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Version 1

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Guidance notes on code of conduct in relation to communication and decision making when handling planning applications (Adopted September 2022)

1. Before the council meeting

1 (a) Communication with community members (applicants or people thinking of responding)

As far as possible, all applications, large and small, should be treated equally. Councillors should generally avoid contacting community members in relation to a planning application. If a community member approaches a councillor, it is reasonable to explain the role (and limitations) of the parish council and to recommend sources of guidance:

<https://www.middevon.gov.uk/residents/planning/apply-for-permission/help-and-guidance/>

<https://www.nalc.gov.uk/library/publications/1632-how-to-respond-to-planning-applications/file>

If approached, it is also reasonable for councillors to suggest that community members attend the meeting where the application is on the agenda. If they are unable to attend, they can ask the parish clerk or a councillor to make a statement on their behalf.

1 (b) Representing community members views

If asked to speak on behalf of a community member, councillors should make it clear that they are speaking on someone else's behalf and that they (or the council) are not endorsing any information or opinions in the statement.

1 (c) Site visits

A site visit for an application can be made if there is an exceptional reason (for example visibility, environmental impact or complex plans) which cannot be adequately assessed by other means. Alternative means of assessment can include observation from public areas or roads and the use of Google Maps in both mapping and satellite views.

All site visits should be by appointment and only with the permission of the land owner. Visits should not be made alone but by at least 2 councillors, plus the clerk if the presence of a council officer is seen as helpful. Councillors should make it clear that it is only a fact-finding exercise and any decisions can only be made at the PC meeting. They should also avoid discussion about, or speculation on, any decision that might be made. Those councillors who make the visit will report at the PC meeting.

1 (d) Acting as an individual member of the community and not as a councillor

Councillors have the same rights as any other member of the community to investigate or respond to planning applications. If a councillor is considering submitting a comment on an application as an individual it is best to attend the PC meeting before doing so, as something may be said at the meeting which may change the councillor's view. However, to avoid the risk of accusations of predetermination or bias, it is important that councillors who choose to contact applicants or respond to applications as an individual are careful to:

- State clearly in any conversation, email or response that this is a personal communication and not made as a councillor
- Report any communication made as an individual at the relevant PC meeting
- Consider carefully if the reason(s) for acting as a private individual fall within the scope of our code of conduct and require a declaration of interest and, if appropriate, a decision not to take part in relevant discussion or voting.

2. During the council meeting

2 (a) Deciding if interests need to be declared

Councillors are asked early in the meeting to declare if they have interests in any of the matters to be discussed (not just planning applications). There may also be situations where a councillor realises during a discussion that an interest applies and will need to declare it. The term 'interest' is being used here in its legal context, relating to a benefit or disadvantage to themselves or people connected to them, that might result from a decision made by the PC. There are 3 types of interest that councillors may need to declare:

- Disclosable Pecuniary Interests (DPI): These relate to potential benefits or disadvantages linked to entries for the councillor or a partner in the appropriate section of the Register of Interests, held by MDDC.
- Other Registrable Interests (ORI): These relate to potential benefits or disadvantages linked to personal entries for the councillor in the appropriate section of the Register of Interests, held by MDDC.
- Non-Registrable Interests (NRI): As there are such a wide range of situations and relationships that might result in benefits or disadvantages, it isn't reasonable to expect councillors to be able to define them in advance. NRIs (sometimes also called 'Personal Interests') are interests not already registered which relate to potential benefits or disadvantages to the councillor, a relative or a close associate. The term 'close associate' usually refers to personal friends or direct neighbours, but may also mean someone the councillor is involved in a conflict with.

As the rules for how to approach the identification and definition of interests can be complicated, councillors are advised to consult the Table of Interests included at the end of this document. The Table of Interests covers the actions required for each type of interest, the tests which should be applied and examples of each situation. If in any doubt, councillors should seek the guidance of our parish clerk or fellow members at the meeting.

2 (b) Discussing planning applications

When MDDC is considering its decisions on planning applications they, usually through experienced planning officers, review its compliance with rules and requirements and consider its public benefits against any harm or detriment that it may cause (the Planning Balance). MDDC is required by law to notify PCs of planning applications in their area. This takes the form of a request for comments, which also notes that if comments are not received MDDC will assume the PC does not choose to comment on the application. When considering responses, the PC can only comment on material considerations as these are what will be taken into account by MDDC in their decision-making process. Material considerations cover a range of issues such as local and national plans, environmental impacts, deficiencies in social facilities and more. A list of valid material and invalid non-material considerations is included at the end of this document.

There is no statutory duty on the PC to respond or guidance on what form a response should take and MDDC may or may not heed comments from the PC, other consultees or the general public.

This leaves the PC with a range of options in relation to a particular request for comments on a planning application. Councillors should be aware of these options and seek in the discussion to agree which is most appropriate in achieving our stated priority of 'Representing local needs in our comments and suggestions relating to planning applications'.

The options we have include:

- To choose not to comment (or to provide a standard comment). Example: if the application seems straightforward and has little or no expected positive or negative effect on the general community
- To comment with suggestions about improving the benefits, or reducing the concerns related to the application. Example: suggesting an increase in the parking area allocation in an application to reduce the likelihood of on-road parking where that might be a concern.
- To comment with suggestions for the planning officer to pay particular attention to content in the application which the PC feels is unclear or potentially detrimental. Example: suggesting a review of the 'Wildlife Form' declaration if the PC has concerns about the effect of the application on a local habitat for protected species.
- To vote to decide whether to formally support an application which has significant benefits to the general community. Example: Where the PC feels that a new business will bring employment and increased services into the community.
- To vote to decide whether to formally oppose an application which has significant detriment to the general community. Example: where the PC feels that a new housing development will create unplanned pressure on the school's capacity.

2 (c) Calling an application into the MDDC Planning Committee

The PC can decide to request their MDDC ward member to 'call in' an application so that the decision is referred to the Planning Committee, rather than delegated to the planning officer. If so, and the planning officer supports the application, they will provide a report to the committee setting out their reasons for doing so and any other key documentation.

Calling in is usually reserved for contentious applications which the PC has decided to object to and where the PC feels there are good reasons for the decision not to be delegated to the planning officer.

It is important that that any decision to object to the application is made before voting on calling in. Discussing calling in an application before the PC has made its decision it risks accusations of predetermination or bias.

3. After the council meeting

3(a) Responding to questions from community members about the meeting

In general, councillors should refer community members who have questions about previous council meetings to the minutes, which are the public record of the content and outcomes. However, councillors may receive questions between the date of the meeting and the publishing of the minutes after drafting and finalisation (which can take up to 2 weeks). In this case, councillors should be careful to balance their responsibilities for openness (Information should not be withheld from the public unless there are clear and lawful reasons for so doing) and for not bringing the council into disrepute. Councillors should therefore confine their answers to factual statements about the PCs comments and decisions and should not offer, or appear to agree with, opinions about their correctness or the suitability of the processes involved.

Appendix 1 – Table of Interests (see examples on next page)

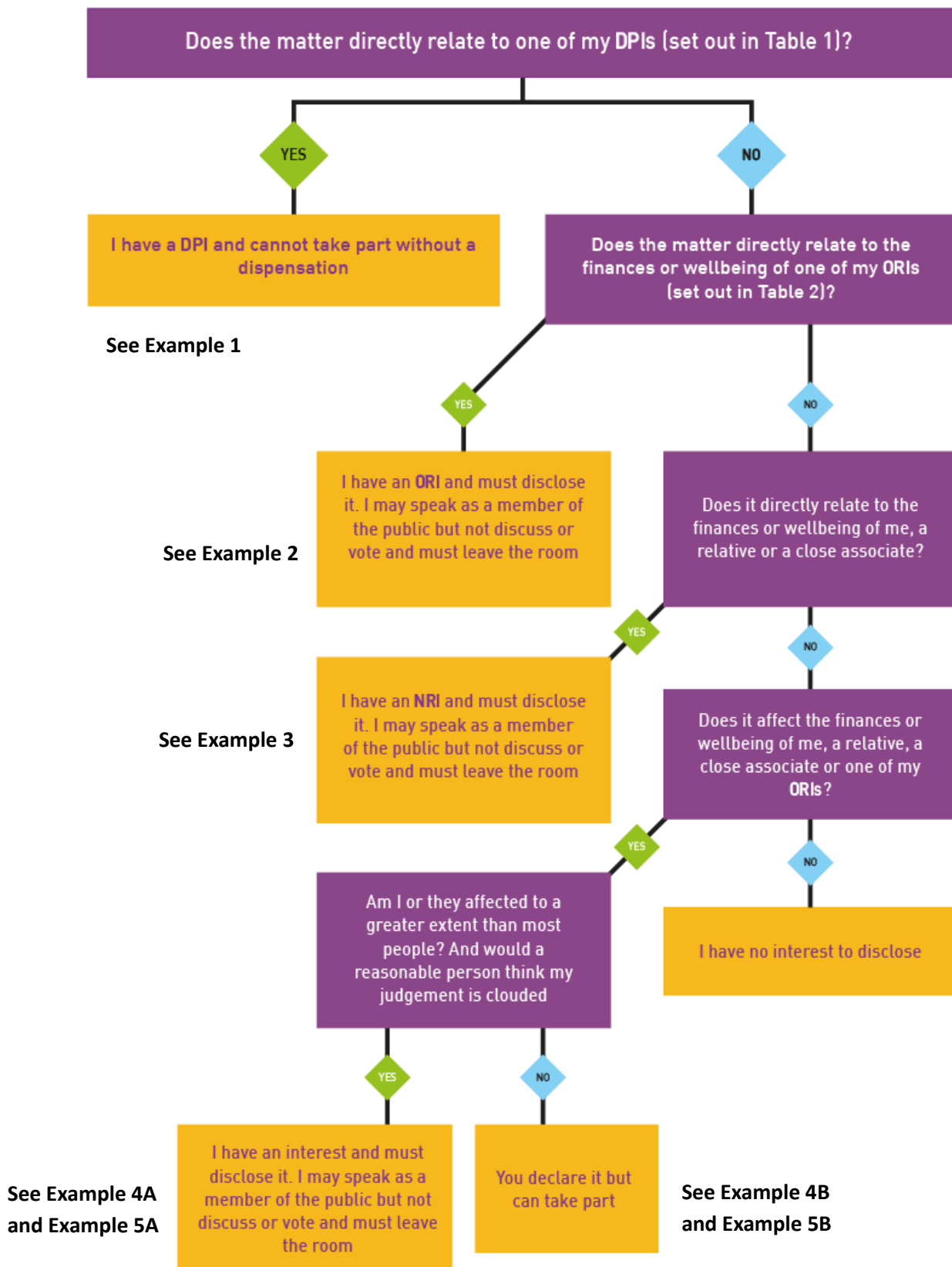


Table of Interests – Examples

Example 1 - Directly relating to a Disclosable Pecuniary Interest (DPI)

The council is considering an application for an extension of the premises of a business owned jointly by the councillor and their partner.

Example 2 – Directly relating to an Other Registrable Interest (ORI)

The councillor is a member of the management committee of a local football club which rents a piece of land for use as a football field. The owner of the land is applying to change its use to a residential development.

Example 3 – Directly relating to a Non-Registrable Interest (NRI)

The councillor and their partner often meet socially with another couple in the same village. The other couple is applying for planning permission to build an additional dwelling in their garden.

Example 4A – affecting an NRI or ORI, to a greater extent than most people

The council is considering an application for significant construction work next to the home of a relative of the councillor, in a street containing 20 properties.

Example 4B – affecting an NRI or ORI, NOT to a greater extent than most people

The council is considering an application for significant construction work in a street containing 20 properties. A property at the other end of the street from the construction is owned by a relative of the councillor.

Example 5A - affecting an NRI or ORI, where a reasonable person would think judgement would be clouded

The council is considering an application to extend and improve the residential facilities of a local residential home for 40 elderly people. The 85-year-old parent of the councillor is a long-term resident of the home.

Example 5B - affecting an NRI or ORI, where a reasonable person would NOT think judgement would be clouded

The council is considering an application to extend and improve the residential facilities of a local residential home for 40 elderly people. The councillor has an 85-year-old parent who is living independently in their own home.

Appendix 2 – Material considerations



When a decision is made on a planning application, only certain issues are taken into account; these are often referred to as ‘material planning considerations’.

MATERIAL PLANNING CONSIDERATIONS:

Issues that may be relevant to the decision

(There may exist further material planning considerations not included here)

- Local, strategic, national [planning policies](#) and policies in the Development Plan Emerging new plans which have already been through at least one stage of public consultation
- [Pre-application planning consultation](#) carried out by, or on behalf of, the applicant [Government and Planning Inspectorate requirements](#) - circulars, orders, statutory instruments, guidance and advice
- [Previous appeal decisions](#) and planning Inquiry reports
- Principles of [Case Law](#) held through the Courts
- [Loss of sunlight](#) (based on Building Research Establishment guidance)
- [Overshadowing/loss of outlook](#) to the detriment of residential amenity (though not loss of view as such)
- Overlooking and [loss of privacy](#)
- [Highway issues](#): traffic generation, vehicular access, highway safety
- [Noise or disturbance](#) resulting from use, including proposed hours of operation [Smells and fumes](#)
- Capacity of [physical infrastructure](#), e.g. in the public drainage or water systems
- Deficiencies in [social facilities](#), e.g. spaces in schools
- Storage & handling of [hazardous materials](#) and development of [contaminated land](#)
- Loss or effect on [trees](#)
- Adverse impact on [nature conservation](#) interests & biodiversity opportunities
- Effect on listed buildings and conservation areas
- [Incompatible or unacceptable uses](#)
- Local [financial considerations](#) offered as a contribution or grant
- [Layout and density of building](#) design, visual appearance and finishing materials
- Inadequate or inappropriate [landscaping](#) or means of enclosure

The weight attached to material considerations in reaching a decision is a matter of judgement for the decision-taker however the decision-taker is required to demonstrate that in reaching that decision that they have considered all relevant matters.

Generally greater weight is attached to issues raised which are supported by evidence rather than solely by assertion.

If an identified problem can be dealt with by means of a suitable condition then the Local Planning Authority is required to consider this rather than by issuing a refusal.

NON-MATERIAL PLANNING CONSIDERATIONS:

Issues that are not relevant to the decision:

(There exist further non-material planning considerations not included in this list)

Matters controlled under building regulations or other non-planning legislation e.g. structural stability, drainage details, fire precautions, matters covered by licences etc.
 Private issues between neighbours e.g. land/boundary disputes, damage to property, private rights of access, covenants, ancient and other rights to light etc. Problems arising from the construction period of any works, e.g. noise, dust, construction vehicles, hours of working (covered by Control of Pollution Acts). Opposition to the principle of development when this has been settled by an outline planning permission or appeal

Applicant's personal circumstances (unless exceptionally and clearly relevant, e.g. provision of facilities for someone with a physical disability)

Previously made objections/representations regarding another site or application

Factual misrepresentation of the proposal

Opposition to business competition

Loss of property value

Loss of view