

Members Interests, Bias and Pre-determination relating to Planning Matters

Fair and Unbiased Decision Making

Members should consider all Planning Matters on their individual merits. They should not, or appear to have come to a firm view on a matter or application before they have taken all the material considerations into account. This applies to a Councillor as an individual and also as a member of a political group.

Planning is often an emotive matter for those involved and it is of utmost important that processes are not only carried out fairly but appear fair to an unbiased observer. This minimises the risk of challenge to the Council as Planning Authority but also to the individual Members from a conduct point of view.

Registering Members Interests

The Localism Act 2011 (Chapter 7) requires that all Members register their pecuniary (financial interests.) The Act also requires that the pecuniary interests of a Member's husband / wife or partner with whom they live as a civil partner are registered too. It is for each Council to determine through their Code of Conduct and Constitution what information, above the national requirements should be registered.

The Council's Monitoring Officer (or in the case of a parish council) the Monitoring Officer of the District or Borough Council must establish and maintain your Council's register of members interests.

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Each Council's Code of Conduct must comply with the Nolan Seven Principles of Public Life. These are selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Disclosable Pecuniary Interests

A disclosable pecuniary interest is broadly defined as including:

- Business interests (for example employment, trade, profession, contracts or any company with which a person is associated)
- Wider financial interests (for example trust funds, investments and assets including land and property)

A full list of Disclosable Pecuniary Interests which have to be disclosed are listed below:

- Any employment, office, trade, profession or vocation carried on for profit or gain, which you, or your spouse or civil partner, undertakes.
- Any payment or provision of any other financial benefit (other than from your council or authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992. The relevant period is the 12 months ending on the day when you tell the monitoring officer about your disclosable pecuniary interests following your election or re-election, or when you became aware you had a disclosable pecuniary interest relating to a matter on which you were acting alone.

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- Any contract which is made between you, or your spouse or your civil partner (or a body in which you, or your spouse or your civil partner, has a beneficial interest) and your council or authority –
- under which goods or services are to be provided or works are to be executed; and
- which has not been fully discharged.
- Any beneficial interest in land which you, or your spouse or your civil partner, have and which is within the area of your council or authority.
- Any licence (alone or jointly with others) which you, or your spouse or your civil partner, holds to occupy land in the area of your council or authority for a month or longer.
- • Any tenancy where (to your knowledge) –
- the landlord is your council or authority; and
- the tenant is a body in which you, or your spouse or your civil partner, has a beneficial interest.

If a new disclosable pecuniary interest comes to light, Members have 28 days in which to tell the Monitoring Officer and add it to their register.

If it is a new interest which hasn't yet been registered and is engaged at a meeting when business is being considered at which a Member is present the disclosable pecuniary interest must be declared at the meeting. If it is sensitive.

Notes:



Briefing Note

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If a Member has a Disclosable Pecuniary Interest and is present at a meeting of the Council or authority, of its Executive or of any sub-committee, joint committee or joint sub-committee, the member must not:

Participate in any discussion of the business of the meeting, or if they become aware of a disclosable pecuniary during the meeting not participate any further in the discussion

Participate in any vote or further vote taken on the matter at the meeting.

This limit applies to any form of participation including speaking as a member of the public or as an interested councillor.

Disclosing and Vacating the Room

In many authorities, a provision has been included in the Council's Constitution whereby a member with a Disclosable Pecuniary Interest would be required to leave the room during the consideration of the item.

A member should also leave the room if their continued presence is not compatible with the Council's Code of Conduct or the Seven Principles of Public Life.

Dispensations

Members can apply for dispensations which would allow them to continue to take part in the business of the authority even if they have a disclosable pecuniary interest. Requests must be put in writing to the Monitoring Officer for consideration and could relate to matters such as:

- Without a dispensation so great a proportion of the council or authority

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would be prohibited from participating in that business as to impede the council or authority's transaction of that business

- The granting of the dispensation is in the interests of people living in the council or authority's area
- Without the dispensation each member of the council's executive would be prohibited from participating in the business

Personal Interests

A definition of a personal interest will be included in an individual Council's Code of Conduct.

Broadly, this links to the principle relating to integrity which says that 'Holders of public office must avoid placing themselves under any obligation to people or organisations that might try to inappropriately influence them in their work.' Therefore any Elected Member considering Council business needs to make sure that they are not taking decisions which will gain financial or other material benefits for themselves, their families or friends. Members must therefore declare and resolve any interests and relationships.

Personal Interest Questions

If a Member is unsure about a relationship with a person and whether they may be classed as a friend they could consider:

- How often do they see this person
- In what circumstances do they meet them? E.g. Friday night drinks in the pub, passing at the school gates dropping off their children.

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- Do they socialise together?
- Are their wider families friends?

Where a Member may consider that he/ she has a relationship with somebody which is so damaged they may consider themselves as 'enemies'. Members will need to consider how this affects their decision making and the perception of others when they review this relationship.

Interests - Prior Thinking

In preparing for a Planning Committee meeting, it is important that when reading the papers Members look for:

- applicant names / addresses
- planning agent details
- objector / supporter details

Members can then consider whether they should continue to sit as a member of the Committee and consider part or all of the business to be transacted. Importantly Members can only be expected to declare interests which are known to them.

Where a Member has a personal interest they can stay and consider the business of a Committee. However, they need to bear in mind how that may be perceived by a fair minded observer and what, if at all it may prejudice the Members view.

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Natural Justice

Planning Committee, in its role as a 'quasi judicial' Committee of the Council must act in accordance with the rules of natural justice.

This means they must:

- Act fairly towards the applicant and interested parties
- Appear to be acting fairly towards the application and interested parties
- Approach all matters with an open mind.

Lord Esher, in R v West Vestry of St Pancras (1890) said:

'...they must fairly consider the application and exercise their discretion on it fairly and not take into account any reason for their discretion which is not a legal one. If people who have to exercise a public duty be exercising their discretion take into account matters which the court consider not to be proper for the guidance of their discretion, then in the eyes of the law they have not exercised their discretion.'

Bias

Bias is defined as:

'a particular tendency or inclination, esp. one that prevents impartial consideration of a question; prejudice.'

This means that Members should not be, or demonstrate a perception that they are inclined to approve or reject a planning application on the grounds that they have an outside interest (this could be a person, relationship, prior experience or other interest.)

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This test was outlined in the Porter v Magill (2001) Case where Lord Hope said that:

‘...the question is whether the fair minded and informed observer, having considered the facts would conclude that there was a real possibility that the tribunal was biased.’

Only a member can say whether they are biased or not.

The Democratic Services Officer cannot force a Member to make a judgement about their potential bias. The Democratic Services Officer's role is to provide advice and guidance to the Member and encourage them to fully consider their potential bias. Where there is serious concern about the potential impact on decision making, advice should be sought from the Council's Monitoring Officer.

Where a member makes a declaration in a meeting, it is imperative to prevent legal challenge that the declaration is minuted clearly. The Democratic Service's Officer's role in the meeting is to clarify the declaration being made at the time so it is clear both for the purposes of the minutes and for those in attendance at the meeting.

Predetermination and Predisposition

Predetermination is defined as:

“Occurring when a member has fixed views on a matter and retains a closed mind when it comes to making the determination.”

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Predisposition is defined as:

"A member must be open to the possibility that, however unlikely, they will hear arguments during the debate about the issue that will change their mind about how they intend to vote. As long as they are willing to keep an open mind about the issue they are entitled to take part in any vote on it."

It is not a problem for councillors to be predisposed to a particular view. That predisposition can be strong and can be publicly voiced. They may even have been elected specifically because of their views on this particular issue. It might be in favour of or against a particular point of view, for example an application for planning permission.

In summary, expressing an intention to vote in a particular way before a meeting (predetermination) is not the same as when a Member makes it clear they are willing to listen to the views of all sides before deciding on how to vote (pre-disposition). Pre-disposition in terms of Committee decision making is okay. Pre-determination however is not and can call into question the integrity of a whole Committee's decision and may lead to a decision being quashed.

Section 25 of the Localism Act says that a Councillor should not be regarded as having a closed mind simply because they have previously said / or acted in a way that may have, directly or indirectly indicated that view they may take in relation to a planning matter. It is important that in these circumstances, the Member considers their stance from the position of a 'reasonable onlooker' and decides whether, there would be, or there would be the appearance of bias.

If a member is pre-determined, or biased on an application they should withdraw from the Committee whilst it considers that particular matter.

Notes:



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