formal decision-making process.
- 1.3 This protocol is not part of the Council's Code of Conduct. It is designed to demonstrate how Councillors' duties and responsibilities should be met in the field of planning.
- 1.4 Planning decisions may be interpreted as any decision under planning legislation including planning permission, enforcement and related matters whether delegated to officers or reserved to Planning Committees.

2. Summary of Provisions

- 2.1 As soon as possible after they are elected, all Councillors must receive appropriate training in planning requirements if they are members or substitutes on Area Plans Sub-Committees as well as the District Development Control Committee.
- 2.2 All planning decisions should be based only on relevant planning considerations.
- 2.3 Planning officers may give professional advice about any proposal to an applicant or objector subject to the general advice in 2.2 above but must explain that the advice cannot bind the Council in any way.
- 2.4 Councillors and officers should avoid giving a firm indication of the decision on any application during contact with applicants and objectors, especially at site meetings, public meetings and pre-consideration discussions in advance of formal decision.
- 2.5 Councillors should refer at a Planning Committee to significant contact with applicants or objectors (meetings, correspondence or telephone calls which are over and above the normal level of Ward Member contacts) about any planning matter under consideration by a planning body and unless this constitutes a prejudicial interest, shall be disclosed during consideration of that matter.
- 2.6 Prejudicial and personal interests in any matter due to be considered at a planning body shall be declared by members under the standing agenda item for that purpose.
- 2.7 All applications considered by the Planning Committees shall be the subject of full written reports from officers incorporating clear and reasoned recommendations.
- 2.8 The conditions for granting of consent or grounds for refusal by Planning Committees shall be approved by a show of hands for voting purposes set out in the minutes.
- 2.9 Chairmen of Planning Committees shall exercise the casting or second vote in accordance with the Council's constitution.
- 2.10 Councillors who are also members of Parish and Town Councils should declare a personal interest if the Parish or Town Council concerned has submitted representations but are not precluded from consideration of that application at District Council level

unless they have another interest which is prejudicial under the Code of Conduct or they have not reserved their position on any application at Parish level.

- 2.11 Councillors must take special care with interests created as a result of being members of lobby or campaign groups.
- 2.12 Planning applications by the Council must be treated in the same way as any other decision.
- 2.13 Special care should be exercised by members and officers of the Council in relation to their own planning applications (or where they are objectors).
- 2.14 Members with a prejudicial interest in a planning application must be careful to ensure that if they intend to exercise their right under the Code of Conduct to make representations on that matter, they should do so in accordance with the advice contained in this protocol.
- ... 2.15 A summary guide to the operation of this protocol is attached at Appendix 1.

3. Status of Protocol

- 3.1 This protocol is purely advisory and designed to help both Councillors and officers. However, it is based on guidance issued by the Local Government Association which itself is based on the provisions of the Code of Conduct for Councillors (as set out in Part 5 of the Constitution), the Royal Town Planning Institute's Code of Professional Conduct, the findings of various Inquiries, together with advice issued by the Audit Commission, the Commissioners for Local Administration in England (the Ombudsman) and the National Planning Forum. Failure to follow the protocol without good reason could be taken into account in investigations into possible maladministration. Likewise, the conduct of any Member would be measured (for consistency) by the Standards Board for England against the requirements of the Code of Conduct.
- 3.2 The Council has decided that the operation of all codes of practice and protocols (such as this one) should be monitored by the Council's Standards Committee and that, if necessary, the Committee should be able to issue advice or adjudicate on disputes relating to their operation.

4. Training Requirements

- 4.1 It is fundamental that Councillors (including Parish and Town Council members) involved in planning should receive appropriate training, before being involved in making planning decisions. The Standards Committee will facilitate such training which should be regarded as obligatory for all Councillors.
- 4.2 No Councillor should be involved in the planning process (whether at Area Plans Sub-Committees, the District Development Control Committee or the full Council) without having undertaken training in planning procedures; the provisions of this protocol; and attended sessions designed to keep members abreast of new developments, as specified by the Authority. This training will also be required for substitutes at the District Development Control Committee meetings.
- 4.3 Even if a Councillor does not serve as a member of an Area Plans Sub-Committee or the District Development Control Committee, this training need should be regarded as a high priority, as it may sometimes be necessary for a planning decision to be taken by the full

Council. Likewise, Councillors who are not serving on one of the Planning Committees may wish to attend on occasions as non-members to speak on a particular case.

4.4 All relevant planning officers should be trained in the provisions of this protocol as part of their professional training.

5. "Dual Hatted" Councillors

5.1 The Code of Conduct does not automatically prevent a Councillor from considering the same matter at more than one tier of local government, including speaking and voting in both tiers. The reference in paragraph 8 of the Code to members of "any body exercising functions of a public nature" includes other local authorities. The Code says that such dual memberships create a personal interest for any Councillor which is to be declared only if the member decides to speak.

5.2 If an issue is for discussion at both the parish and district level, and a Councillor sits on both authorities, you should:

- (a) at the parish level make it clear that you will reconsider the matter at the district level, taking into account all relevant evidence and representations at the district tier; and
- (b) at the district level, declare personal (but not prejudicial) interests arising from your membership of the Parish Council which has already expressed a view on the matter and make it clear that the Parish Council's view does not bind you and that you are considering the matter afresh.

5.3 These guidelines apply even if a proposal has a direct impact on a particular location. For example, there is no objection, in principle, to a Councillor speaking and voting on issues in the District Council's development plan that particularly affect your parish. However Councillors must still consider if they have a prejudicial interest arising from the impact of the proposals on their personal well-being or financial position. ~~In such circumstances, it would not be appropriate for you to rely on paragraph 8 of the Code.~~

5.4 In some situations, it is unrealistic to expect a member of the public to believe you would disregard the interests of another public body on which you serve. For example, you should not sit on decision-making bodies dealing with planning when they decide applications from an authority on which you also serve. This is reinforced by the Code of Conduct which requires declarations of prejudicial interests to be made on financial issues and on matters relating to the granting of consents by the Council (including planning matters). ~~Even though these situations fall within the scope of paragraph 8, a reasonable member of the public would think that your judgement is likely to be prejudiced. In addition, a legal challenge could be made against the authority's decision-making process if you participate in these circumstances.~~

5.5 Where the procedures of the District Council dictate that a planning application is referred on for further consideration at the District Development Control Committee or the District Council itself, members of Council should not regard themselves as a "dual hatted" Councillor for the purposes of this section of the Protocol.

6. Fettering a Councillor's Discretion

6.1 District Councillors (including those who are also members of Town or Parish Councils) should take care to ensure that they are seen to maintain an open mind until they have heard all the evidence and arguments which will be presented at the appropriate Area

Plans Sub-Committee, the District Development Control Committee or, if necessary, the Full Council. This is particularly the case where Councillors serve on Parish councils and have spoken and voted on a planning matter and have not reserved their final position. (See section 5 above).

- 6.2 However, if members in advance of the decision-making meeting commit themselves to a firm view on a planning matter and state this publicly, whether in meetings of another body, in the media, in election material, or otherwise, they would be unable to demonstrate that all the relevant facts and arguments had been taken into account. They would have "fettered" their discretion. Were they to participate in a decision in those circumstances, they would have a prejudicial interest and might place the decision made by the Council at risk of judicial review. If, therefore, Councillors comment publicly they must be careful to reserve their final position. An open mind on the issues must be genuine. A mere statement to that effect in the face of actions and comments to the contrary will not suffice.
- 6.3 Any Councillor who has fettered his or her discretion, whether before or after election to the Council, must declare a prejudicial interest under the Code of Conduct and leave the meeting. Even if the member does not have any other interest, they must leave the meeting.
- 6.4 Any member who is uncertain as to whether his or her actions would be regarded as having fettered his or her discretion should ask the Standards Committee or the Monitoring Officer for advice.
- 6.5 For the purposes of this section of the Protocol, a Chairman or member of an Area Plans Sub Committee should not regard themselves as under a duty to support the views of that Sub Committee if the planning application or other matter is referred on to the District Development Control Committee or the District Council.

7. Cabinet Members – Conflicts of Interest on Planning Matters

- 7.1 Under the Council's executive constitution there is a clear distinction in law between the role of the Cabinet, which deals with planning policy and the determination of planning applications, etc which are not the responsibility of the Cabinet. The principle is that the Cabinet is responsible for formulating and recommending planning policy to the Council, whilst decision-making on individual planning matters must be separate and dealt with by separate bodies.
- 7.2 Any member of the Cabinet who is responsible for bringing forward planning applications or other proposals which are subsequently considered by an Area Plans Sub-Committee, or the District Development Control Committee needs to be aware of the conflict of interest which exists. They should declare a prejudicial interest and not speak or vote on the planning matters.
- 7.3 The Housing and Finance, Performance Management and Corporate Support Services Portfolio Holders will often be closely involved in planning proposals. The Planning and Economic Development Portfolio Holder has a less close involvement in planning applications and the conflict of interest is thus less onerous. Furthermore, constituency work could easily blur the policy and decision-making roles. A Cabinet member would therefore need to be careful about approaches from constituents. They should for instance, consider arranging for these:
 - (a) to be dealt with by other electoral ward councillors; or

(b) to be dealt with by another member of this political group if they serve in a single member Ward; or

(c) to be referred to planning officers.

8. Property Interests

8.1 Councillors who have substantial property interests or involvement with the property market or similar interests need to be very careful about their involvement in planning matters and should make their interests known at every meeting which they attend when planning issues are discussed. In cases of doubt, members should seek the advice of the Council's Monitoring Officer before the meeting.

8.2 Similarly the property interests of other public authorities can impinge on the planning process and conflicts of interests for "dual-hatted" members may arise requiring prejudicial interests to be declared.

9. Gifts and Hospitality

9.1 Councillors should also be very cautious about accepting gifts and hospitality and bear in mind the requirement to include acceptance of gifts in their registration of interests under the Code of Conduct. Such acceptances create an automatic personal interest for 3 years thereafter and may lead members to conclude that any planning matter affecting the person giving the gift involves a prejudicial interest.

9.2 Similarly, officers may be offered hospitality from people with an interest in a planning proposal. Such offers should be declined politely. If receipt of hospitality is unavoidable, the recipient should ensure it is of the minimum level and declare this as soon as possible in the register kept by the relevant Head of Service.

9.3 When members and officers involved in planning matters receive approaches from any quarter, it is useful to clarify at the outset whether the person concerned has had, or will have, any dealings with the Council.

9.4 On occasions, third parties may offer gifts or hospitality to the Council or to the Chairman of the Council, sometimes in the context of a charitable appeal. The potential donor should always be asked whether they know of any current or intended dealings with the Council on a planning or property issue. If such matters are under consideration, such offers should be declined.

9.5 Separate advice on this area is available from the Standards Committee.

10. Pre-Application and Post Submission Discussions - Role of Officers and Councillors

10.1 Ward Councillors (particularly if they are members of a planning body) should preserve their impartiality as decision-makers at pre-application or post-submission discussions with developers or other interested parties (including objectors) regarding development proposals.

- 10.2 Their involvement should be limited to listening to the discussion, asking questions and indicating points of concern. Ward Councillors should not debate the merits of the case or indicate views. Councillors should avoid the possibility that comments made at such meetings might prejudice their ability to bring an open mind to the formal decision on the proposal.
- 10.3 Post-submission meetings should be arranged so that, wherever possible, representatives of both the applicants and objectors can present their views. This could be either at a single meeting or at separate meetings. Councillors should be accompanied by an officer and a note taken of the meeting for the purpose of reporting to the full Committee. It is recognised that Councillors will be subject to lobbying on specific applications. In such cases, it is essential that care is taken to maintain the Council's and its members' integrity so as to protect the credibility of the planning process.
- 10.4 Members of the Council should always bear in mind the provisions of Section 5 of this protocol at such meetings.
- 10.5 Professional planning officers are approached from time to time by applicants, objectors and Ward Councillors ~~in order~~ to discuss a particular case ~~and the Council charges for advice in relation to major schemes.~~ Often, those officers will be asked to indicate a view on the case. Where this occurs, planning officers must balance the following considerations:
- (a) the duty to advise on legitimate concerns regarding proposals and to be helpful to those who come forward explaining the likely recommendations which will go forward;
 - (b) the need to avoid anticipating the outcome of Planning Committee decisions.
- 10.6 All advice given and comments made must be designed to provide information to interested parties which is helpful. This must, however, stop short of committing the Council to a decision, ~~whether or not the advice has been given free of charge or under the Council's Pre-Application Advice Scheme.~~
- 11. Presentations Regarding Development Proposals**
- 11.1 The District Council is approached from time to time about development proposals for sites within the District. Such requests involve:
- (a) presentations on schemes which may eventually result in planning applications;
 - (b) supply of development brief and other written material on the proposals;
 - (c) indications of a wish to hear views and answer questions on the scheme.
- 11.2 Such requests need to be treated with caution. Invariably the sponsors of such schemes will be anxious to receive any indications, whether positive or negative, about their proposals and whether planning approval will be forthcoming. Councillors should carefully consider whether it is advisable to agree such requests or whether it is preferable to rely on normal planning processes.
- 11.3 If such a presentation is to be entertained, they should be regarded as the exception rather than the rule. The reasons for and against need to be carefully weighed, both from the point of view of members making themselves better informed and from the public perception

particularly among those who may oppose the scheme. Councillors also need to avoid fettering their discretion in relation to any subsequent planning application. They should -

(a) restrict themselves to listening to the presentation and reading the material provided;

(b) restrict themselves to clarifying facts and asking questions and not express opinions without reserving their opinion until all the facts are to hand;

(c) avoid 'one-to-one' discussions with the developers either at a presentation or separately.

11.4 It is important that a planning officer accompanies Councillors at such presentations.

12. Attendance of the Public at Planning Meetings

12.1 All planning decisions are taken in public session at meetings except if they are delegated to officers. Planning issues usually attract high levels of public interest and attendances reflect this.

12.2 With high levels of public interest and sometimes contentious decisions to be made, confidence in the planning system is under the spotlight. Issues such as conflicts of interest, lobbying, officer advice, the conduct of meetings and focus on planning considerations will colour the public perception positively or negatively. All participants need to keep this in mind.

12.3 The Council has a policy of allowing public speaking by applicants, objectors and Parish/Town Councils. The rules are set out in the Council's Constitution (Operational Standing Order 5(2)) and summarised in the public leaflet "Your Voice, Your Choice". This procedure must be respected at all times and the exercise of legitimate discretion by Chairmen accepted in the light of the circumstances which prevail.

12.4 Members of Planning Committees are strongly advised to attach equal weight to all representations made on planning grounds.

13. Substitute Councillors and Attendance of Non-Members at Meetings

13.1 The Council's policy on these issues is set out in the Council's Constitution (Operational Standing Orders – Non-Executive Bodies).

13.2 The rules governing substitute Councillors apply to the District Development Control Committee providing that Committee members shall, if they wish another member of the political group to which they belong to attend a meeting of that Committee in their place, liaise with the Leader or Deputy Leader of their political group who shall give notice not later than 10.00 a.m. on the day of the meeting that the member is unable to attend and that the substitute Member named will attend in his/her place. Substitutes should only undertake this role if they have received the obligatory training.

13.3 The effect of a substitution is that the substitute Councillor shall be a full member of the Committee for the same period.

13.4 A substitution may be revoked at any time before the meeting starts. If both Members are at the meeting, the Councillor appointed to the Committee or Sub-Committee will take precedence.

14. Officer Reports to Committees

- 14.1 All applications considered by the Council's Planning Committees and Sub-Committees shall be the subject of full written reports from officers incorporating clear recommendations. These reports will consider national and development plan policies and guidance and representations made by statutory consultees, local residents and other interested parties. Reports will contain all the relevant material known at the time the report is despatched to Councillors and updating information will be provided to Councillors only if there have been any significant developments or changes to the report.
- 14.2 Once the Committee papers for a meeting have been published, any subsequent information received on material planning considerations will be reported orally at the meeting by the Director of Planning and Economic Development or his or her representative. With the consent of the Chairman of the District Development Control Committee or Area Plans Sub-Committee concerned this may on occasion involve tabled written material.
- 14.3 The Council's Code of Conduct requires Councillors not to prejudice the impartiality of officers. In their relations with officers therefore, Councillors should avoid placing inappropriate pressure on planning staff to achieve a desired outcome, including attempting to change decisions made under delegated authority by the Director of Planning and Economic Development.

15. Determination of Planning Applications

- 15.1 Whilst Councillors should bring to planning decisions a sense of the community's needs and interests, they must balance this with their obligation to remain within the constraints of planning law. They must only take account of relevant matters, e.g. sound land use planning considerations and must have regard to the Development and Local Plans and Government policy. Local feelings may run high but these must be weighed carefully against all material considerations. The officer's report must deal specifically with these matters so that Councillors reach an informed decision.
- 15.2 Section 54A of the Town and Country Planning Act 1990 requires that where, in making any determination under the Planning Acts, regard is to be had to the Development Plan, the determination shall be made in accordance with the Plan unless material considerations indicate otherwise. In cases where an Area Plans Sub-Committee wishes to depart from planning policy following consideration of an application, planning officers will advise that such a decision must be referred to the District Development Control Committee. In some cases the Leader of the Council may determine that a final decision by the full Council is desirable.
- 15.3 The Council recognises that planning decisions are often matters of fine judgement where the balancing of considerations is difficult. Reports of the Director of Planning and Economic Development will be based on planning policy but members may wish to exercise their discretion to permit an application as an exception to policy or may not agree with the recommendation. In such cases the procedural requirement is that they should formally move a motion to take the place of the officer's recommendation giving reasons.
- 15.4 Voting on decisions shall be by a show of hands.
- 15.5 When dealing with planning applications Councillors should be careful to avoid even the appearance that they may have been influenced improperly or by considerations which

should not be taken into account under the planning legislation and regulations. Similar circumstances must give rise to similar decisions.

15.6 Improper decision taking can have financial penalties not only for the Council. The circumstances set out below can lead to expenditure:

- (a) an Ombudsman finding maladministration and injustice giving rise to recommendations for remedial action and financial recompense;
- (b) costs of litigation and award of costs following application for judicial review in the High Court;
- (c) costs of local Public Inquiries, including possible award of an applicant's costs following use of Secretary of State's call-in powers;
- (d) costs of local Public Inquiries, together with landowners' costs and possibly substantial compensation payments following actions by the Secretary of State for revocation, modification or discontinuance.

16. Decisions Contrary to Officer Recommendations

16.1 Where a Planning Committee is minded to determine an application contrary to the officer's recommendation (whether for approval or refusal), the onus is upon the Committee to identify its reasons for the decision, which should be based on material planning considerations. The final decision on the application can therefore either:

- (a) normally be dealt with at the meeting with a formal proposal summarised by officers and voted on at that time;
- (b) in the event of exceptional circumstances, be deferred until the next meeting of the Committee (provided it does not prevent a final decision within a reasonable timescale) to ensure that officers can provide appropriate advice as to the clarity and reasonableness of the reasons put forward for approval or refusal of the application.

16.2 There will be a careful record kept of the debate when a resolution is proposed which is contrary to an officer recommendation. In such cases the Chairman will summarise the main reasons for the proposed decision so that these are clearly understood before it is put to the vote.

16.3 Under no circumstances is it acceptable for grounds for refusal or granting of consent to be left to planning officers to draft after the meeting. All such grounds shall be discussed at the meeting at which the application is dealt with and adopted following professional advice from planning staff. Chairmen of Planning Committees can assist this process by seeking from movers of proposals the reasons for their proposal based on District Plan requirements.

17. Voting at Planning Committees

17.1 In dealing with planning applications, a Committee or Sub-Committee is acting quasi-judicially (i.e. similar to a Court). In doing so, the Committee is balancing the requirements of planning law and planning policy against the needs of the community or individuals.

17.2 Votes must be cast according to an honest appraisal of the merits of an application, the planning grounds which apply and the need to act promptly on planning applications.

Although there are circumstances where further debate in another forum might be helpful, such deferrals should be avoided except in the most exceptional cases.

18. Voting by Chairmen

- 18.1 Chairmen must state whether they intend to vote on any item for consideration before votes are cast.

19. Second or Casting Vote of Chairman

- 19.1 The Council's Constitution provides for the Chairman of the District Development Control Committee and the ~~four~~ three Area Plans Sub-Committees to exercise a second or casting vote in the event of an equality of votes. The use of the second or casting vote should only be based on an honest appraisal of the planning matter concerned.

20. Site Visits

- 20.1 Formal site visits may be requested by any Planning Committee. However, these consume resources and could delay determination of an application. It is good practice to:
- (a) consider site visits only where there is a substantial benefit to the decision-making process, e.g. when the impact of the proposed development is difficult to visualise from prior inspection from a public place, or from the plans and the supporting material; or it is particularly contentious;
 - (b) encourage members of the Committee, plus the Chairman or Vice-Chairman, to attend the site visit, together with a senior planning officer, if they have not already done so;
 - (c) ensure that the visit is managed by the Chairman, Vice-Chairman or senior officer and that it is made clear to other parties at the outset that the purpose is to gather factual information first hand – **not** to hear arguments for and against, or to enter into a debate about the merits of the case;
 - (d) ensure that the application will not be determined at that site visit;
 - (e) in the interests of fairness to all parties, consider the desirability of viewing an application site from more than one property when the site visit is arranged.
- 20.2 Any response to questions or statements by interested parties at site visits should follow the good practice summarised above. Councillors should refrain from making comments on the merits or otherwise of the application to any interested party.
- 20.3 All formal site visits should be conducted in a single group.

21. Lobbying

- 21.1 It is vital to distinguish the "quasi-judicial" role as a Councillor on a decision-taking Committee from that of a Ward Councillor approached by a constituent with a particular viewpoint about a planning matter.
- 21.2 The Council's duty when determining planning applications or planning enforcement matters is to attach weight to development plans, proper planning considerations and the

advice of professional officers presented at Committee. Reasonable and fair decisions are expected.

Lobbying of Councillors

- 21.3 Lobbying of Councillors is a normal and proper part of the political process. However, unless care and common sense are exercised, the impartiality and integrity of members can be called into question. So far as lobbying is concerned, it is good practice to:
- (a) explain to the lobbyist the quasi-judicial nature of the planning process;
 - (b) listen and ask relevant questions but avoid expressing any opinion which may indicate that the issue is prejudged before debate in Committee; in particular Members should never indicate in advance how they intend to vote;
 - (c) give procedural information or advice as appropriate, including how to speak or write to the relevant officer;
 - (d) stress that any comments made are personal and provisional, pending the rehearsal of all the relevant evidence and arguments at Committee;
 - (e) avoid acceptance of any hospitality at a site visit, (apart from routine courtesies), which could be misinterpreted by third parties;
 - (f) when a relevant item is considered declare cases where contacts with third parties through correspondence, telephone calls or meetings with applicants or objectors are significantly greater than normal Ward Councillor contacts; and
 - (g) consider whether the nature of the contacts referred to in (f) are so significant as to render them in the Councillor's view a personal or prejudicial interest and declare accordingly.
- 21.4 Councillors should carefully consider whether it is wise to accept an invitation from an applicant or objector to make an informal site visit prior to the relevant Committee meeting. In controversial cases only one side of an argument will be heard. It is, of course, perfectly proper for a Councillors to view a site from a public place.

Lobbying by Councillors

- 21.5 Councillors should avoid organising support for, or opposition to, planning applications and should not lobby other Councillors as such actions can easily be misunderstood. Members may have concerns about a planning matter before it comes to Committee. They are entitled to raise these concerns and to ask that they be addressed in any report that may go to Committee but Councillors should not put pressure on officers for a particular recommendation. The Code of Conduct requires Councillors to respect this impartiality.
- 21.6 Councillors should not lobby their colleagues on the Council if they have a prejudicial interest as this is precluded by the Council's Code of Conduct. Political Groups should also not seek to instruct their Councillors to vote in a particular way on a planning application.
- 21.7 For the purposes of this protocol, approaches from a Member of Parliament should be treated as lobbying if this is the nature of the approach.

Lobbying and Campaign Groups

~~21.8 Membership of lobby and campaign groups should be included in the register of interests, as these are bodies “whose principle purposes include the influence of public opinion or policy.” The Code of Conduct requires members to declare personal interests in any matters that relate to an interest included in the register of interests. Councillors are required to declare a personal interest if they are members of a group that lobbies or campaigns about an issue that comes up for discussion or decision at the Council.~~

~~21.9 The existence and nature of such an interest should be declared at the meeting so that members of the public are informed about interests that may relate decisions. The member can continue to participate unless the interest is also prejudicial.~~

~~21.10 Even if the lobby group does not keep a formal membership list the Code of Conduct still applies in the same way. A Councillor acting as a member — perhaps attending meetings or participating in group activities — should still register membership of the group and declare interests.~~

~~Prejudicial Interests arising from Membership of Lobby Groups~~

~~21.11 Sometimes, organisations within the District may have memberships which include Councillors. Where such organisations make representations about planning applications, any Councillor who will be involved in determining such applications must be careful to avoid any conflict of interest. They should be careful to ensure that they take no part in helping the organisation to formulate its representations as they may, in doing so, have fettered their discretion and created a prejudicial interest. Within the organisation they may be best advised not to participate. This is advice which could equally well relate to other functions of the Council such as licensing.~~

~~21.12 Under the Code of Conduct it is only necessary to withdraw from a meeting where there is a personal interest, if that interest is also prejudicial. The points outlined below should be taken into account in each case, to help decide whether or not a personal interest is also prejudicial:~~

~~(a) Direct impact on Lobby and Campaign Groups~~

~~If the matter to be discussed will have a direct impact on a lobby or campaign group a Councillor who is a member of that group is likely to have a prejudicial interest. This includes anything that directly affects the rights and obligations of a group to which you belong.~~

~~(b) Indirect impact on Lobby and Campaign Groups~~

~~Matters that relate to the campaign on or to matters on which the group has expressed public opinions but which do not affect the operation of the group directly, have an indirect impact on that group. If the matter to be discussed relates indirectly to a lobby or campaign group a Councillor may have a personal or prejudicial interest in it.~~

~~(c) Councillors should determine whether a prejudicial interest in a matter of indirect impact exists by considering the following factors:~~

- ~~• the nature of the matter to be discussed;~~
- ~~• the nature of your involvement with the lobby or campaign group;~~
- ~~• the publicly expressed views of the lobby or campaign group;~~

- ~~• what you have said or done in relation to the particular issue.~~

~~Note: The Standards Board for England has published detailed advice on the situation set out in (c) above and if any Councillor is in doubt about their position, they should contact the Monitoring Officer. A flow chart showing the process recommended by the Standards Board for England is attached as~~

~~Appendix 2.~~

- 21.8 The Code of Conduct requires members to declare a personal interest in any matter that relates to an interest they must include in their register of interests – so they are required to declare a personal interest if they are a member of a group that lobbies or campaigns about an issue that comes up for discussion or decision at their authority.
- 21.9 Members may not have a personal interest in the related discussion or decision of their authority if they merely campaigned on an issue as an individual, perhaps during their election campaign, and they are not a member of a relevant lobby group. As a result, they could not have a prejudicial interest in the matter. Members should still consider the general test for personal and prejudicial interests and whether there is any other reason outside of the Code why they should not participate in the decision, including bias.
- 21.10 Of particular relevance to members of lobby or campaign groups, the revised Code provides an exception to having a prejudicial interest in the following circumstances:
- (a) where the decision does not affect the financial position of a member or their interests; or
 - (b) does not relate to a licensing or regulatory matter brought by them or a person or body in which they have a personal interest.
- 21.11 For example, a member will not have a prejudicial interest in a developer's planning proposal against which they and their lobby group campaigned if they or any other person or body in which they have a personal interest are not affected financially by the matter.

22. Development Proposals Submitted by Councillors and Officers or Where They Are Objectors

(a) ~~Prejudicial Interest – Councillors Introduction~~

- 22.1 Applications to their own Authority by serving and former Councillors and officers and their close friends, partners, employers or business associates (including those of relatives) and relatives themselves can easily give rise to suspicions of impropriety.

(b) Registration of Applications/Interests

- 22.2 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism. Serving Councillors, ~~Chief Officers and~~ and staff of Planning Services ~~together with other Council staff who act as agents for applicants~~ should play no part in the decision-making process in respect of those proposals. The Council's Monitoring Officer and the Director of Planning and Economic Development should be told by the Councillor or member of staff that an application has been made as soon as it is submitted. In the event that the Monitoring Officer or the Director of Planning and Economic Development is the applicant they should notify the Deputy Monitoring Officer and an Assistant Head of

Service respectively. Both postholders shall also advise the Chief Executive. Councillors and officers therefore should be scrupulous in completing the appropriate sections of the application form prescribed by the Government. Any such applications, whether by Members or officers, cannot be dealt with by the Director of Planning and Economic Development under delegated powers. Any such applications by members, cannot be dealt with by an Area Plans Sub-Committee.

(c) Prejudicial Interests - Councillors

- 22.3 A Councillor submitting an application will invariably have a personal and prejudicial interest in the application. He or she must declare this interest at the meeting where the application is under discussion and withdraw whilst it is considered unless they decide to exercise their right to make representations (see Section 23 below).
- 22.4 A Councillor who is an applicant or who otherwise has a prejudicial interest under the Code of Conduct in an application should also not 'improperly seek to influence a decision about the matter' (Paragraph 12(1)(c) of the Code of Conduct). 'Improperly' should not imply that a Councillor should have any less rights than a member of the public in seeking to explain and justify their proposal to an officer in advance of consideration by a Committee.
- 22.5 Applications submitted by Councillors will always be determined by the District Development Control Committee and not by the Director of Planning and Economic Development under delegated powers.

(d) Applications by Officers and Councillors

- 22.56 An officer (~~ie staff of Planning Services and other Council staff acting as agents~~) submitting an application has a clear interest in that application. ~~He or she must also declare that interest and leave if present at the meeting at which the application is discussed. Applications submitted by Councillors will always be determined by the District Development Control Committee and not by the Director of Planning and Economic Development under delegated powers.~~ Applications submitted by officers will always be determined by an Area Plans Sub-Committee or the District Development Control Committee and not by the Planning and Economic Development Service Director under delegated powers.
- 22.67 In all such cases, the aim must be to ensure that applications are dealt with in the same way as those by any other person. This will avoid any suggestion of preferential treatment.

~~(e)~~(e) Objectors

- 22.78 Members of the Council and officers will have a clear interest in a planning matter if they are an objector in respect of a proposal being made by another party. In those circumstances, the same procedures shall be followed as outlined above.

~~(d)~~(f) Membership of Political Groups and Political Parties

- 22.89 On occasions, planning applications etc from fellow Councillors and political parties can give rise to concerns about conflicts of interest for those within the political grouping. This often creates a situation where all members of a Committee who have that relationship feel that they must ~~take no part in the decision. declare a prejudicial interest.~~ The consequence of this can be that applications have to be referred on to another body or delayed. Clearly where members of the public attend to make their

views known, they will form a negative impression of the planning process unless the position is clearly thought through beforehand.

~~22.9 Although wholesale declarations may sometimes be unavoidable, declarations of prejudicial interests must not be made on a collective basis or following a political instruction. The Code of Conduct clearly requires the individual Councillor to think through their own position and act accordingly. If individual decisions can be made on this basis, there should be more opportunity for Area Plans Sub Committees to maintain a quorum and make decisions, albeit that some members will have to leave the meeting.~~

22.10 ~~Planning officers will also review~~ Such applications will be referred and make a judgement that there are clear policy arguments for referring a case direct to the District Development Control Committee.

23. Prejudicial Interests And A Councillor's Representative Role

23.1 The preceding section deals with the prejudicial interests which exist where Councillors etc are applicants or objectors on planning matters.

23.2 The revised Code of Conduct provides that a personal interest will also be a prejudicial interest if the matters affects Councillors' financial interests or relates to a licensing or regulatory matter and a member of the public, who knows the relevant facts, would reasonably think that the personal interest is so significant that it is likely to prejudice their judgement of the public interest. Regulatory matters include planning decisions. Equally prejudicial interest can arise as a result of "fettered discretions" as a consequence of advice in this protocol.

23.3 All such interests must be declared and the nature of that interest described. Councillors must then leave the room. Area Plans Sub Committees, the District Development Control Committee and (where necessary) the Council make provision for applicants and objectors to make representations for a maximum of three minutes.

23.4 The Code of Conduct allows Councillors who have a prejudicial interest in a planning matter to exercise the same rights as a member of the public. Thus ~~he or she~~ they can attend a planning meeting for the purpose of:

(a) making representations ~~on their own behalf, for constituents, as a Parish Councillor either as objector or applicant,~~ or

(b) giving evidence; or

(c) answering questions ~~while they are present.~~

~~In these circumstances, the Councillor will be subject to the Council's policy for public speaking at planning meetings.~~

~~In these circumstances the Councillor will be subject to the Council's policy for public speaking at planning meetings. The Councillor should not sit with other members when he or she makes these representations. The Councillor should present them in the same way as would be expected of a member of the public in accordance with the Council's policy. Once the member has spoken then he or she must leave the meeting room and take no part in the decision.~~

23.5 Once the member has spoken, the Code of Conduct requires that he or she leaves the meeting room and takes no part in the decision. Councillors might wish to exercise this right –

- (a) to submit representations on behalf of constituents;
- (b) to make representations as applicant or objector or as Parish Council representative.

23.6 They should also make their representations before any other person registered to do so. This is to ensure that a member with a prejudicial interest remains at in the meeting for a minimal period and to ensure that any influence in relation to discussion is restricted.

~~23.6 Councillors should not sit with other members when they make these representations. They should present them in the same way as would be expected of a member of the public, i.e. in accordance with the Council's policy as referred to earlier.~~

23.7 It is very important that the procedure for Councillors who have a prejudicial interest is perceived as quite distinct from their normal role particularly if they are a member of that Committee. Members must be scrupulous in making this distinction clear.

24. Application for Planning Consent by the District Council

24.1 Planning applications for the Council's own development proposals will be treated in the same way as applications by any other person or body. Such applications will always be referred to an Area Plans Sub-Committee and will not be dealt with under delegated authority. This requirement extends to applications from other parties in respect of Council-owned land or property, where a land sale is being negotiated.

24.2 The Council's role as landowner is completely separate from its role as Planning Authority. The landowner role is a matter reserved to the Cabinet as an executive function. Considerations relating to the landowner role are not relevant planning considerations in respect of the determination of planning applications. Members of Area Plans Sub-Committees should at all times keep this in mind.

24.3 Section 7 above deals with conflicts of interest which can arise if Cabinet members are involved in determining applications for which they are responsible.

25. Review of Decisions

25.1 Planning and enforcement decisions and Local Plans are subject to review in a number of ways:

- (a) as a result of investigations by the Local Government Ombudsman;
- (b) at Planning Inquiries;
- (c) through the Courts;
- (d) as part of Comprehensive Performance Assessments and Best Value service reviews;
- (e) through the Council's Compliments and Complaints Procedure; and
- (f) by means of a six-monthly review of appeal decisions.

25.2 By these reviews, the quality of planning decisions will be constantly monitored to ensure that the public can continue to have faith in the appropriateness and probity of the system.

26. Complaints

26.1 The Council's compliments and complaints procedure allows any member of the public to complain about any aspect of how the planning system operates.

26.2 Opportunities exist to take complaints forward to the Local Government Commissioner for Administration (the Ombudsman) usually if a complainant is not satisfied after the Council's complaints procedure has been completed.

26.3 The Standards Board for England will consider complaints by any member of the public (including officers and other Councillors) about the conduct of any Councillor if it is considered that he or she has breached the requirements of the Council's Code of Conduct.

26.4 The Standards Committee has a role in reviewing and monitoring this protocol and if necessary offering advice on its operation.

27. Human Rights Act 1998

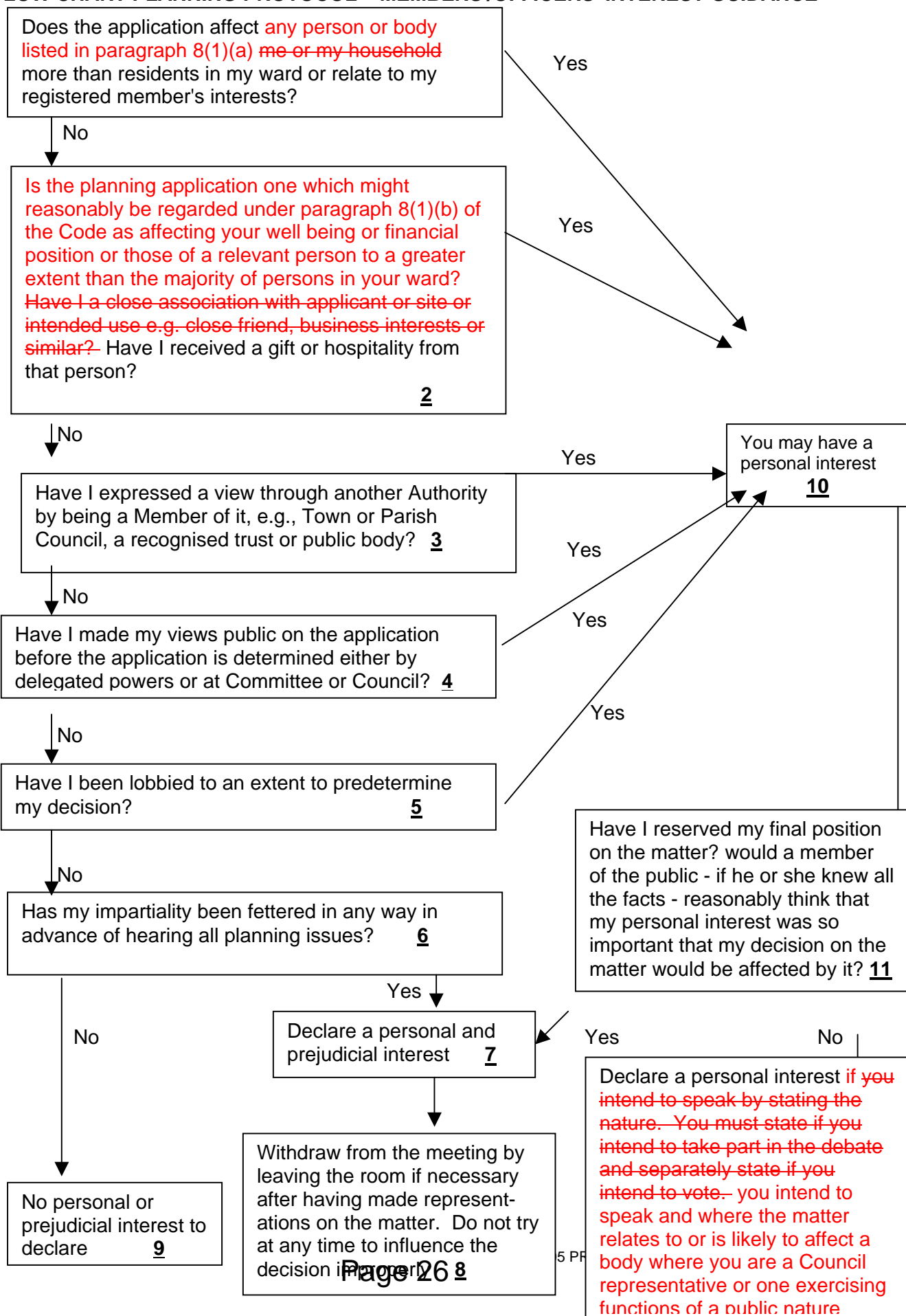
27.1 The provisions of this protocol acknowledge throughout the rights of citizens in the planning process and the duty of the Council to reflect those rights in its procedures.

28. Planning Inquiries, Court Proceedings and Public Hearings

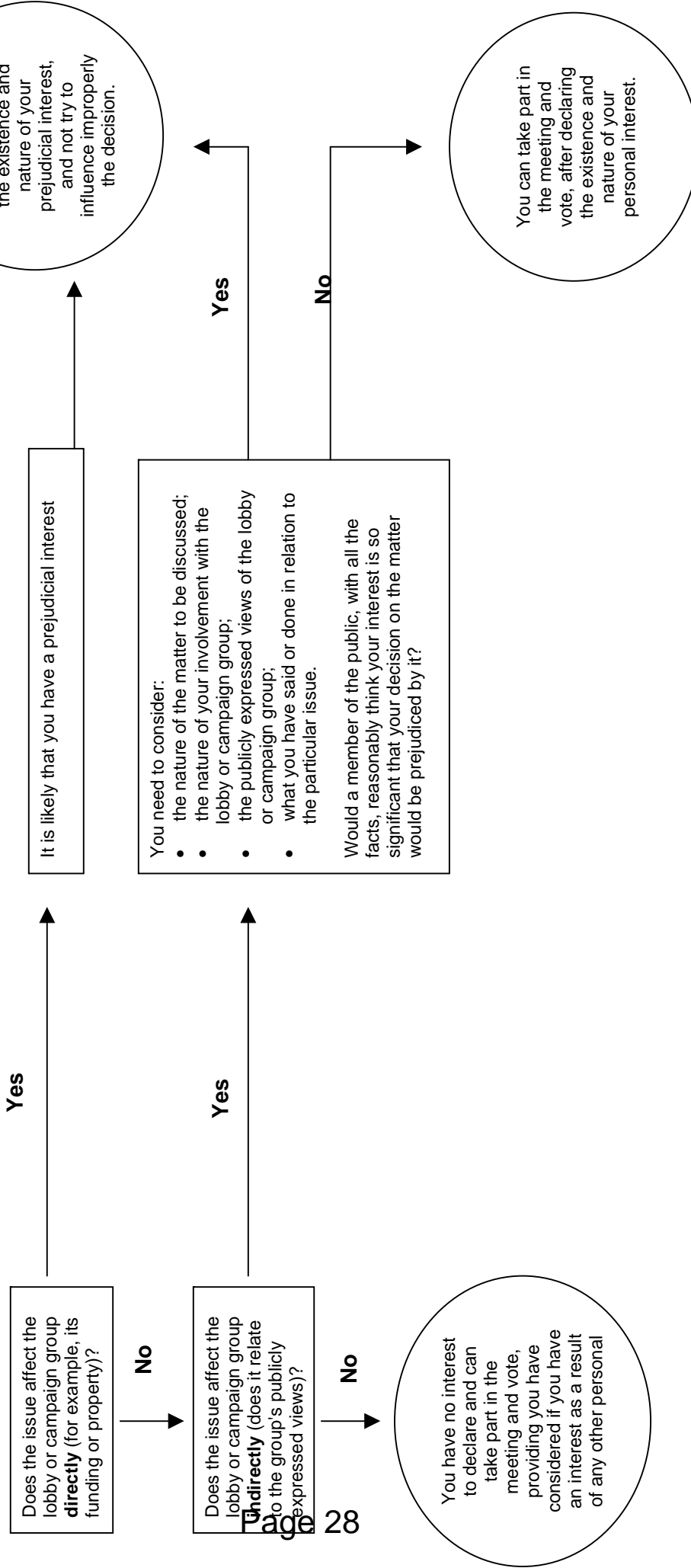
28.1 Often planning decisions of the Council lead to further proceedings by way of appeals heard at Public Inquiries or hearings or in Court. The question often arises about involvement by Councillors in such circumstances.

28.2 Councillors who wish to be involved in such hearings should, as a matter of courtesy, advise the Council in advance that they intend to participate. At the hearing, they should make it clear that the views they express are personal and should not seek to criticise Council officers or Councillors on a personal basis.

FLOW CHART PLANNING PROTOCOL – MEMBERS/OFFICERS' INTEREST GUIDANCE



DECLARING INTERESTS - LOBBY GROUPS



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