

# **PART 6**

## **SECTION B**

### **Interim Planning Protocol for Members and Officers**

## **Contents**

- A1. Application of the Interim Planning Protocol for Members and Officers**
- B1. Definitions**
  - 1.** Introduction
  - 2.** Role and conduct of members and officers
  - 3.** Declaration of disclosable pecuniary interests
  - 4.** Declaration of personal interests
  - 5.** Declaration of prejudicial interests
  - 6.** Bias and predetermination
  - 7.** Development proposed by Salford City Council or a council controlled company or agency
  - 8.** Development proposals by individual members or officers or persons related to them
  - 9.** Lobbying of and by Members
  - 10.** Membership of lobbying groups
  - 11.** Pre and post application discussions
  - 12.** Officer reports to committee
  - 13.** Decisions contrary to officer recommendation
  - 14.** Committee site visits
  - 15.** Complaints and record keeping
  - 16.** Breach of the Members' code

## **A1. Application of the Interim Planning Protocol for Members and Officers**

**A1.1** This Protocol (“the Interim Planning Protocol for Members and Officers”) temporarily suspends and supersedes the Planning Protocol for Members and Officers that was adopted by the Council in November 2019 (“the Suspended Planning Protocol for Members and Officers”).

**A1.2.** This Protocol comes into effect on 17 June 2020 and applies to all matters that the Suspended Planning Protocol for Members and Officers would otherwise apply to on or before 6<sup>th</sup> May 2021 (unless this Protocol is rescinded or amended by the Council prior to that date).

**A1.3.** From 7<sup>th</sup> May 2021 (or such earlier date as the Council may rescind it) this Protocol shall cease to apply and the Suspended Code Planning Protocol for Members and Officers shall apply again instead.

## **B1. Definitions**

**B1.** Any reference (howsoever expressed) in this Protocol to a member or members being present at or attending a meeting shall include a member who is in remote attendance.

**B2.** “Meeting” and the “place” where the meeting is held (or is to be held) are to be construed in accordance with [Regulation 5\(1\)](#) of the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 (“the 2020 Regulations”).

**B3.** “Remote attendance” and “remote access” are to be construed in accordance with [Regulation 3](#) of the 2020 Regulations.

**B4.** “Remote meeting” means a meeting where some or all members are in remote attendance and/or where some or all members of the public are attending by remote access.

## **1. Introduction**

**1.1** The aim of this Planning Protocol is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

**1.2** No member should be appointed to the Planning and Transportation Regulatory Panel (‘the Panel’) unless they have agreed in writing to take part in training in planning matters, including the operation of this Planning Protocol. No member appointed to the Panel should participate in the business of the Panel until they have attended training in planning matters.

**1.3** In this Planning Protocol, the expression ‘planning matter’ means any planning application, development, development proposal or plan within the city of

Salford or which materially affects the city and includes the enforcement of planning control. This Planning Protocol sets out the practices and procedures that members and officers of the council should follow whenever they are involved in planning matters in order to comply with the Code of Conduct for Members (as contained within the Council's Constitution ('the Code')) and the Employee Code of Conduct, respectively.

- 1.4 The sections of this Planning Protocol relating to the declaration of interests also apply to members who are not members of the Panel. In making written representations to the Panel all members must serve only the public interest and should never seek to improperly confer an advantage or disadvantage on any person.
- 1.5 Planning affects land and property interests, including the value of land and the quality of the environment. Decisions affect people's daily lives and the private interests of individuals, landowners and developers. The role of the planning system is to regulate the use and development of land in the public interest. Accordingly planning decisions must be seen to be impartial and properly justified. The planning system can only operate effectively if there is trust among the various stakeholders: the public, applicants, developers, members and officers.
- 1.6 Failure to abide by this Planning Protocol may place the council at risk of proceedings concerning the legality or maladministration of the related decision.

## **2. Role and conduct of members and officers**

- 2.1 Members and officers have different but complementary roles. Both serve the public but members are accountable to the electorate and officers accountable to the council as a whole.
- 2.2 The main duty of members is to represent their constituents as a whole, including those who did not vote for them. This is especially relevant to planning matters where often decisions are taken against the interests of individuals but for the benefit of the wider community. However, case law has established there may be occasions where the need to uphold public trust and confidence in the impartiality of planning decision making requires a restriction of members' representative capacity.
- 2.3 The role of members of the Planning Authority is to make planning decisions openly, impartially with sound judgement and for justifiable reasons.
- 2.4 Although members may take into account the views of others they should not discriminate in favour of any particular group or individual or put themselves in a position where they appear to do so.
- 2.5 Members are advised to treat with extreme caution any offer, gift, favour or hospitality that is made to a member personally. Members are referred to the Members' Code of Conduct.

- 2.6 Officers who are chartered town planners must act in accordance with the Royal Town Planning Institute's (RTPI) Code of Professional Conduct and breaches of that code may be subject to separate disciplinary action by the Institute. All officers are expected to follow the council's own Code of Conduct for Employees, or any statutory code which may come into force or be adopted by the council.
- 2.7 Members are free not to follow the advice of the professional officers. Professional officers may also have a change of opinion but this must be on the basis of professional judgement; they must not be allowed to be influenced by members or other officers to change an opinion where this does not genuinely represent their professional view. The council endorses the RTPI's statement that its members 'shall not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions'.
- 2.8 The council has a designated head of the planning service, who is qualified for election to membership of the RTPI and who has direct access to elected members as their professional adviser on planning matters.

### **3. Declaration of disclosable pecuniary interests**

- 3.1 Part 2 of the Code incorporates the provisions in the Localism Act 2011 concerning the disclosure of pecuniary interests.
- 3.2 A 'disclosable pecuniary interest' is fully defined in the Code and includes, in relation to both members and their partners:
- Employment, office trade, profession or vocation.
  - Sponsorship.
  - Contracts.
  - Land.
  - Licences.
  - Corporate tenancies.
  - Securities.
- 3.3 It is a criminal offence, if a Member without reasonable excuse:
- a) fails to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election
  - b) fails to declare a disclosable pecuniary interest at a meeting if it is not on the register
  - c) fails to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that s/he has disclosed to a meeting
  - d) participates in any discussion or vote on a matter in which they have a disclosable pecuniary interest
  - e) knowingly or recklessly provides false or misleading information relating to disclosable pecuniary interests in notifying the Monitoring Officer or in disclosing such interest to a meeting.

3.4 Part 2 of the Code also advises members that, if they are present at a meeting and have a disclosable pecuniary interest in any matter to be considered at that meeting:

- Members must disclose the interest to the meeting whether or not it is registered.
- Members must not participate in any discussion of the matter or in any vote taken on the matter at the meeting and must withdraw from the meeting whilst the matter is being considered (**and in the case of a member in remote attendance at the meeting, must suspend use of their means of remote attendance at, and remote access to, the meeting during this time**).

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

#### 4. Declaration of personal interests

4.1 Part 3, in paragraph 7.1 of the Code states that, in addition to disclosable pecuniary interests, members must also register other personal interests defined in the Code.

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

#### 5. Declaration of prejudicial interests

5.1 A member with a personal interest in any business of your authority you may also have a prejudicial interest in that business where the interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest. A full definition of 'prejudicial interest' appears in Part 3, paragraph 9.1 of the Code.

5.2 A member with a prejudicial interest must disclose the interest to the meeting and must withdraw from the meeting (**and in the case of a member in remote attendance at the meeting, must suspend use of their means of remote attendance at, and remote access to, the meeting during this time**) unless s/he is making representations, answering questions or giving evidence relating to the relevant planning matter, provided that the public are also

allowed to attend the meeting for the same reason. The member must leave the **meeting** immediately after making representations, answering questions or giving evidence and must not participate in any discussion of the matter at the meeting or in any vote taken on the matter at the meeting **(and in the case of a member in remote attendance at the meeting, must suspend use of their means of remote attendance at, and remote access to, the meeting during this time)**.

## **6. Bias and predetermination**

6.1 The law on bias and predetermination may apply at times when the member concerned does not have a disclosable pecuniary interest or a personal or prejudicial interest as defined by the Code.

6.2 Predetermination is a principle developed by the courts which has established that a decision taken by a public body is unlawful if the decision maker approaches the decision with a closed mind.

6.3 Section 25 of the Localism Act 2011 applies when a court has to consider whether a decision has been validly made. It provides that a 'decision taker' is not to be regarded as having a closed mind just because the decision taker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter that was relevant to the decision. The use of the qualifying words 'just because' in Section 25 indicates that some decisions will still be invalid by reason of predetermination notwithstanding the enactment of the section, because all the circumstances surrounding the decision have to be taken into account. Regardless of any predisposition of members to determine an application in accordance with their political views and policies, the members of the Panel must approach decision making with an open mind, must listen to the evidence and arguments on both sides and must make decisions with regard to material planning considerations. Members should not have, or appear to have, a closed mind on a planning application prior to its full consideration at the Panel.

6.4 Where bias or predetermination or a risk of the perception of bias or predetermination arises, a member of the Panel who has, or appears to have, closed mind about a planning matter in advance of the Panel should not participate in the decision making part of the meeting. Members may, in their representative capacity, address the Panel on the planning merits of the application for the same period of time as any member of the public with a right to speak. Members should declare that they cannot participate in the decision taking as a result of having a closed mind in advance of the meeting and withdraw as soon as they have addressed the Panel **(and in the case of a member in remote attendance at the meeting, must suspend use of their means of remote attendance at, and remote access to, the meeting during this time)**.

## **7. Development proposed by Salford City Council or a council controlled company or agency**

- 7.1 Planning legislation allows councils, and bodies controlled by them, to submit and determine development proposals which they intend to carry out themselves. These shall be considered in the same way as those put forward by private developers.
- 7.2 Decisions shall be taken strictly on planning merits and without regard to any financial gain that the council e.g. in its capacity as land owner - may accrue, if the development is allowed. The council should treat such applications on an equal basis with all other applications.
- 7.3 Members of the Panel who hold a position of control or management in another public authority or are appointed by the council as its representative to another body need to consider their position where such bodies submit planning applications to the council. In such cases the Code provides that members have a personal interest and need only disclose the nature or existence of that interest when they address the meeting on the business which relates to their public authority or other body, unless the interest is a prejudicial interest. Members should always consider whether it is appropriate to regard themselves as having no prejudicial interest in the light of the specific facts.

In addition, because of the appearance of bias, a member should always consider whether it is appropriate to take part in the decision making process. For example, where the member has been or is perceived as being the chief advocate for the proposal *or* has had a significant personal involvement in preparing or promoting the proposal by which they may be perceived as being unable to act impartially or determine the proposal purely on its planning merits and in the public interest *or* has, or appears to have, a closed mind about the application, this would give rise to an appearance of bias. If the circumstances would give rise to potential allegations of bias, members are advised to explain their involvement and not take part in the decision (see paragraph 6.4 above).

- 8. Development proposals by individual members or officers or persons related to them.**
- 8.1. Serving members or officers should never act as agents for another in pursuing a planning matter to be determined by Salford City Council as local planning authority. If members or officers submit their own proposal to the council they should take no part in the processing and determination of that proposal. The council's Strategic Director Place should be informed of all such proposals as soon as they are submitted.
- 8.2. Proposals for development by members or officers shall be reported to the Panel and should not be determined under delegated authority unless they relate to the residence of a member or officer *and* there are no objections to the application.

- 8.3 Officers should not deal with development proposals and planning applications in which they have a personal interest.

## **9. Lobbying of and by members**

- 9.1 Lobbying is a necessary and legitimate element of the political and democratic process. Those affected by a development proposal often try to canvass support from one or more members of the Panel. The time for individual members of the Panel to make a decision on a proposal is at the Panel meeting when all the relevant information is available and has been properly considered. Members should not close their minds or give the appearance of having closed their minds, particularly in relation to an external interest or lobby group, prior to the Panel meeting. Members who commit themselves in advance to a fixed view as to how the proposal should be determined should withdraw from the meeting and not participate when the Panel is discussing or voting on the application **(and in the case of a member in remote attendance at the meeting, they must suspend use of their means of remote attendance at, and remote access to, the meeting during this time)**. They may, in their representative capacity, address the Panel on the planning merits of the application (see paragraph 6.4 above).

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

- 9.2 Members are free to listen to a point of view about a particular proposal and to provide procedural advice, (e.g. by referring the person to a particular officer). They should be careful however to reserve their own final judgement on the matter until the Panel meeting.
- 9.3 Members should not circulate unofficial papers not previously considered by officers at Panel meetings.
- 9.4 Whilst items are being considered at Panel members should only use their electronic devices to read and make notes on the Panel agenda, so that it is clear they are concentrating on the application under consideration. Members should not use mobile telephones or hand held devices to discuss the progress of an application with any person whilst items are under discussion.

## **10. Membership of lobbying groups**

- 10.1 If a member is in a position of general control or management of an organisation that has made representations on a particular planning matter then they are likely to have a personal interest under the Code. Such membership may also give rise to a perception of bias or predetermination (see paragraph 6.4 above).

10.2 Whether membership constitutes a prejudicial interest will depend on the individual case. Where their lobby group has expressed a public view on a matter, members must consider whether a member of the public with knowledge of the relevant facts would reasonably regard the member's judgement of the public interest as prejudiced. In deciding whether they have a prejudicial interest, members should consider:

- the nature of the application
- the nature of their involvement with the organisation
- the publicly expressed views of the organisation
- what the member has said or done in relation to issues relevant to the application.

10.3 A personal interest may also be prejudicial where a member of the council's Planning Panel becomes aware that a decision in relation to a planning application involves a 'relevant person' (such as a child or close friend of the member) as described in Part 3, paragraph 8.2 of the Code (see paragraph 5.1 above)

## **11. Pre and post application discussions**

11.1 Members of the Panel need to uphold their position as impartial decision makers and it would not be appropriate for them to take part in pre or post application discussions with applicants, developers or groups of objectors regarding the proposed development, even if they find it desirable as a ward member to attend such meetings. If it is necessary that they do so in order to fulfil some role other than ward member, this should be part of a structured arrangement agreed with a senior planning officer, who will arrange the meeting and the attendance of an officer at the meeting.

11.2 During any pre-application discussions or meetings with the applicant, developers or group of objectors that may take place, it shall be made clear by an officer at the outset that the council will not as a result of anything during the course of such communication - be bound to make a particular decision and further that any views expressed are provisional only and not those of the council.

11.2 A written note shall be made of such pre-application meetings. At least two officers should be present at meetings likely to arouse controversy as to what took place.

## **12. Officer reports to committee**

12.1 Officers' reports to the Panel (except to present and update a report) shall be in writing except in the most exceptional circumstances. Oral reports which are material to the Panel's decision shall be minuted.

12.2 Officers should seek to apply and interpret national and local planning policies in a consistent and objective manner.

- 12.3 Reports to the Panel shall be accurate and provide all relevant information. They shall contain a reasoned assessment of the proposal and justification of any recommendation. If an officer's recommendation is contrary to the Development Plan the material considerations which justify this shall be set out clearly.

### **13. Decisions contrary to officer recommendation**

- 13.1 Members shall take decisions on planning matters in accordance with the Development Plan (or its statutory replacement) where relevant unless material considerations indicate otherwise. The reason for a contrary decision should be clear and convincing and fully minuted. A decision contrary to officer recommendation must be supported by reasons related to material considerations. Any such decision and its reasons should be minuted.
- 13.2 A senior officer should be asked to explain to the Panel the implications of a decision contrary to officer recommendation before the decision is taken.
- 13.3 If the Panel asks for additional planning conditions to be imposed or requests that amendments be made to proposed conditions, officers should prepare the draft condition. Standard conditions may be delegated to officers. Drafting of non-standard conditions which significantly depart from officers' recommendations as set out in the committee report should be delegated to officers in consultation with the Chair.

### **14. Committee site visits**

- 14.1 A decision to carry out a site visit may be held where a proposal is contentious or complex and the impact is difficult to visualise or assess from the plans or any supporting presentation. The visit is intended to enable members to gain knowledge of the proposal and its physical context.
- 14.2 Members, objectors and interested parties who are in regular contact with officers about specific applications will be able to obtain information about proposed site visits. Any correspondence from officers relating to a site visit shall identify clearly the purpose of the visit and its form and explain the limited extent to which members can receive representations during a site visit from the local members, applicants, objectors and interested parties. A note shall be taken by officers of any significant events occurring during the site visit.
- 14.3 While attending site visits members are free to listen to views expressed by the local members, applicants, objectors and other interested parties at the site visit but should not express an opinion on the planning application or on its merits (or otherwise) at the site visit.
- 14.4 In order to ensure transparency of public dealing by members, members shall keep together as a group and shall not engage individually in discussion with local members, applicants, objectors and other interested parties present at the site visit. Any questions or representations by local members, applicants,

objectors and other interested parties shall be made in the presence of the other parties.

**15. Complaints and record keeping**

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

**16. Breach of the Members' Code**

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