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Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Eich cyf/Your Ref:

Ein cyf/Our Ref: A-PAA-56-06-049

Local Authority Cabinet Members
responsible for Planning
Chairs of Planning Committees
Chief Executives
Chief Planning Officers of County and
County Borough Councils in Wales
National Park Authorities in Wales

23 August 2006

Dear Colleague

Clarification letter CL-06-06

The operation of The Conduct of Members (Model Code of Conduct) (Wales) Order 2001 with relation to land use planning.

I am writing in response to continuing concerns some Councillors have expressed about applying the Model Code of Conduct in respect of their planning responsibilities.

The Assembly Government has been working with the Welsh Local Government Association (WLGA) and the Planning Officers Society for Wales (POSW) to provide a Briefing Programme for elected Members intended to provide skills to enable Members to take better-informed decisions. The evaluation of the Briefing programme has highlighted a number of outstanding issues. Although some positive outcomes are reported, such as more effective decision-making in planning committees and Members saying they feel more confident about making decisions, I am aware of continued uncertainty amongst Members, particularly those who are also Members of Town and Community councils, in how to apply the Code. Some Members have expressed the view that they were overly restricted in decision making and that further guidance was needed. We are working with the WLGA to provide additional Member Briefing and I have asked for this to include issues related to the Code of Conduct.

Last Summer the Assembly Government consulted on the work of the Review Group on the operation of the Local Government Code of Conduct in Wales. This included a revised draft Order "The Conduct of Members (Principles and Model Code of Conduct) (Wales) Order 2005", which would replace the existing Model Code of Conduct. Consultation has been completed and the responses are being analysed with a view to laying a revised Order before the Assembly in due course.

It is not possible to provide guidance about every situation that a Member may encounter in undertaking their planning responsibilities. To avoid the risk of planning decisions being legally challenged, Members must avoid impropriety, any occasion for suspicion and any appearance of improper conduct. They may involve themselves in discussions with

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developers, their constituents and others about planning matters as ward representatives, or as members of decision making committees. In circumstances where a Member is in any doubt about the application of the Code to a particular situation they should consult their Authority's Monitoring Officer. Under the Code, Members must exercise personal responsibility in deciding whether they have a "personal interest" that they should disclose. Subject to the nature of the interest, a Member may be able to speak but not vote on a matter, or may be required to withdraw from its consideration altogether.

On the issue of Member dual representation, the Code does not automatically prevent a Member from considering the same issue at more than one tier of authority, including speaking and voting in both tiers. Using the example of a planning application, a Member could consider an application at both tiers under the provisions of the Code, though it would be sensible for the Member to make it clear at the Community Council that he/she would consider the matter afresh at County level, taking account of all relevant information. At County level, the Member should make it clear that they are not bound by the views of the Community Council. The exception to this would be where the County was considering an application from the Community Council itself. In that circumstance, it is entirely appropriate that the Member, having made any representations, should withdraw. This basic principle which has much wider relevance than planning matters will be made clearer in the revised Code.

General advice which may be of assistance to Members in undertaking their planning responsibilities is appended.

Following publication of the revised Local Government Code, it will be for the Public Services Ombudsman for Wales, using his powers under Part III of the Local Government Act 2000, to issue any guidance which may be required on its interpretation. I understand that once the definitive text of the new code is available, he intends to consult the WLGA about the extent to which interpretative guidance appears to be necessary, including in particular guidance for the benefit of Members who take planning decisions and to draw up such guidance on a collaborative basis with the WLGA, the Welsh Assembly Government and other relevant stakeholders.

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Minister for Environment, Planning & Countryside

CC

Welsh Local Government Association
National Association of Local Councils
Once Voice Wales
Association of Larger Local Councils
Public Services Ombudsman for Wales
Wales Audit Office

APPENDIX

Members should:

- Hold discussions with developers before a planning application is made, not after it has been submitted to the local planning authority;
- Structure discussions and involve officers throughout;
- Preface any discussion with disclaimers; do not attend or take part in meetings having already taken a stance which opposes or favours a development ; do keep a note of meetings, messages and telephone calls; make clear at the outset that discussions are not binding on the lpa;
- Refrain from making statements and taking a stance on a planning matter prior to fully considering all the available information at the relevant decision making meeting;
- Remember that they are taking planning decisions on behalf of the community as a whole;
- Put forward the views of their constituents, while making it clear that they will be taking decisions with an open mind and on the basis of **all** the information available;
- Recognise the distinction between giving procedural or policy advice and engaging in negotiation;
- Stick to the policies in the adopted development plan but also pay heed to other considerations relevant to planning;
- Disclose and register their interests as required by the Code of Conduct¹. Subject to the nature of the interest, a Member may be able to speak but not vote on a matter or may be required to withdraw altogether, unless granted a dispensation by the authority's standards committee. Members should seek early advice from the relevant authority's monitoring officer when in any doubt.
- Use meetings to show leadership and vision;
- Encourage positive outcomes;
- Make sure they understand the Code of Conduct and seek training from their Authority on probity matters if there are difficulties in applying its code of conduct;
- Seek early advice from the Monitoring Officer of their authority;

¹ Paragraph 12 of the Code provides that:

“Members must regard themselves as having a personal interest in a matter to the extent that it relates to:

(a) another relevant authority of which they are a member;
(b) a body in which they hold a position of general control or management;
(c) a body to which they have been appointed or nominated by the authority as a representative.”

Paragraph 16 provides that a Member with an interest in a matter specified in paragraph 12 must disclose the existence and nature of the interest and may speak but not vote.

- Be aware of the reports of the Wales Audit Office and the Public Services Ombudsman for Wales detailing cases where things have gone wrong and complaints have been made.

Members should not:

- Meet developers alone or put themselves in a position where they appear to favour a person, company or group - even a “ friendly “ private discussion with a developer could cause others to mistrust the Member’s impartiality:
- Accept gifts or hospitality;
- Expect to lobby and actively support or oppose an application and still be able to vote at committee or stay in the committee room during discussions;
- Seek to influence officers or other Members, or put pressure on them to support a particular course of action in relation to a planning application, planning agreement, enforcement action or development plan.