



MAYOR AND MEMBERS OF THE CITY COUNCIL

PORTFOLIO AREA: Not applicable

Date of Meeting: 5 MARCH 2002

Public

Key Decision: Not applicable

Recorded in Forward Plan: Not applicable

Inside/Outside Policy Framework: Not applicable

Title: ADOPTION OF CODE OF CONDUCT FOR MEMBERS

Report of: CITY SOLICITOR AND SECRETARY

Report reference: TC.30/02

Summary:

Following on from the Council decision on 15 January last, the report recommends an appropriate resolution to the Council to secure the formal adoption of the Code of Conduct for Elected and Co-Opted Members of the Authority and the formal approval of revised Planning Guidance and an E-Mail Protocol as supplementary guidance to the Code of Conduct.

Recommendations:

It is recommended that the Council:

1. Formally resolves, pursuant to Section 51 of the Local Government Act 2000, to adopt without amendment the model Code of Conduct annexed to this report as regards the conduct which is expected of Members and Co-Opted Members of Carlisle City Council and that this Code be substituted in place of the current Members Code of Conduct set out in the Council's Constitution. and
2. Formally approves and adopts the Planning Guidance and E-Mail Protocol annexed to this report as supplementary guidance in observing the Code of Conduct and
3. Authorises the City Solicitor and Secretary to take all necessary steps to comply with the requirements on the Council under the Local Government Act 2000 following the adoption of the Code of Conduct by the Authority.

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Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: Model Code of Conduct issued by DTLR

1. BACKGROUND INFORMATION AND OPTIONS

- 1.1 Members may recall that at the meeting of the Council on 15 January last the Council approved the recommendations from the Standards Committee that the Council should adopt the model Code of Conduct prescribed by statutory instrument without any amendments. However, in order to enable proper training to be made available to all Members prior to the Code coming into effect, the Council resolved that a formal adoption resolution be deferred until the Council meeting on 5 March 2002.
- 1.2 The Council on 15 January last also agreed revised Planning Guidance and an E-Mail Protocol by way of Supplementary Guidance for Members in observing the Code of Conduct, but again resolved that formal confirmation of these guidance documents should be deferred until the Council meeting on 5 March so that they too could be formally adopted at the same time as the Code of Conduct itself.
- 1.3 Since 15 January, a number of training sessions have been presented by the City Solicitor and Secretary in order to appraise Members of the requirements of the new Code of Conduct once it is adopted. That being the case, it is now considered appropriate that formal adoption should take place at the Council Meeting on 5 March so that, thereafter, the new Code of Conduct will apply to elected and co-opted Members of the Authority. The new Code of Conduct will be in substitution for the existing Members Code of Conduct set out in the Council's Constitution and, to that extent, the Council needs formally to approve an amendment to the Constitution.
- 1.4 Members should be aware that, following the formal adoption resolution being passed by the City Council, all aspects of the Code will then apply to Members and the external enforcement regime overseen by the Standards Board will come into play.
- 1.5 There are also certain procedural requirements falling on the Council following adoption in terms of advertising the fact that the Code has been adopted and sending copies to the Standards Board which the City Solicitor and Secretary will attend to.
- 1.6 The City Solicitor and Secretary will also be in touch with Members shortly after adoption with regard to ensuring that they sign the appropriate form of undertaking to observe the requirements of the newly adopted Code and to assist them in completing the revised Register of Members Interests. By way of reminder, the

undertaking to observe the Code has to be completed not later than two months following formal adoption by the Council, in default of which a Member's seat will be vacated. The Register of Interests is required to be completed within 28 days of the Code being adopted and failure to do this would amount to a breach of the Code.

2. CONSULTATION

Not applicable.

3. STAFFING/RESOURCES COMMENTS

Not applicable.

4. CITY TREASURER'S COMMENTS

Not applicable.

5. LEGAL COMMENTS

These are included in this Report.

6. CORPORATE COMMENTS

Not applicable.

7. RISK MANAGEMENT ASSESSMENT

Not applicable.

8. EQUALITY ISSUES

Not applicable.

9. ENVIRONMENTAL IMPLICATIONS

Not applicable.

10. CRIME AND DISORDER IMPLICATIONS

Not applicable.

11. RECOMMENDATIONS

- 11.1 Formally resolves, pursuant to Section 51 of the Local Government Act 2000, to adopt without amendment the model Code of Conduct annexed to this report as regards the conduct which is expected of Members and Co-Opted Members of Carlisle City Council and that this Code be substituted in place of the current Members Code of Conduct set out in the Council's Constitution. and
- 11.2 Formally approves and adopts the Planning Guidance and E-Mail Protocol annexed to this report as supplementary guidance in observing the Code of Conduct and
- 11.3 Authorises the City Solicitor and Secretary to take all necessary steps to comply with the requirements on
the Council under the Local Government Act 2000 following the adoption of the Code of Conduct by the Authority.

JOHN EGAN
CITY SOLICITOR AND SECRETARY

**THE MODEL CODE OF CONDUCT – AUTHORITIES OPERATING
EXECUTIVE ARRANGEMENTS**

PART 1

GENERAL PROVISIONS

Scope

1. (1) A member must observe the authority's code of conduct whenever he -
 - (a) conducts the business of the authority;
 - (b) conducts the business of the office to which he has been elected or appointed; or
 - (c) acts as a representative of the authority, and references to a member's official capacity shall be construed accordingly.
- (2) an authority's code of conduct shall not, apart from paragraphs 4 and 5(a) below, have effect in relation to the activities of a member undertaken other than in an official capacity.
- (3) Where a member acts as a representative of the authority –
 - (a) on another relevant authority, he must, when acting for that other authority, comply with that other authority's code of conduct; or
 - (b) on any other body, he must, when acting for that other body, comply with the authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.
- (4) In this code, "member" includes a co-opted member of an authority.

General Obligations

2. A member must –
 - (a) promote equality by not discriminating unlawfully against any person;
 - (b) treat others with respect; and
 - (c) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.

3. A member must not –
 - (a) disclose information given to him in confidence by anyone, or information acquired which he believes is of a confidential nature, without the consent of a person authorised to give it, or unless he is required by law to do so; nor
 - (b) prevent another person from gaining access to information to which that person is entitled by law.
4. A member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.
5. A member –
 - (a) must not in his official capacity, or any other circumstance, use his position as a member improperly to confer on or secure for himself or any other person, an advantage or disadvantage; and
 - (b) must, when using or authorising the use by others of the resources of the authority –
 - (i) act in accordance with the authority's requirements; and
 - (ii) ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the authority or of the office to which the member has been elected or appointed.
6. (1) A member must when reaching decisions –
 - (a) have regard to any relevant advice provided to him by –
 - (i) the authority's chief finance officer acting in pursuance of his duties under section 114 of the Local Government Finance Act 1988; and
 - (ii) the authority's monitoring officer acting in pursuance of his duties under section 5(2) of the Local Government and Housing Act 1989; and
 - (b) give the reasons for those decisions in accordance with the authority's and any statutory requirements in relation to the taking of an executive decision.

(2) In sub-paragraph (1)(b) above and in paragraph 9(2) below, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

7. A member must, if he becomes aware of any conduct by another member which he reasonably believes involves a failure to comply with the authority's code of conduct, make a written allegation to that effect to the Standards Board for England as soon as it is practicable for him to do so.

PART 2

INTERESTS

Personal Interests

8. (1) A member must regard himself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under paragraphs 14 and 15 below, or if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, the well-being or financial position of himself, a relative or a friend or –
- (a) any employment or business carried on by such persons;
 - (b) any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
 - (c) any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
 - (d) any body listed in sub-paragraphs (a) to (e) of paragraph 15 below in which such persons hold a position of general control or management.
- (2) In this paragraph –
- (a) "relative" means a spouse, partner, parent, parent-in-law, son, daughter, step-son, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons; and
 - (b) "partner" in sub-paragraph (2)(a) above means a member of a couple who live together.

Disclosure of Personal Interests

9. (1) A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

- (2) Subject to paragraph 12(1)(b) below, a member with a personal interest in any matter who has made an executive decision in relation to that matter must ensure that any written statement of that decision records the existence and nature of that interest.

Prejudicial Interests

10. (1) Subject to sub-paragraph (2) below, a member with a personal interest in a matter also has a prejudicial interest in that matter if 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 the member's judgement of the public interest.
- (2) A member may regard himself as not having a prejudicial interest in a matter if that matter relates to –
- (a) another relevant authority of which he is a member;
 - (b) another public authority in which he holds a position of general control or management;
 - (c) a body to which he has been appointed or nominated by the authority as its representative;
 - (d) the housing functions of the authority where the member holds a tenancy or lease with a relevant authority, provided that he does not have arrears of rent with that relevant authority of more than two months, and provided that those functions do not relate particularly to the member's tenancy or lease;
 - (e) the functions of the authority in respect of school meals, transport and travelling expenses, where the member is a guardian or parent of a child in full time education, unless it relates particularly to the school which the child attends;
 - (f) the functions of the authority in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the member is in receipt of, or is entitled to the receipt of such pay from a relevant authority; and
 - (g) the functions of the authority in respect of an allowance or payment made under sections 173 to 176 of the Local Government Act 1972 or section 18 of the Local Government and Housing Act 1989.

Overview and Scrutiny Committees

11. (1) For the purposes of this Part, a member must if he is involved in the consideration of a matter at a meeting of an overview and scrutiny committee of the authority or a sub-committee of such a committee, regard himself as having a personal and a prejudicial interest if that consideration relates to a decision made, or action taken, by another of the authority's –

- (a) committees or sub-committees; or
- (b) joint committees or joint sub-committees, of which he may also be a member.
- (2) But sub-paragraph (1) above shall not apply if that member attends that meeting for the purpose of answering questions or otherwise giving evidence relating to that decision or action.

Participation in Relation to Disclosed Interests

- 12. (1) Subject to sub-paragraph (2) below, a member with a prejudicial interest in any matter must –
 - (a) withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, unless he has obtained a dispensation from the authority's standard's committee;
 - (b) not exercise executive functions in relation to that matter; and
 - (c) not seek improperly to influence a decision about that matter.
- (2) A member with a prejudicial interest may, unless that interest is of a financial nature, and unless it is an interest of the type described in paragraph 11 above, participate in a meeting of the authority's –
 - (a) overview and scrutiny committees; and
 - (b) joint or area committees, to the extent that such committees are not exercising functions of the authority or its executive.
- 13. For the purposes of this Part, "meeting" means any meeting of –
 - (a) the authority;
 - (b) the executive of the authority; or
 - (c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees.

PART 3

THE REGISTER OF MEMBERS' INTERESTS

Registration of Financial and Other Interests

14. Within 28 days of the provisions of an authority's code of conduct being adopted or applied to that authority or within 28 days of his election or appointment to office (if that is later), a member must register his financial interests in the authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to the authority's monitoring officer of –
- (a) any employment or business carried on by him;
 - (b) the name of the person who employs or has appointed him, the name of any firm in which he is a partner, and the name of any company for which he is a remunerated director;
 - (c) the name of any person, other than a relevant authority, who has made a payment to him in respect of his election or any expenses incurred by him in carrying out his duties;
 - (d) the name of any corporate body which has a place of business or land in the authority's area, and in which the member has a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body;
 - (e) a description of any contract for goods, services or works made between the authority and himself or a firm in which he is a partner, a company of which he is a remunerated director, or a body of the description specified in sub-paragraph (d) above;
 - (f) the address or other description (sufficient to identify the location) of any land in which he has a beneficial interest and which is in the area of the authority;
 - (g) the address or other description (sufficient to identify the location) of any land where the landlord is the authority and the tenant is a firm in which he is a partner, a company of which he is a remunerated director, or a body of the description specified in sub-paragraph (d) above; and
 - (h) the address or other description (sufficient to identify the location) of any land in the authority's area in which he has a licence (alone or jointly with others) to occupy for 28 days or longer.
15. Within 28 days of the provisions of the authority's code of conduct being adopted or applied to that authority or within 28 days of his election or appointment to office (if that is later), a member must register his other interests in the authority's register maintained under section 81(1) of the Local

Government Act 2000 by providing written notification to the authority's monitoring officer of his membership of or position of general control or management in any –

- (a) body to which he has been appointed or nominated by the authority as its representative;
 - (b) public authority or body exercising functions of a public nature;
 - (c) company, industrial and provident society, charity, or body directed to charitable purposes;
 - (d) body whose principal purposes include the influence of public opinion or policy; and
 - (e) trade union or professional association.
16. A member must within 28 days of becoming aware of any change to the interests specified under paragraphs 14 and 15 above, provide written notification to the authority's monitoring officer of that change.

Registration of Gifts and Hospitality

17. A member must within 28 days of receiving any gift or hospitality over the value of £25, provide written notification to the authority's monitoring officer of the existence and nature of that gift or hospitality.

EXPLANATORY NOTE

(This note is not part of the Order)

The Order contains a model code of conduct as regards the conduct which is expected of members and co-opted members of relevant authorities in England. Under section 51 of the Local Government Act 2000, each relevant authority must adopt a code of conduct applying to its members which must incorporate any mandatory provisions of the model code. Under section 51(5) of that Act, where an authority does not adopt such a code within six months of the Order coming into force, the mandatory provisions of the model code will apply to the members of the authority until it does.

Article 1 provides that this Order applies only to the named authorities.

Article 2 provides that a model code for authorities operating executive arrangements is set out in Schedule 1 to the order, and that all of its provisions are mandatory and **article 3** provides that a model code for authorities not operating executive arrangements is set out in Schedule 2 to the Order, and that all of its provisions are mandatory. Where an authority ceases to, or begins to operate executive arrangements, it must adopt the appropriate code or revise its existing code in accordance with the appropriate code.

Article 4 makes transitional provision for eight months following the coming into force of the Order to disapply existing statutory provisions relating to the National Code of Local Government Conduct, members' interests, surcharge and declarations of office.

Schedule 1 to the Order applies in relation to authorities operating executive arrangements.

Paragraph 1 of that model code provides that it applies whenever a member is acting in his official capacity, and that it does not apply in other circumstances unless otherwise indicated. Additionally, where a member is acting as a representative of his authority, he must continue to observe the authority's code, unless he is subject to another relevant authority's code, or unless (in relation to any other body) it conflicts with any other legal obligations.

Paragraph 2 provides that members must promote equality, treat others with respect and not do anything which compromises the impartiality of those who work for the authority.

Paragraph 3 provides that members must not without consent disclose confidential information they have acquired and must not prevent others from gaining access to information to which they are entitled.

Paragraph 4 provides that in a member's official capacity and in other circumstances, a member must not conduct himself in a manner which could bring his authority into disrepute.

Paragraph 5 provides that a member must not in his official capacity or in other circumstances use his position improperly to gain an advantage or confer a disadvantage and that when using or authorising the use of the authority's resources, he must act in accordance with the authority's requirements and must not permit those resources to be used for political purposes.

Paragraph 6 provides that a member must have regard to any relevant advice provided to him by the authority's chief finance officer which relates to the officer's report on unlawful expenditure or expenditure which exceeds resources, and to relevant advice provided by the authority's monitoring officer which relates to the officer's report on contraventions of law or maladministration. It also provides that in reaching executive decisions, a member must give reasons for the decision in accordance with the authority's and statutory requirements.

Paragraph 7 provides that a member must make a written allegation of misconduct to the Standards Board for England if he becomes aware of conduct by another member involving failure to comply with the authority's code of conduct.

Paragraph 8 provides that a member has a personal interest in a matter which has been registered, or where a decision upon a matter could reasonably be regarded as affecting the well-being or financial position of those persons described in the paragraph.

Paragraph 9 provides that a member with a personal interest in a matter must disclose that interest at any meeting at which the matter is considered, and where an executive decision is taken in relation to that matter, must ensure that the interest is recorded in any written statement of the decision.

Paragraph 10 provides that a member with a personal interest also has a prejudicial interest if the interest could be regarded by a member of the public as so significant that it is likely to prejudice his judgement of the public interest. The paragraph provides that in the circumstances specified a member may regard himself as not having a prejudicial interest.

Paragraph 11 provides that a personal and prejudicial interest arises for a member at a meeting of an overview and scrutiny committee where that committee considers a decision of another committee in which he was involved, unless he attends to give evidence about that decision.

Paragraph 12 provides that a member with a prejudicial interest must, unless he has obtained a dispensation, withdraw from any meetings at which the matter is being considered, and must not exercise executive functions or improperly influence decisions in relation to the matter. In the circumstances specified a member with a prejudicial interest may participate in meetings.

Paragraph 13 defines "meeting" for the purposes of Part 3.

Paragraph 14 provides that a member must notify the authority's monitoring officer of the financial interests specified in the paragraph and **paragraph 15** provides that he must notify the authority's monitoring officer of the other interests specified in the paragraph. Any change to those interests must also be notified under **paragraph 16**.

Paragraph 17 provides that a member must notify the authority's monitoring officer of any gift or hospitality he receives which may be over the value of £25.

The model code in **Schedule 2** to the Order makes similar provision for members of authorities not operating executive arrangements, with the omission of references to executive arrangements.

CARLISLE CITY COUNCIL MEMBERS' E-MAIL & INTERNET PROTOCOL



INTRODUCTION

1. The Council has adopted a Code of Conduct for Members in accordance with its statutory responsibilities which applies to all Members of the Council. This Protocol is intended to assist Members in complying with their obligations under the Code of Conduct with regard to matters relating to E-Mail and Internet. In the event of any conflict between the Code of Conduct and this Protocol then the Code will prevail.
2. This Protocol contains important rules covering E-Mail and access to the Internet. Many of the rules apply equally to the Council's other methods of communicating with the outside world such as letter, fax and telephone.
3. This Protocol governs the rules of behaviour for Council Members. A separate Protocol exists for staff.
4. This Protocol explains how E-Mail and Internet access should be used. It explains what you are allowed to do and what you are not allowed to do.
5. The Protocol starts with some general rules, do's and don'ts. We have then identified 6 areas where legal problems might arise for you and for the Council. These are:

Harassment, defamation, copyright, pornography and confidential information.

Under each section there is an explanation of the potential legal problems and some rules to help avoid those problems.

6. Failure to comply with the rules set out in this Protocol:
 - (a) May result in legal claims against you and the Council; and
 - (b) May lead to you breaking the Council's Code of Conduct and to you being reported to the Standards Board or the Standards Committee for Members.
7. It is vital that you read this Protocol carefully. If there is anything that you do not understand, it is your responsibility to ask for clarification.
8. Any Council supplied IT equipment and software may only be used in connection with Council business. In particular, you should note that it is not permitted to load your own software, connect any hardware or subscribe to any E-Mail or Internet service other than that supplied by

the Council. Any such misuse will result in a breach of the Council's Code of Conduct and to the appropriate disciplinary action being taken.

GENERAL RULES, DO'S AND DON'TS

1. The Council's E-Mail system is primarily for business use. Occasional and reasonable personal use is permitted provided that this does not interfere with the performance of your duties.
2. All E-Mail is stored and E-Mail (including personal E-Mail) may be inspected by the Council at any time without notice.
3. If you send a personal E-Mail start or sign off the E-Mail message with the following statement:

"The views and opinions expressed on this message are solely those of the sender, and may not reflect those of the Council".
4. Ask yourself, before sending an E-Mail, how you would feel if your message was read out in Court. E-Mail messages may have to be disclosed in litigation.
5. Obtain confirmation of receipt for all important E-Mails sent. E-Receipts are acceptable.
6. Keep copies of all important E-Mails in separate computer folders.
7. Keep all passwords secure. You are responsible for the security of your password. An unauthorised disclosure of your password could result in a breach of the Council's Code of Conduct and the disciplinary procedures being invoked and you being reported to the Standards Board or the Standards Committee.
8. Check your E-Mail on each working day or arrange for a duly authorised person to do so on your behalf.
9. Reply promptly to all E-Mail messages requiring a reply. Where a prompt detailed response is not possible, a short E-Mail acknowledging receipt and giving an estimate of when a detailed response will be sent, should be sent.
10. Do not impersonate any other person when using E-Mail or amend messages received.
11. Do not create E-Mail congestion by sending trivial messages or personal messages or by copying E-Mails to those who do not need to see them.

12. It is permitted to access the World Wide Web for occasional and reasonable personal use.
13. Do not deliberately visit, view, or download any material from any Web site containing sexual or illegal material or material which is offensive in any way whatsoever.
14. Do not download software onto the Council's system. This includes software, screen savers and shareware available for free on the Internet or magazine disks.

HARASSMENT

What is Harassment?

1. It is the Council's policy that all employees must be allowed to work in an environment free from harassment of any kind. This includes (but is not limited to) sexual and racial harassment and harassment on the grounds of sexual orientation, religion and disability. Harassment affects morale and prevents a person fulfilling their full potential in their work. The Council's Code of Conduct also contains obligations on Members in this regard.
2. Sexual harassment is unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work. In the context of this Protocol this includes sending messages with sexually suggestive material repeated offensive sexual propositions or abuse of a sexual nature.
3. Racial harassment is unwanted conduct based on race affecting the dignity of women and men at work. In the context of this Protocol this includes sending messages containing offensive insults or "jokes" based on race and abuse of a racial nature.

What you must not do

4. **Do Not** send abusive messages or messages which contain sexual or racist material.

What are the consequences of not following this Protocol?

5. In certain circumstances harassment may constitute a criminal offence for which the harasser can be imprisoned. Victims of harassment may be able to claim damages from the harasser and from the Council.
6. If you are suspected of having committed acts of harassment, you will be dealt with under the Council's Code of Conduct which may lead to

being reported to the Standards Board or the Standards Committee for Members.

Reporting

- 7.1 Any Member who is subjected to or has knowledge of harassment (whether emanating from inside or outside of the Council) is encouraged to immediately report that harassment to:
- (a) The Group Leader or, where that is not possible or appropriate;
 - (b) The Chairman of the Standards Committee or, where that is not possible or appropriate.
 - (c) The Town Clerk and Chief Executive.
- 7.2 Any Member must also, if he/she becomes aware of any conduct by another Member which he believes involves a failure to comply with the Authority's Code of Conduct report the matter in writing to the Standards Board as soon as practicable.

Defamation

What is defamation

1. Defamation is the publication of a statement which adversely affects a person's, or an organisation's reputation. Publication may be by way of Internet or E-Mail.

What you must not do

2. **Do Not** send or circulate, internally or externally, any information which is defamatory. In particular, you must not send or circulate, internally or externally, any information which contains negative comments about an individual or organisation without first checking that the contents of the information are accurate. If in doubt, take legal advice.

What are the consequences of not following this policy?

3. A person or Company defamed may sue you and/or the Council for damages. There is a defence that the information was "true" but the onus would be on you or the Council to show that.
4. Failure to follow these rules may lead to a breach of the Council's Code of Conduct and to disciplinary action being taken against you which could include being reported to the Standards Board or the Standards Committee for Members.

Copyright

What is copyright?

1. The owner of copyright has the exclusive right in certain works such as documents, articles, books, plays and musical compositions, so that they cannot be copied or used in certain other ways without the consent of the copyright owner.

What you must not do

2. **Do Not** download, copy or transmit to third parties the works of others without their permission as this may infringe copyright. Copyright is most likely to be breached:
 - (a) When you download material from the Internet; or
 - (b) When you copy text or attach it to an E-Mail message.

What are the consequences of not following this Policy?

3. You and/or the Council can be sued by the owner of the copyright for damages for unauthorised use of the copyrighted material.
4. Failure to follow these rules may lead to a breach of the Council's Code of Conduct and to disciplinary action being taken against you which could include being reported to the Standards Board or the Standards Committee for Members.

Pornography

What is pornography?

1. As there can be no possible legitimate business use for accessing or transmitting sexually explicit materials at work, the question of whether or not sexual material constitutes pornography is not relevant to use of Council E-Mail and Internet access.

What you must not do

2. **Do Not** access or transmit any material with a sexual content.

What are the consequences of not following this Policy?

3. Accessing and transmitting sexual material may be a criminal offence for which both you and the Council could be liable.

4. The display on screen of sexual material or the transmitting of such material to other people may constitute sexual harassment (see the harassment section of this Policy).
5. Failure to follow these rules may lead to a breach of the Council's Code of Conduct to disciplinary action being taken against you which could include being reported to the Standards Board and the Standards Committee for Members.

Legislation

The use of E-Mail is subject to the Data Protection and Computer Misuse Act. Brief details of your responsibilities under these Acts are detailed below.

Data Protection Act

1. Under the Act, information stored by the Council may only be used for the purpose for which it is registered.
2. Under the Data Protection Act **you** are responsible for any information under your control. If you are unsure as to your responsibilities in managing data you should contact the Council's Data Protection Officer.

Computer Misuse Act 1990

3. It is a criminal offence to access or attempt to access computer data or a computer application for which you are not authorised.

What you must not do

4. **Do not** disclose information to anyone, even other Council employees or Members if the information will be used for a purpose for which it wasn't collected. If in doubt take legal advice.
5. **Do not** attempt to access computer data from systems you are not authorised to access.

What are the consequences of not following this Policy?

6. Breaches of the legislation may result in the Council and/or you being prosecuted by the Data Protection Registrar.
7. Failure to follow these rules may lead to a breach of the Council's Code of Conduct and to disciplinary action being taken against you which could include being reported to the Standards Board and the Standards Committee for Members.

SUPPLEMENTARY GUIDANCE NOTE FOR DEALING WITH PLANNING MATTERS

**"the planning process should be characterised by
open and transparent decision making"**

NOTE:

This Guidance Note is intended to provide supplementary guidance on how to comply with the Council's Code of Conduct for Members adopted by the Authority in so far as planning matters are concerned. In the event of any conflict between this Guidance and the Code of Conduct then the Code will prevail.

PREFACE

The City Council has an important role as Local Planning Authority for Carlisle since planning decisions help shape how the City and its surrounding rural areas grow and develop. Planning proposals are often controversial, however, and it is important that the planning process is seen to be responsive to the genuine concerns of those likely to be affected by development so that their views are fully considered. Invariably this means that the Council must, when deciding applications, reconcile different and sometimes conflicting view points. The Council has adopted a general Code of Conduct for Members and one for Officers which must be complied with at all times by Members and Officers. This Guidance is intended to assist Members and Officers dealing with planning matters to comply with their Codes of Conduct and is not intended to displace the Codes in any way. The Guidance seeks to ensure that the Council's statutory responsibilities as Local Planning Authority are carried out in an open, consistent, structured and fair manner where all interests of the community are taken into account. It is intended to assist Councillors both to comply with their duties under the Code and to effectively discharge the need for planning decisions to be made within the legal framework of the Planning Statutes and the published policies of the Development Plan while having regard to the demands of their role in representing their electorate. This Guidance is framed to help Councillors to strike that balance in the most meaningful and transparent way.

The Guidance requires that advice given by Officers to Councillors and to the public on planning matters must be fair and objective. It is particularly important that everyone engaged in the planning process must have complete confidence in the manner in which it is conducted. The Guidance recognises

that particular care must therefore be taken in the handling of the City Council's own planning proposals so that the public can see that these have been treated in the same objective way as other applications.

In adopting this Guidance and in its implementation the City Council commits itself to providing a Planning Service that is founded on quality, responsiveness, fairness and openness. It is the least the public of Carlisle should expect and I am confident that we can fully meet that expectation.

Councillor John Collier
Chairman of Development Control Committee

INTRODUCTION

- 1.1 The City Council's Guidance emphasises that:
- The planning process should be characterised by open and transparent decision making.
 - One of the key purposes of the planning system is to control development in the public interest.
 - The process should leave no grounds for suggesting with any justification that a decision has been partial, biased or not well-founded in any way.
 - The Guidance should be taken into account by any Committee, including full Council, when taking a planning decision.
 - Councillors are responsible to the electorate and must vote in the interests of the whole District.
 - Officers are responsible to the Council as a whole.
 - The Guidance is available to Councillors, staff and members of the public.

DECLARATION AND REGISTRATION OF INTERESTS

- 2.1 The nature of the planning process means that potential conflict of interests between the formal role of Councillors and Officers and their own personal activities can arise quite often. Even if the Officer or Councillor plays no part in the planning process, an outside observer might construe that they have had an influence on the decision making process. This may be especially the case with those who hold a senior position within the Council.
- 2.2 Councillors involved in planning already have an obligation to declare personal interests under the Council's own Code of Conduct in any planning matter coming before them.
- 2.3 To avoid conflicts of interest unduly influencing its planning decisions, the Council will ensure that:
- Individual Officers and Councillors engaged in planning matters or who sit on the Development Control Committee are individually responsible for declaring interests and for following the Council's Codes of Conduct relating to them.

- The Council will maintain a register of Members' interests and of any gifts or hospitality in accordance with the requirements under the Code of Conduct and Members will notify the City Solicitor and Secretary as the Council's Monitoring Officer of any changes to enable the register to be updated as required by the Code.
 - Councillors and Officers will normally declare personal interests at the beginning of each Committee meeting but this will not absolve them from the need to make a declaration at any other time during the meeting if an interest subsequently arises as required by the Code.
 - Councillors who have substantial property or other interests that would prevent them from voting on a regular basis should avoid serving on the Development Control Committee.
 - The Council will hold annual seminars to advise Councillors on how to judge the declaration of interests using practical examples wherever possible to assist them in complying with the Code.
 - All Planning Officers and other Senior Officers within the Council engaged in planning matters or who advise the Development Control Committee will declare any interests, such as membership of voluntary groups or private organisations, when planning applications regarding their activities are considered by the Council.
- 2.4 The Council has adopted its own Codes of Conduct for both Members and Officers for all its activities in accordance with its statutory responsibilities and they form part of the Council's Constitution. This planning Guidance may have to be revised from time to time to ensure that it fits in with the Codes of Conduct adopted for Members and Officers.

DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS AND OFFICERS, AND COUNCIL DEVELOPMENT

- 3.1 There is great scope for misunderstanding amongst the public about how objectively decisions are made when the Council itself is promoting a scheme or when individual Councillors or Officers are making development proposals. Again it will be a matter of judgement for individual Councillors (bearing in mind their duties under the Council's Code) and Officers to declare their personal interests in a planning application. Where development on Council land or Council-sponsored development is concerned the legitimate interests of the Council to promote development could appear to the public to influence its planning decision.

3.2 To avoid the appearance of any conflict of interests and ensure that development proposals are brought forward in an open and transparent way, the Council will deal with its own planning applications in the same way as any other application. The application will be considered in the context of the policies of the Development Plan, national and regional planning guidance and other material considerations. Furthermore, to avoid suspicions of impropriety and favouritism, Carlisle's practice is that:

- Serving Councillors and Officers who submit their own proposals or act as agent for others will clearly identify their status in writing when submitting proposals and will play no part in its processing or decision-making and will ensure that they comply fully with the Codes of Conduct for Members and Officers when dealing with the matter.
- The Council's Monitoring Officer will be informed when this occurs.
- These proposals will always be reported to the Development Control Committee and the Monitoring Officer will confirm that it has been processed normally.
- Officers advice to the Council will be impartial and based on sound planning matters in the context of the published Development Plan, national and regional planning guidance and other material considerations.

3.3 Schemes on Council-owned sites and development the Council is otherwise promoting can attract criticism that the Council may find it difficult to separate its roles as both developer and planning authority. It is important that there is a process in place which identifies to all concerned the key planning issues and how the Council would wish to ensure any development should proceed. The Council already brings forward development briefs for important sites, mostly privately owned, such as those allocated in the Carlisle District Local Plan. This principle will be extended to all Council-related development sites. Most Council-sponsored schemes are for relatively small-scale development and it would not be appropriate to instigate a full development brief in all cases. The scale of the site and its circumstances would determine the level of detail within the appraisal and the need for public consultation. The Council's practice will be that:

- The Council body responsible for land management and disposal is not the Development Control Committee.
- Council-owned sites will be appraised by the Council's Planning Service prior to being marketed or developers invited to negotiate a scheme.

- Council-sponsored development will be brought forward within the Council in such a way that the Council's planning view has been sought prior to a planning application being prepared and this view will be made known in writing to the Executive, the relevant decision making body or Director.
- Small sites, for example housing developments of 12 or less units, will be subject to a simple planning appraisal, whilst larger or more complex sites will require a full development brief which will be agreed by the Executive or other relevant decision making body.
- The development brief will clearly set out the relevant planning matters and the Council's Local Plan policy as well as other important corporate policy issues that have a bearing on the application.

PRE-APPLICATION DISCUSSIONS

- 4.1 Many of the Council's services are in regular contact with developers to assist them in bringing forward appropriate investment and development for the District. This is recognised as good practice but it can be interpreted as a "behind closed doors" style to the public concerned about the impact of development on their area. The impartiality of Officers and Councillors is vital and the Council will maintain helpful but proper relations with developers and other interested parties to ensure consistency of approach across the Council. The Council's guidelines are that:
- Members and Officers should at all times ensure that they comply with their respective obligations under the Member and Officer Codes of Conduct.
 - Officers of the Planning Service should hold pre-application and pre-decision meetings with developers to discuss proposals in order to encourage appropriate development, improve schemes of poor quality and to give initial guidance on what would be permissible under current policy.
 - It is clear to all that the discussions do not bind the Council to a particular decision.
 - Advice should be impartial, consistent, based on the development plan or other material considerations and it should be clear whether or not the Officers involved are the decision-makers.

- Written file notes should be made by Councillors and Officers of all meetings or telephone calls with developers and third parties and in the case of "contentious" discussions a follow up letter is advisable; these should be recorded on planning files - marked confidential if necessary - for subsequent reference if required.
- Councillors should not, as a rule, become involved in discussions with developers or third parties regarding schemes which will potentially give rise to a planning application.
- At public meetings or when presentations are made to the Executive/Committees/Members, it will be made clear at the outset that any planning decision will only be made by the Council's Development Control Committee.
- Officers from services other than Planning should also make written records of their discussions with developers and a copy should be placed on relevant planning files - marked confidential if necessary - to ensure consistency of advice.
- Any formal advice on the likely outcome of a planning application should be given through the Head of Planning Services or representative and then only on a "without prejudice" basis, emphasising that any decision will be a matter for the relevant decision maker or the Development Control Committee.

LOBBYING OF AND BY COUNCILLORS

- 5.1 This Guidance must take into account the realities of the political and representative role that is undertaken by Councillors. The planning process puts Councillors into the position of taking decisions within a legal framework but also requiring them to exercise their representational role on behalf of their constituents. Lobbying of Councillors about planning matters is an integral part of democratic life in Carlisle.
- 5.2 The relationship between Officers and Councillors is obviously crucial to the decision-making process. Officers are accessible if Councillors wish to discuss a particular planning application but there is a clear distinction of roles and Councillors do not direct Officer advice to the Committee. The likely content of the Development Control Committee schedule is discussed in advance with the Chairman of the Committee and the Chairman and Vice-Chair are briefed on the detail of the reports to the Committee.

5.3 As with other aspects of the planning function it is important that the electorate have a clear image of the guidelines under which Councillors must operate if the perception of bias and hidden decisions, is to be avoided. The Council's guidelines are that:

- Councillors must always have regard to their general duties under the Code of Conduct.
- Councillors on the Development Control Committee should generally avoid organising support or opposition to an application or lobbying other Councillors.
- Councillors should not indicate that they have made up their mind on an issue in advance of the Development Control Committee, that is before being exposed to all the evidence and arguments.
- Councillors should restrict themselves to giving procedural advice in advance of the Development Control Committee meeting; a standard letter is available for this purpose.
- Development Control Committee Members who have publicly committed themselves to a particular view on an application in their ward should make an open declaration and not vote on the application.
- Councillors who have a particular ward interest can inform the Chairman of the Development Control Committee that they wish to represent those interests and ask for dispensation to speak at the Committee.
- Councillors should not put pressure on Officers for a particular recommendation and the Head of Planning should inform the Chair of Committee and/or Chief Executive if undue lobbying from Councillors takes place.
- The overriding duty of a Councillor is to the whole local community and in planning matters Councillors act as individuals rather than as members of a political group to determine applications and policy.

OFFICER REPORTS TO COMMITTEE

6.1 The Council delegates to Officers authority to determine minor planning applications and applications which are uncontroversial, that is where no objections are raised. The Council's Development Control Committee determine all other planning applications. Councillors who sit on this Committee are guided by reports submitted by Officers as well as their general duties as Councillors set out in the Members Code

of Conduct. To avoid public concern and loss of confidence in the quality of decision-making and the possibility of maladministration or a judicial review, Officer reports will:

- Be accurate, objective and fair.
- Include a copy of all written submissions pertaining to the relevant planning considerations on each application for the Committee's consideration; in this way all views can be made directly known to Councillors attending the meeting.
- In summary, cover the substance of the public's and other consultees views or objections.
- Give a clear exposition of Development Plan policy, site history and material consideration.
- Usually have a written recommendation.
- Contain a technical appraisal which justifies the recommendation and any conditions that might be imposed on the application.
- State clearly the material considerations which justify any recommendation contrary to the development plan.

Oral reporting at the Committee will be kept to a minimum, though the Council will continue with its practice of updating the Committee on the day on certain applications, for example where information from consultees is awaited, so as to be able to deal with applications swiftly. Where reports do not have a written recommendation (on Schedule B), the "Director to Report" statement will explicitly identify the reasons for the lack of recommendation (e.g. awaiting Highway or Environment Agency comments). Where an oral report is given a careful minute will be taken of the report and the decision that is made.

DECISIONS CONTRARY TO OFFICER RECOMMENDATION

- 7.1 It is particularly important that decisions should usually accord with the Development Plan (in Carlisle this is the County Structure Plan and the Carlisle District Local Plan, guided by Regional Planning Guidance) and that the Committee does not determine the application on the basis of the personal circumstances of applicants. In most cases decisions will follow the policies and proposals of the Development Plan and Councillors will generally agree with the Officers recommendation on a particular application. On occasions and quite properly, Councillors will disagree with this advice and determine a proposal according to their

interpretation of the situation. It may also be the case that the circumstances and merits of a particular application might be considered as outweighing the current policy. It is important to ensure that proper procedures are followed and detailed records are made of these types of decisions, as to why they were made and the implications of the decision. If the Development Control Committee is mindful to refuse a planning application contrary to the planning officer's recommendation, a final decision on the application shall be deferred until the next meeting.

This deferral of the decision will allow time for confirmation that clear and convincing reasons for refusal of the application can be made, based on material planning consideration.

A contrary decision should not be made because of the personal circumstances of the applicant, unless planning policy specifically allows for this.

If Councillors wish to add or amend conditions that will also be recorded and the reasons given; Officers will be asked to draft these and include in the decision notice.

A senior legal officer will always attend the meeting to ensure procedures are followed.

COMMITTEE SITE VISITS

8.1 Site visits by the Development Control Committee can be a useful way of helping the Committee to reach an objective decision, especially where there are complex issues or it is a particularly controversial matter. The decision to have a site visit is usually made when the Committee, in public, first considers an application and so the determination of the application will be delayed for some 6 weeks. The Council's good practice will be based on the following points:

- To avoid delay and cost, site visits will only be used when the benefit is expected to be substantial.
- The reason for the visit will be recorded in the minutes and will usually be that the impact of a proposal is unclear, that the application is very complex or that the proposal is particularly contentious.
- The Committee and Officers will make the visit unaccompanied by the applicant or any objectors.

- Ward Members and, where appropriate, representatives of the Parish Council are invited to attend and give their views.
- All Members of the Committee are invited to attend the site visit but the decision will be taken at the subsequent formally-convened meeting.

REGULAR REVIEW OF DECISIONS

- 9.1 The Council determines some 1,000 planning applications a year and so the impact of its decisions on the District can be significant. An important element of the Council's work is to ensure that not only are its procedures in good order but that the quality of its decision-making is maintained. It would be impossible to evaluate every decision and so a selective review will be the most fruitful way forward. Such a review will encompass both the quality of the development concerned and the process by which the decision was reached. Many planning decisions are also delegated to Officers and these must also be monitored on a regular basis. There are clear links to the monitoring and review process undertaken on the Local Plan. To improve the quality and consistency of decision-making, the Council will:
- Undertake a regular review of a sample of its recent decisions.
 - Look at a range of types of permissions by visiting the sites of implemented planning permissions and preparing briefing notes on each case to assess the quality of its decisions.
 - Undertake a review of a sample of delegated power files for the quality of record keeping.
 - Monitor the comments made by members of the public on the Council's planning policies for consideration in the review of planning decisions and reviews of the Local Plan.
 - Formally consider whether the review gives rise to the need to review policies or practices and link this to the monitoring work on the Local Plan to consider the extent to which Local Plan policy has been implemented.

INFORMATION, COMPLAINTS AND RECORD-KEEPING

10.1 Due to the nature of the planning process, it is inevitable that not everyone will be content with the planning decisions that are taken by the Council. It is important that there is an opportunity for those people to have their complaints thoroughly investigated, particularly to ensure that the process of reaching the decision was fair and open. The availability of more information about how the planning system operates and how the Council undertakes its planning role would also probably help to reduce any concerns that might exist about probity in the planning process locally. The Council will:

- Continue to make available the established corporate complaints system to deal with planning related matters, giving equal attention to enforcement and development plan matters as much as planning applications.
- Ensure every planning application file contains an accurate account of events throughout its life.
- Continue to publish leaflets and other documents such as the Planning Handbook in order to provide information about the Council's planning work.
- Further invest in the information technology which supports the work of the Planning Service in order to ensure that records are maintained and information is available to the public.

Any concerns over how a planning matter has been handled should first be raised with the case officer dealing with the matter. If this does not resolve your concern, please contact:

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