

ANNEX

- A1. Further to paragraph 115 of my Opinion, this Annex contains a selection of exemplar codes and protocols for members and officers involved in making decisions relating to planning merits.
- A2. The following exemplar codes and protocols are included in this Annex:
- (i) Maidstone Borough Council - 'Local Code of Conduct for Councillors and Officers Dealing with Planning Matters' (adopted 21 May 2016);
 - (ii) Canterbury City Council - 'Probity in Planning - Local Code of Practice' (adopted 18 April 2016);
 - (iii) Cheshire East Council - 'Planning Protocol of Conduct in relation to the Determination of Planning Matters' (adopted 5 February 2016)
 - (iv) Tamworth Borough Council - 'Local Protocol for Councillors and Officers Dealing with Planning Matters' (adopted 15 December 2015);
 - (v) Chelmsford Borough Council - 'Planning Code of Conduct' (adopted 3 December 2015);
 - (vi) East Riding of Yorkshire Council - 'A Code of Practice for Councillors and Officers for Dealing with Planning Applications' (adopted August 2015);
 - (vii) Cheshire West and Chester Council - 'Member Planning Protocol' (adopted 14 July 2015);
 - (viii) Newport City Council - 'Planning Committee Code of Practice' (adopted May 2015);
 - (ix) Bath and North East Somerset Council - 'Members' Planning Code of Conduct' (adopted 29 April 2015); and
 - (x) Boston Borough Council - 'Planning Code of Good Practice' (adopted 2 March 2015).
- A3. The exemplars have been extracted from local authority constitutions, which have been adopted or updated in 2015-2016 and are arranged in reverse chronological order (by reference to the adoption date of the constitution in which they are included). For the avoidance of doubt, the selection of an

exemplar for inclusion in this Annex should not be taken as endorsement of its form and content. The exemplars included have been selected to demonstrate the variation in the approach adopted by other local authorities, which may or may not be considered suitable for adaptation by the Council.

- A4. As those instructing me will note, although the subject matter covered by the exemplars is broadly similar, there is considerable variation in the scope, format and detail included in the individual codes and protocols. To some extent, those variations are the product of the specific constitutional arrangements adopted by a particular local authority. Without exception, the attached exemplars are located within the Codes and Protocols chapter (usually Chapter 5) of the authority's constitution.
- A5. The following considerations should be noted.
- A6. Some exemplars take the form of annexes to the local Members' Code of Conduct (as required by section 27 of the 2000 Act) and focus, either exclusively or primarily, upon considerations relating to the conduct of elected Members (e.g., East Riding of Yorkshire Council).
- A7. Other exemplars are codes of conduct or practice, which apply to both elected members and officers (see e.g., Maidstone Borough Council, Tamworth Borough Council and East Riding of Yorkshire Council), although the extent to which those exemplars address considerations of officer conduct varies.
- A8. A number of the exemplars take the form of freestanding codes of practice (as opposed codes of conduct) and address wider considerations relevant to the determination of planning applications and the conduct planning committee meetings (see e.g., Canterbury City Council, Newport City Council);
- A9. One exemplar takes the form of a series of short 'do' and 'don't' statements, providing advice to the elected members in simple language (i.e., Bath and North East Somerset Council). As I understand matters, this approach reflects a 'model members' planning code/protocol' published by 'Lawyers in Local Government' (LLG) in April 2014. In my view, the laudable attempt to avoid planning jargon and to simplify the complexities of planning law and practice is undermined by the rather patronising and unduly prescriptive approach adopted. In my experience, similar member planning codes based on the LLG 'model' have proven to be unpopular amongst elected members, who find the

oversimplified and prescriptive approach to be unhelpful in complex situations, which the code does not expressly consider.

A10. The form and content of the rewritten 'Planning Protocol' is a matter for the Council, although the following matters should be addressed:

- (i) The aim and application of the Planning Protocol;
- (ii) The relationship with the Local Members' Code of Conduct;
- (iii) Roles and responsibilities;
- (iv) Declaration of interests;
- (v) Predisposition, predetermination and bias;
- (vi) Membership of other councils and bodies;
- (vii) Pre-application discussions;
- (viii) Contact with applicants, developers and interested persons;
- (ix) Lobbying of and by councillors;
- (x) Officers
- (xi) Attendance and participation at public meetings;
- (xii) Site visits;
- (xiii) Officer reports and recommendations;
- (xiv) Conduct during public meetings;
- (xv) Decision-making;
- (xvi) Decisions contrary to the officer recommendation;
- (xvii) Training;
- (xviii) Review.

A11. Those instructing me may also wish to consider the following further observations:

- (i) The aims of the rewritten 'Planning Protocol' should employ positive language which explains the importance of maintaining public confidence in the planning system by taking planning decisions in an

open, impartial and fair manner; which are justified by sound and defensible planning reasons;

- (ii) Negative language, such as avoiding allegations of bias, partiality etc (e.g., Cheshire East Council, Planning Protocol, page 411, paragraph 1) should be avoided;
- (iii) To avoid confusion, the title and content of the rewritten Planning Protocol should avoid use of the term 'code', save as it relates to the Council's Code of Conduct for Members;
- (iv) The rewritten Planning Protocol should explain its relationship with the Code of Conduct for Members, which must be applied in all circumstances and should take priority over the guidance in Protocol, which explains and supplements the Code of Conduct;
- (v) The Protocol should expressly state that a failure to follow the guidance contained in the Protocol, of itself, will not usually constitute a breach of the Council's Code of Conduct but may expose the Council to legal proceedings challenging the lawfulness of its planning decisions and complaints of maladministration;
- (vi) Consideration should be given to the merit of explaining how the Council will deal with allegations of serious, repeated, or persistent failure to comply with the Protocol, cross-referring to relevant provisions within the Constitution;
- (vii) The Protocol should explain how disclosable pecuniary and other interests are likely to arise in the context of planning decisions, making clear that declarations of interest remain the sole responsibility of each Councillor. It should also address the potential consequences of a member failing to declare an interest in the determination of a planning application, including exposing the Council's decision to legal challenge and the risk of being quashed by the High Court;
- (viii) The Protocol should include detailed guidance on decision-making including (but not limited to) the following considerations:
 - (a) The statutory requirement to determine planning application taking account of all material planning considerations (TCPA

1990, s.70(2)) in accordance with the development plan, unless material considerations indicate otherwise (PCPA 2004, s.38(6));

- (b) The relevance of other statutory provisions to some applications (e.g., LBA 1990, ss.66(1) and 72(1); EIA Regs 2011; Habitats Regs 2010 etc);
 - (c) The plan-led approach and the primacy of the development plan;
 - (d) Material planning considerations;
 - (e) The differentiation between issues of principle/law and matters planning judgement;
 - (f) Relevancy;
 - (g) Consistency in decision-making;
 - (h) Overall planning balance requiring the benefits of granting permission to be considered, given appropriate weight and balanced against any harm identified; and
 - (i) The need for decisions to be justified by adequate and intelligence reasons that can be defended on appeal, or legal challenge.
- (ix) As for decisions taken contrary to officers' recommendation, the rewritten Planning Protocol must include guidance that expressly requires members, before proposing a motion contrary to officers' recommendation, to identify the reasons for refusing/granting permission and advice from officers as to whether the reasons proposed are lawful and defensible on appeal/under legal challenge.

A12. When compared against the exemplars provided, the existing Planning Protocol retained in the Council's new Constitution needs to be rewritten, or at the very least updated. Notably, the existing Protocol addresses matters considered elsewhere in the new Constitution, which should not be duplicated in the rewritten Protocol.

A13. That said, having regard to the foregoing advice, rewriting the the whole of the existing Planning Protocol should not be necessary, as significant parts remain relevant and need only be updated. Likewise, as the procedures relevant to planning decisions are addressed elsewhere in the new Constitution, they should not be duplicated in the rewritten Protocol.

MAIDSTONE
BOROUGH
COUNCIL
CONSTITUTION

CONSTITUTION OF THE COUNCIL

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 - Head of Planning and Development
- Director of Regeneration and Communities
 - Head of Commercial and Economic Development

- Head of Finance and Resources
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- Director of the Environment and Shared Services
 - Head of Environment and Public Realm
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Councillors' Allowances Scheme

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4.4 LOCAL CODE OF CONDUCT FOR COUNCILLORS AND OFFICERS DEALING WITH PLANNING MATTERS

**Adopted by the Council on 23 October 2002
Amended by Planning Committee on 17 March 2004 and by
Standards Committee on 5 April 2004
Further Amended by Planning Committee on 27 April 2005 and by
Standards Committee on 27 April 2005 and by
Council on 27 April 2005
Further Amended by the Planning Committee 19 January 2006
Further Amended by Council on 26 July 2006
Further Amended by Council on 25 April 2007
Further Amended by the Monitoring Officer in June 2007 and July 2013
and
to take into account the new Code of Conduct, the Localism Act 2011 and
the Officer restructure
Further Amended with effect from 23 May 2015 as a result of the
Council's change to Committee Governance.**

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BACKGROUND TO THE CODE

The Code is based on the Local Government Association publication "Probity in Planning; the Role of Councillors and Officers" which was produced to help ensure that planning authorities make planning decisions in an open, impartial manner, with sound judgement and for justifiable reasons. This Code has been updated many times to take account of new legislation and the change in governance model of the Council in May 2015. Public disquiet over aspects of the planning system, reflected in inquiries into the conduct of Brent, North Cornwall, Warwick and Bassetlaw Councils, emphasised the need for a code which would set out best practice and produce more standard procedures for the consideration of planning matters. The need for such a Code was also endorsed by the Nolan Committee on Standards in Public Life. The code applies to Councillors in relation to planning applications, local development plan documents and planning enforcement.

1. THE GENERAL ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS

- Councillors and officers have different, but complementary, roles. Both serve the public but Councillors are responsible to the electorate, whilst Officers are responsible to the Council as a whole. Officers advise Councillors and the Council, and carry out the Council's work. They are employed by the Council, not by individual Councillors and it follows that instructions may only be given to Officers through a decision of the Council or a Committee or Sub-Committee. Any other system which develops is open to question. A successful relationship between Councillors and officers can only be based upon mutual trust and understanding of each other's positions. This relationship, and the trust which underpins it, must never be abused or compromised.
- Both Councillors and officers are guided by Codes of Conduct. The Codes of Conduct adopted by Maidstone Borough Council, provide standards and guidance for Councillors and officers and they are set out at 4.1 and 4.6 of this Constitution. Councillors and officers are obliged to register and declare certain interests as well as relationships. In addition, staff who are Chartered Town Planners are guided by the RTPI's Code of Professional Conduct, breaches of which may be subject to disciplinary action by the Institute. The Council's Codes and Procedure rules govern the conduct of Council business.

(a) The Code of Conduct for Councillors was adopted by Maidstone Borough Council on 5 July 2012. It sets out the requirements on Councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to Council business, including the need to register and declare interests, but it also deals with a Councillor's relationships with other Councillors, staff and the public, which will impact on the way in which Councillors participate in the planning process. Of particular relevance to Councillors serving on planning committees or who become involved in making a planning decision (relating to an application, enforcement or planning policy) is the requirement that a Councillor:

*"must not, use or attempt to use your position as a Councillor **improperly** to confer on or secure for yourself or any other person, an advantage or disadvantage;" (Paragraph 3 (2)(g) of the Councillors' Code).*

Councillors serving on the Planning Committee or who otherwise become involved in making a planning decision must represent their constituents as a body and vote in the interests of the whole Borough. The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst Members of the Planning Committee should take account of those views, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so. Councillors who do not feel that they can act in this way should consider whether they are best suited to serving on the Planning Committee. Councillors should also be very cautious about accepting gifts and hospitality. The Code requires any Councillors receiving any gift, benefit or hospitality or a series of gifts, benefits and hospitality **in their official capacity as Councillors**, over the value of £100, to provide written notification of the details to the Monitoring Officer of the Council within 28 days of its receipt. Receipt of the gift must also be declared at meetings of the Council by the recipient, where it relates to the matter being considered (if the gift was received in the last 3 years).

- (b) Similarly, officers, during the course of carrying out their duties, may be offered hospitality from people with an interest in a planning proposal. Wherever possible, such offers should be declined politely. If the receipt of hospitality is unavoidable, officers should ensure that it is of a minimal level and declare its receipt as soon as possible, having obtained the approval of their line manager. Such offers must be recorded in the Council's register of gifts and hospitality whether or not accepted. This register is reviewed regularly by Directors of the Council.

Employees must always act impartially. In order to ensure that Senior Officers do so, the Local Government and Housing Act 1989 enables restrictions to be set on their outside activities, such as certain political activity and serving on another Council.

A requirement for staff to act impartially is a requirement of the Employees' Code of Conduct. Such impartiality (particularly crucial in highly contentious matters) is re-enforced by requirements on Councillors in the Model Code. Councillors are placed under a requirement by paragraphs 3(2)(c) of the Code:

- not to do anything that compromises or is likely to compromise the impartiality or integrity of those who work for, or on behalf of, the authority.

- (c) The Council has agreed that no member will be able to serve on the Planning Committee without having agreed to undertake a minimum period of training on the policies, procedures, legislation and guidance relevant to the Committee as specified by the Committee. This training should be completed to an agreed level according to an agreed programme within an agreed time period set by the Committee for newly appointed Councillors and substitutes of the Committee. If the specified training has not been completed by the due date, the Councillor will cease to be a member/substitute member of the Committee until the training has been completed. The Head of Finance and Resources will keep a record of the training requirements of the Committee and of the Councillor's compliance with the requirements. Existing members and substitute members of the Committee should be updated regularly on changes of legislation and procedures and must receive refresher training on an annual basis. Failure to undertake the refresher training will result in the Councillor ceasing to be a member/substitute member of the Committee until the refresher training has been completed. All members of the Council will be provided with training on planning processes.

2. REGISTRATION OF INTERESTS BY COUNCILLORS

The Localism Act 2011 and the Code place requirements on Councillors relating to the registration and declaration of their interests and sets out the consequences for the Councillor's participation in consideration of an issue, in the light of those interests. These requirements must be followed scrupulously and Councillors should review their situation regularly. Advice may be sought from the Council's Monitoring Officer on these issues. Ultimate responsibility for fulfilling the requirements rests individually with each Councillor.

A register of Councillors' interests will be maintained by the Council's Monitoring Officer, which will be available for public inspection and be published on the Council's website. A Councillor must provide the Monitoring Officer with written details of relevant interests within 28 days of his/her election, or appointment to office. Any changes to those interests must similarly be notified within 28 days of the Councillor becoming aware of such changes.

3. DECLARATION OF INTERESTS

The Code sets out definitions of Disclosable Pecuniary Interest (DPI) (which must be registered under the Localism Act – it being a criminal offence not to do so) and Other Significant Interests (OSI) which must be registered/disclosed under the Council's Code:

Where a Councillor considers s/he has a DPI or OSI in a matter, s/he must always declare it, not participate or vote on the matter and must withdraw from the room when the matter is discussed.

If the Council allows members of the public to address meetings, then a Councillor with an OSI may attend a meeting to make such representations, but must leave the room immediately after making those representations. If a Councillor wishes to take advantage of this, they should seek guidance from the Monitoring Officer.

Translated to a Councillor's involvement in planning issues, the interests test will require a Councillor to abstain from involvement in any issue the outcome of which might advantage, or disadvantage the personal interests of the Councillor, his/her family, friends or employer (other than the limited right to attend meetings to make representations and then leave).

In certain circumstances a Councillor with a DPI or OSI may seek a dispensation to participate, notwithstanding their interest, from the Monitoring Officer.

The Policy and Resources Committee is responsible for economic development. Councillors on that Committee may be members of the authority's Planning Committee or other decision-making body for planning matters. There may be occasions when such Councillors will wish to press for a particular development which they regard as beneficial to the development of the area. *Should those Councillors be able to vote on any planning application relating to that development?*

The appropriate action is not clear cut, and may depend on the particulars of the case. However, the general advice would be that a Councillor in such circumstances may well be so committed to a particular development as the result of undertaking the responsibilities of furthering the development of the area, that he or she may well not be able to demonstrate that they are able to take account of counter arguments before a final decision is reached. Indeed, a Councillor may be seen as the chief advocate on behalf of the authority for the development in question. In such circumstances, the appropriate approach is likely to be that the Councillor is able to speak in favour of the development but should not vote on the relevant application, (unless the Councillor has conducted high-profile, active lobbying for a particular outcome, in which case s/he should not participate in the debate nor vote on the application.)

Any Councillor who is also a Parish Councillor and/or a County Councillor must consider carefully the potential conflicts of interest that might arise by serving on the Planning Committee when considering taking up an appointment on that Committee, but provided that the Councillor does not believe him/herself to be under an obligation to vote in the same way as the Parish Council recommends, dual membership should not be a bar to sitting on the Planning Committee when considering such applications. However, such membership should be notified to the Committee. If the application has actually been made by another Council of which the

Councillor is a member or a senior member of staff, the interest is likely to be an Other Significant Interest.

4. DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS AND OFFICERS; AND COUNCIL DEVELOPMENT

Proposals to their own Authority by serving and former Councillors and officers and their close associates and relatives can easily give rise to suspicions of impropriety. So indeed can proposals for a Council's own development. Proposals can take the form of either planning applications or development plan proposals.

It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism. Accordingly:-

- Councillors who act as agents for people pursuing a planning matter with the Authority should play no part in the decision-making process for that proposal. Similarly, should they submit their own proposal to the Council which they serve, they should take no part in its processing.
 - Proposals for a Council's own development must be treated in accordance with Government advice
 - Applications submitted by Councillors and officers, and for Council development, should be dealt with by the Planning Committee.
 - Proposals for a Council's own development should be treated in the same way as those of private developers, in accordance with DoE Circular 19/92, particularly in relation to officers' advice.

5. LOBBYING OF AND BY COUNCILLORS

- It is important to recognise that lobbying is a normal and perfectly proper part of the political process. Those who may be affected by a planning decision will often seek to influence it through an approach to their elected Ward Councillor or to a Member of the Planning Committee. As the Nolan Committee's Third Report states:

"It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is via the local elected representatives, the Councillors themselves" (paragraph 288).

Any code of conduct which fails to take account of the realities of the political/representative process will not carry credibility with experienced elected Councillors.

- However, such lobbying can, unless care and common sense are exercised by all the parties concerned, lead to the impartiality and integrity of a Councillor being called in question. When being lobbied, Members of the Planning Committee should take care about indicating

that they have already made up their mind on the issue before they consider the matter in Committee when full information about the application will be considered by Councillors. In such situations, they should restrict themselves to giving procedural advice, including suggesting to those who are lobbying, that they should speak or write to the Head of Planning and Development in order that their opinions can be included in the report to the Planning Committee or the delegated report. If they do express an opinion, they should make it clear that they will reserve their position as to how they will vote until the meeting of the Planning Committee which considers the application. The Localism Act (Section 25) does provide that a decision maker is not to be taken to have, or to appear to have, a closed mind when making a decision just because the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take, in relation to a matter, and the matter was relevant to the decision. However, to avoid allegations of bias, prejudice or pre-determination, which could lead to the Council's decision being quashed, Councillors should be careful not to have, or appear to have had, a closed mind when dealing with planning applications.

- It should be remembered that the reports on North Cornwall and Warwick were both greatly concerned with the issue of lobbying. In both cases, lobbying had caused considerable public mistrust of the Councils.
- Councillors, and Members of the Planning Committee in particular, need to take account of the expectations of the general public (and the Courts and the Ombudsman) that a planning application will be processed and determined in a transparently open and fair manner, in which Councillors making the decision will take account of all the officers' advice and representations made before arriving at a decision, and that to commit themselves one way or the other before the Committee meets makes them vulnerable to an accusation of partiality and risks challenge to the decision taken.
- Determining a planning application is a formal administrative process involving rules of procedure, rights of appeal and an expectation that the Council will act reasonably and fairly. There is also the added possibility that an aggrieved party may seek Judicial Review of the way in which a decision has been arrived at, or complain to the Ombudsman on grounds of maladministration, or to the Council that any Councillor has breached the Code of Conduct.
- In reality, of course, Councillors will often form a view about an application early on in its passage through the system, whether or not they have been lobbied. The difficulty created by the nature of the Planning Committee's proceedings (as set out in the paragraph above) is that Members of the Planning Committee should not finally make up their mind or openly declare which way they intend to vote in advance of the Planning Committee meeting.

- Political reality suggests that it is often important to distinguish between the role of the Planning Committee Member who is, and who is not, a Ward Councillor for the area affected by a particular planning application.

A Planning Committee Member who does not represent the Ward affected is in an easier position to adopt an impartial stance, however strong his or her feelings about the application may be, and to wait until the Planning Committee meeting before declaring one way or the other.

A Planning Committee Member who represents a Ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If the Councillor responds to lobbying by deciding to go public in support of a particular outcome - or even campaign actively for it - it will be very difficult for that Councillor to argue convincingly when the Planning Committee comes to take its decision that s/he has carefully weighed the evidence and arguments presented - perhaps in some respects for the first time - at the Planning Committee. Although not amounting to an interest according to the Code of Conduct, the proper course of action for such a Councillor would be to make an open declaration and not to vote. In most cases short of such high-profile, active lobbying for a particular outcome (in which case the Councillor on the Planning Committee should not participate in the debate or vote on the matter), it should be possible for a Councillor to give some support to a particular body of opinion whilst waiting until the Planning Committee before making a final decision, and making it clear to those lobbying that s/he will not finally decide how to vote until the Planning Committee meeting.

Councillors must make oral declarations at Committee of significant contact with Applicants and Objectors (lobbying).

It should be evident from the previous paragraphs that it is very difficult to find a form of words which covers every nuance of these situations and which gets the balance right between the duty to be an active Ward representative and the requirement, when taking decisions on planning matters, to take account of all arguments in an open-minded way.

- It cannot be stressed too strongly that the striking of this balance is, ultimately, the responsibility of the individual Councillor, and that in doing so regard needs to be paid to the general rules laid down in the Code of Conduct and the law relating to bias/predetermination.
- Given that the point at which a decision on a planning application is made cannot occur before the meeting, when all available information is to hand and has been duly considered, any political group meeting prior to the Planning Committee meeting must not be used to decide how Councillors should vote. (The view of the Ombudsman in relation to the former national Code was that the use of political whips to seek to influence the outcome of a planning application could amount to

maladministration. There is nothing in the Code of Conduct which would serve to change this advice).

- Unless they have decided to play no role in the determination of the application, Members of the Planning Committee should avoid organising support for or opposition to a planning application, and avoid lobbying other Councillors. Such actions can easily be misunderstood by parties to the application and by the general public.
- Councillors should not put improper pressure on officers for a particular recommendation or delegated decision and should not do anything which compromises, or is likely to compromise, their impartiality.
- Councillors who are unsure whether an interest should be declared should seek the advice of the Monitoring Officer, although as indicated above, the decision rests with the Councillor.
- Councillors and Officers shall avoid indicating the likely decision on an application or otherwise committing the Council during contact with Applicants and Objectors; but Officers may indicate what their recommendation to Committee will be, however this should be accompanied by a statement that it will be for the Committee to decide the outcome and that the recommendation cannot be relied upon as a decision.
- Where a Councillor receives written representations directly in relation to a planning application s/he should pass the correspondence to the Head of Planning and Development in order that those representations may be taken into account and referred to in any Committee report.
- Unless they have an interest in the item being discussed, members of the Planning Committee are encouraged to remain in the meeting for the whole time that an item is being debated and are strongly encouraged not to vote on the matter unless they have done so.
- Members of the Planning Committee should not leave the meeting to discuss decisions just taken with Applicants/Objectors, since to do so may give the wrong impression to the public.

6. PRE-APPLICATION DISCUSSIONS

Discussions between a potential Applicant and Council Officers prior to the submission of an application can be of considerable benefit to both parties. It is encouraged by the Local Government Association and the National Planning Forum with the recognition of the need to allow and encourage Councillors to be champions of their local communities. Councillor engagement in pre-application discussions on major development may be necessary to allow Councillors to fulfil their role. However, it would be easy for such discussions with Councillors to become, or be seen (especially by Objectors) to become, part of a lobbying process.

In order to avoid such perceptions, pre-application discussions should take place within clear guidelines. The following guidelines have been adopted by the Council to govern such discussions:

- The Human Rights Act requires a fair and impartial tribunal to determine the rights of individuals. This applies to the work of Councils' Planning Committee. If a balance is to be struck between impartiality and the wish to be seen as engaged, positive, open and transparent, Councillors need to exercise caution in engaging with Applicants. In engaging with Applicants, the principles of the Code of Conduct should remain in the forefront of the Councillors' minds.
- If a Councillor, particularly of Planning Committee, argues strongly in favour of or against an application prior to it being considered by Committee such that their mind is or appears to be closed when they attend Committee, they should take no part in the determination of the application. The proper place for the determination of an application is at the Planning Committee once Councillors have heard all the evidence and representations in relation to that application.
- However, to enable Councillors to participate in pre-application discussions, they should be aware of the distinction between giving and receiving information and engaging in negotiations in their discussions with Applicants or their agents regarding planning proposals, legal agreements or any other planning matters.
- Members of Planning Committee should be invited to pre-application meetings to give support to non-Planning Committee Ward Members. To assist all Councillors to participate successfully in pre-application discussions, planning training will be offered to all Councillors.
- Pre-application meetings relating to major applications could take place in a number of different situations:-
 - A - A meeting between a Developer and the community at which Councillors are present, most likely as a Ward Member.
 - B- A presentation by the Developer to all Members including Members of the Planning Committee.
 - C - A specific meeting to discuss the detail of a proposal and obtain advice.
- For the purposes of this Guidance, major applications are those which relate to:-
 - residential development of more than 10 dwellings or where the site area is larger than 0.5 hectares;
 - commercial development where the floor space is larger than 1000 sq. metres; or
 - any development where the site area is larger than 1 hectare.

- In all of these meetings Councillors, if they wish to remain impartial, should observe the following guidance:-
 - The purpose of the meeting is for the Developer to outline its proposals and for Councillors to question the Developer on factual matters. In relation to C outlined above, it is for the officers to provide:-
 - Policy advice
 - Advice on technical/design matters.
 - The aim of these discussions is to improve the understanding of all parties including that of the Developer.
 - Councillors should maintain an impartial role (unless they choose not to, and understand the consequences of that) and should avoid expressing a final view on the application or giving advice. However, Councillors have a legitimate role as representatives of the local community and it is correct that they should ask questions and express concerns about a development on behalf of the local community.
 - Questions to clarify aspects of a proposal or the expressions of policy or detailed concerns are legitimate, so long as they do not develop into negotiations.
 - Where appropriate, such meetings described at B and C may take place on site but they will need to be carefully managed by the Planning Officer present to ensure that impartiality is maintained, as well as providing a written record of the meeting.
 - In relation to meetings within A and B, it should be clear at the outset of the meeting that the discussions are not binding and that the views expressed are not part of the determination process. However, in relation to pre-application meetings falling within C, the Developer will be looking for unequivocal advice on policy, technical matters and the detail of the scheme in order to form a view as to whether the proposal is acceptable. In this type of meeting Councillors will be able to ask questions about all aspects of the scheme but should not enter into negotiations with the Developer. The role of the officers in this type of meeting is set out in the leaflet "Grand Designs".
 - It should be clear that any statements by Councillors should be categorised as without prejudice to their final decision on the application.
 - Officers should be present in relation to meetings falling within A, and must be in the case of B and C. In these meetings, the Officer should explain that the meeting is taking place at the request of the Applicant and that Councillors and officers will be free to ask questions about the proposal. If the Applicant requests the view of the Authority this should be communicated subsequently and in writing by the Officer. The Officer will make it clear that any views expressed, prior to the formal determination

of an application, are preliminary. The Officer taking part in the discussions will make it clear if they are the decision maker.

- Advice and observations should be based on the Adopted Plan and Material Considerations. A written note of the proceedings must be kept to include a record of Officer attendance and will form a background document to any future planning application.
 - Officers of appropriate seniority should attend such meetings. The involvement of any Councillors should be recorded in any subsequent Committee Report.
 - Following the meeting a letter should be sent to the Applicant emphasising the informative nature of the meeting.
 - In discussions which have touched on commercially sensitive or confidential information, this information may remain confidential, subject to the requirements of the Freedom of Information Act.
 - In addition, Councillors should not seek to influence officers or pressure their officers to support a particular course of action.
 - Unless developers illustrate, at the time of submitting a major application, how they have met the requirements of the Statement of Community Involvement in relation to pre-application discussions with the Community and Councillors, Regulation 4 of the Town and Country Planning Applications Regulations will be used to put the application on hold until the developer has demonstrated how the requirements have been met; and this should include pre-application discussion with Councillors.
- If Councillors follow this advice, they should be able to participate in pre-application discussions without affecting their partiality.
 - The Head of Planning and Development may guide Parish Councillors if they wish to participate in pre-application discussions.

7. COUNCILLORS' INVOLVEMENT DURING THE LIFE OF A PLANNING APPLICATION

- It is considered that Councillors' input into the pre-application stage would assist in the collation and provision of information to the Applicant on the views of the local community and matters that may concern Councillors and the community and should not be seen as negotiation but an exchange of information.
- However, during the life of an application, it is considered that discussion between Councillors and the Applicant may be considered as negotiation which will affect the view of the partiality of the Councillor(s). For this reason it is considered that Councillors should not be involved in discussions with Applicants during the life of a major application.
- If Councillors are concerned about such an application, either before or after its consideration by Planning Committee, then a meeting should

take place between Councillors and officers to detail that concern, and subsequently between officers and the Developer to set out concerns. This process should include applications deferred by Committee.

- The alternative would be to either refuse an application or seek an application's withdrawal and then for Councillors to be engaged in the pre-application discussions prior to the submission of a new application.
- The advantage of these approaches is that Councillors' impartiality remains but the Council's actions, particularly in the latter approach, could be regarded as 'heavy handed' and there is the question of additional appeals. The preferred approach would be to use officers as 'informed go-betweens'.

8. OFFICER REPORTS TO COMMITTEE

Earlier inquiries found serious shortcomings by Councils in the way in which planning applications were reported to Committee. These gave rise to criticisms of inadequate consideration of the issues, inconsistency of decision-making, that the reasoning behind a recommendation was unclear or non-existent, and that sometimes there was no recommendation. This led to public concern and a loss of confidence.

All these problems can be avoided by having regard to the following points. It is particularly important to do so, not only as a matter of good practice, but because failure may constitute maladministration and/or give rise to judicial review on the grounds that the decision was not taken in accordance with the provisions of the Development Plan and the Council's statutory duty under Section 38 of the Planning and Compulsory Purchase Act 2004:

- All applications considered by Planning Committee will be subject to full, written reports from officers.
- Reports should be accurate and cover, among other things, the substance of objections and the views of people who have been consulted, as recommended by the Ombudsman.
- Relevant points will include a clear exposition of the Development Plan, site or related history, and any other material considerations.
- Reports will have a written firm recommendation of action. Oral reporting (except to update a report) should be extremely rare and carefully minuted when it does occur.
 - Reports should contain a technical appraisal which clearly justifies the recommendation.
- If the report's recommendation is contrary to the provisions of the Development Plan, the material considerations which justify this must be clearly stated.

- Reasons for granting permission must be clearly stated and minuted.
- Significant contact between officers and Applicants or Objectors will be recorded on the application file which will be publicly available.

9. PUBLIC SPEAKING AT PLANNING COMMITTEE

Public participation in respect of planning applications has been agreed by the Council and the procedure is as set out below.

- If a planning application or enforcement issue (unless an exempt item) is to be determined by the Planning Committee and a speaker wishes to address the Committee in respect of that application, s/he must give notice of that request to the Head of Finance and Resources by 4 p.m. on the working day before the relevant meeting.
- The following speakers will be allowed to address the Committee for each planning application or planning enforcement matter (except Exempt reports) in the following order

Parished Areas

- | | | |
|---|---|--|
| ▪ An Objector | } | A petitioner, or a representative of a Residents' Association/ Amenity Group, or an individual Objector |
| ▪ A representative of the appropriate Parish Councils | | |
| ▪ *The Applicant or his/her representative | } | The Applicant or his/her representative (including a supporter), or a petitioner, or a representative of a Residents' Association/ Amenity Group |

Non-Parished Areas

- | | | |
|--|---|--|
| ▪ A representative of a Residents' Association/Amenity Group | | |
| ▪ An Objector | } | A petitioner, or a representative of a second Residents' Association/ Amenity Group, or an individual Objector |
| ▪ *The Applicant or | } | The Applicant or his/her |

his/her
representative

representative (including
a supporter), or a
petitioner, or a
representative of a
second or third
Residents' Association/
Amenity Group

* The Applicant or his/her representative would have priority.

In order to avoid repetition, a petitioner may present a petition but the appropriate speaker slot will be forfeited. A petitioner may speak for three minutes. If more than one petition is received these may be presented in accordance with the Council's rules on petitions.

Each speaker will be limited to three minutes to address the Committee. S/he will not be allowed to ask a supplementary question, make a supplementary statement and will not be cross examined. Also, no written material or photographs may be handed out at the meeting.

When more than one person wants to speak for or against a planning application or more than one amenity group/organisation or residents association wishes to speak for or against a planning application, the first person or group to register their wish to speak will be afforded that right. However, the Head of Finance and Resources shall keep a reserve list of speakers for each application. If, at the meeting the original speaker is not in attendance, a speaker from the reserve list, depending on if the original speaker was a supporter or objector, i.e. an objector replaces an objector, taken in the order which they registered their right to speak shall be invited to address the Committee.

Visiting Members may address the Planning Committee for three minutes on individual matters but should give the same notice of their intention to speak to the Head of Finance and Resources as members of the public. If they do not do so, the application will not be brought forward on the agenda.

Councillors who have Other Significant Interests in the issue being discussed, but who are exercising their right to make representations, must give the same notice of their intention to speak to the Head of Finance and Resources as members of the public.

Visiting Members and Councillors with Other Significant Interests who are exercising their right to make representations, should sit away from the body of the Committee.

A Councillor with an Other Significant Interest who wishes to make representations will always be the first speaker to address the Committee on an item and will leave the room immediately after making the representations.

Councillors are urged not to hold conversations whilst being addressed by visitors, since to do so may give the impression that the points being made are not being considered.

10. DECISIONS CONTRARY TO OFFICER RECOMMENDATION AND/OR THE DEVELOPMENT PLAN

The law requires that where the Development Plan is relevant, decisions should be taken in accordance with it unless material considerations indicate otherwise (Section 38 of the Planning and Compulsory Purchase Act 2004). This gives rise to two main issues:-

- - Firstly, all applications which are not in accordance with the Development Plan must be identified as soon as possible. They must be advertised as such, in accordance with the requirements of the Town and Country Planning (General Development Procedure) (England) Order 2010.
- Secondly, if it is intended to approve such an application, the material considerations which lead to this conclusion must be clearly identified and how they justify overriding the Development Plan clearly demonstrated. The application may then have to be referred to the Secretary of State depending upon the type and scale of development proposed. If the Officer's report recommends approval of a departure, the justification for this should be included, in full, in that report and in the minutes.
- If the Planning Committee makes a decision contrary to the Officer's recommendations (for refusal) a detailed minute of the Planning Committee's reasons (which should be full, clear and convincing) should be made and a copy placed on the application file. The Officer should also be given the opportunity to explain the implications of any decision contrary to his recommendation. The courts have expressed the view that such reasons should be clear and convincing. The personal circumstances of an Applicant will rarely provide such grounds.
- The wording of reasons for refusal should be clearly understood before the Planning Committee votes on a motion to refuse an application, rather than leaving the drafting to officers to do following the meeting, even if this requires the deferral of the application or a short adjournment in order to draft the wording.
- Conditions should be clearly understood before the Committee votes on applications to grant permission.

11. REFERENCE OF APPLICATIONS TO PLANNING COMMITTEE BY COUNCILLORS

If a Ward Councillor or a Political Group Spokesperson of the Planning Committee wishes an application to be dealt with by the Planning Committee (rather than by the Head of Planning and Development under delegated powers) s/he must notify the Head of Planning and Development in writing within 21 days of the receipt of a weekly list advising him/her of the application.

When so doing, the Councillor shall offer his/her views on the application, but if the Councillor is a member of the Planning Committee they should ensure that they have not pre-determined the application.

The application shall only be referred to the Planning Committee (unless for other reasons delegated authority cannot be exercised) if determination of the application would differ from the Councillor's views.

Additionally, if a Councillor or Parish Council requests that an application is determined by Committee, that Councillor or Parish Council should attend the Committee to address the planning issues they have raised.

12. SITE VISITS

12.1 Purpose of Visits

- (i) The purpose of a site visit is to enable Councillors to inspect the site of a proposed development to enable them better to understand the impact of that proposed development.
- (ii) It is not the function of the visit to receive representations or debate issues.

12.2 Decisions to Conduct a Site Visit

- (i) Visits will take place if voted for by a majority of the Planning Committee.
- (ii) Site visits will only take place where the Committee believes that there is a clear benefit to be gained.
- (iii) Arrangements for visits will not normally be publicised nor made known to Applicants or agents, Objectors or Parish Councils except where permission is needed to go on land.

12.3 Procedures on Site Visits

- (i) The site will be inspected from the viewpoint of both Applicant(s) and other persons making representations and will normally be unaccompanied by the Applicant, other persons making representations or Parish Councils.
- (ii) Where it is necessary to enter a building to carry out a visit, representatives of both Applicant(s) and any other persons making

representations will normally be given the opportunity to be present. If either party is not present or declines to accept the presence of the other, Councillors will consider whether to proceed with the visit.

- (iii) Where Applicant(s) and/or other persons making representations are present, the Chairman may invite them to point out matters or features which are relevant to the matter being considered but will first advise them that it is not the function of the visit to receive representations or debate issues.

12.4 Decision Making

- (i) No decision will be taken on site. The application will normally be considered at the next ordinary meeting of the Planning Committee.
- (ii) Substitutes who have attended the site visit are strongly encouraged to attend the meeting of the Committee when the decision is due to be made in order to act on behalf of the Councillor they represented at the site visit.
- (iii) Members of the Planning Committee are strongly encouraged not to vote on planning applications where there has been a site visit, unless they attended the site visit.

13. REGULAR REVIEW OF DECISIONS

- Councillors should visit a sample of implemented planning permissions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, thereby strengthening public confidence, and can help with reviews of planning policy.
- Such a review will be undertaken at least annually. It should include examples from a broad range of categories, such as, major and minor development, permitted departures, upheld appeals, listed building works and enforcement cases. Briefing notes should be prepared on each case. The Planning Committee should formally consider the review and decide whether it gives rise to the need to review any policies or practice.

14. COMPLAINTS AND RECORD KEEPING

- Whatever procedures a Council operates, it is likely that complaints will be made. However, the adoption of this local Code should reduce the occasions on which complaints are justified. It should also provide less reason for people to complain in the first place.
- The Council already has a fully developed local complaints system.
- So that complaints may be fully investigated (and in any case as a matter of general good practice) record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. Every planning

application file should contain an accurate account of events throughout its life. It should be possible for someone not involved with that application to understand what the decision was and how and why it was reached. Particular care needs to be taken with applications determined under officers' delegated powers. Such decisions should be as well documented and recorded as those taken by the Planning Committee. These principles apply equally to enforcement and Development Plan matters. Monitoring should be undertaken regularly. Every report should contain a full planning history of the site.

15. SECTION 106 AGREEMENTS

- A system shall be put in place and maintained to ensure the co-ordination, management, monitoring and enforcement of Section 106 Obligations by the Head of Planning and Development.
- Interim progress and final statements of all Section 106 Obligations shall be reported to Planning Committee by the Head of Planning and Development.
- A system shall be put in place by the Head of Planning to identify the monetary and non-monetary outcomes of Section 106 Obligations.
- All reports (both delegated and Committee) which cover matters which require planning obligations should explain how the obligations relate to the tests set out in the Community Infrastructure Levy (CIL) regulations.

16. DEFERRAL OF PLANNING DECISIONS

It is likely that from time to time the Planning Committee will defer a decision to a future meeting of the Committee, in order to enable the officers to report back on any areas of concern raised by the Committee. Minor applications should only be deferred if there is a need for additional information or if there are disputed facts within the report, otherwise they should be determined as reported, with the proviso that there may be occasions when the Planning Officers may seek deferral/withdrawal of an application or to implement the agreed procedures for dealing with cases where they believe that the proposed reasons for refusal are unsustainable. On the second occasion that the matter is discussed at Committee, a decision must be made.

17. PLANNING DECISIONS WHICH HAVE SIGNIFICANT COST IMPLICATIONS

- (a) If the Head of Planning and Development, on the advice of the Legal Officer present at the meeting, believes that the Planning Committee's reasons justifying a resolution to refuse/impose conditions are not sustainable, that decision of the Planning Committee will be deferred to its next meeting. The Head of Planning and Development will give advice on this before any vote is taken. The Committee itself may also agree to defer consideration of an application for the same reasons.

- (b) If, at that next meeting, the Planning Committee votes to continue with a decision which it has been advised cannot be sustained at appeal and which could have significant cost implications for the Council's budget, the Head of Planning and Development on the advice of the Legal Officer present will request Councillors to refer the consideration of the application to Part II of the meeting (private session), to offer Members further advice on the legal and financial implications, and the likelihood of success at appeal. If the Committee still decides to refuse the application/impose an unreasonable condition, the Head of Planning and Development will on the advice of the Legal Officer present, immediately after the vote has been taken, refer the application to the Planning Referrals Committee for determination.

18. ATTENDANCE OF MEMBERS AT PLANNING COMMITTEE

As a matter of courtesy, if a member of the Planning Committee knows that s/he will not be able to attend the whole of the meeting s/he should, wherever practicable, so advise the Committee at the beginning of the meeting.

19. APPEALS

- In cases of appeals against non-determination, the Legal Officer taking the case should manage the appeal process to ensure that the Committee's instructions are taken sufficiently early to enable the Council's case to be established before statements of case and witness statements are exchanged with the Appellant/sent to the Inspectorate.
- If the Planning Committee decides to refuse planning permission on grounds which they are advised cannot be sustained, the Legal Officer managing any subsequent appeal should give serious consideration to calling the Chairman or other representative of the Committee to give evidence.

20. TRAINING

- All Members of the Planning Committee and substitute Members should receive training on grounds of refusal and imposition of conditions.
- All Councillors should receive basic training on planning issues.
- Please also see paragraph 1(c) of this Code.

21. URGENT UPDATE REPORTS

The urgent update report will be prepared one clear day before the day of the meeting of the Planning Committee and e-mailed to Councillors and posted on the website that evening, giving Councillors and the public the opportunity to read it before the meeting. Persons who have given notice of their intention to address the Planning Committee shall be informed if there is an urgent update report in respect of the application on which

they wish to speak and advised that they may inspect the update on the website or obtain an oral update from the Planning Department. If there is any further communication between the day that the urgent update report is published and the day of the meeting which raises material considerations, this will be reported to the meeting.



Constitution of the Council

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April 2016

Constitution of the Council

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Part Five

Codes and protocols

Canterbury City Council

Probity in Planning – Local Code of Practice

1. Purpose and status

- 1.1 This protocol is a public guide to the conduct of all councillors and staff who come into contact with the planning process, not just the members of the Planning Committee and professional planning officers. The protocol demonstrates that the council takes its planning decisions openly, impartially and for sound, justifiable planning reasons. The protocol is based upon the Local Government Association and Planning Advisory Service publication 'Probity in Planning' (April 2013) and takes account of the Localism Act 2011.
- 1.2 This protocol provides guidance on how the council's planning function should be run. The council's Standards Committee has approved it. It is supported by operational procedures approved by the council. It is available to the public free of charge and will continue to be kept under regular review.
- 1.3 The protocol provides a measure against which the council's operation of the planning system may be judged. Adherence to the protocol should reduce cause for complaint by the public.
- 1.4 When complaints are made they will be assessed for a breach of the Codes of Conduct, a breach of this protocol or the Bribery Act 2010. From April 2008 complaints that involve an alleged breach of the Member's Code of Conduct will be referred to the council's Standards Committee for assessment. Failure to abide by the protocol is likely to result in a complaint being upheld. Similarly breaches of the protocol may provide grounds for a finding of maladministration by the Ombudsman. Any suspected breach of the Bribery Act 2010 will be reported to the Kent Police.

2. The general role of councillors and officers

- 2.1 Councillors and officers have different but complementary roles. Both serve the public but councillors are responsible to the electorate, whilst officers are responsible to the council as a whole. Officers advise councillors and the council and carry out the council's work. They are employed by the council, not by individual councillors. A successful relationship between councillors and officers will be based upon mutual trust, understanding and respect of each other's positions.
- 2.2 Both councillors and officers are guided by codes of conduct. The Members' Code of Conduct adopted by Canterbury City Council provides standards and guidance for councillors. In addition, councillors are obliged to register and declare certain pecuniary interests by the Localism Act. Employees are subject to an Employee's Code of Conduct. In addition, staff who are Chartered Town Planners are guided by the RTPI's Code of Professional Conduct, breaches of which may be subject to disciplinary action by the Institute. In addition to these codes, the Council's standing orders set down rules which govern the conduct of Council business.
- 2.3 The Code of Conduct for Councillors ("the Code") sets out the requirements for councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to council business, including the need to register and declare interests, but it also deals with

a Member's relationships with other Members, staff and the public, which will impact on the way in which Councillors participate in the planning process.

- 2.4 Councillors serving on the Planning Committee, or who otherwise become involved in making a planning decision, must represent their constituents as a body and vote in the interests of the whole District. The basis of the planning system is the consideration of private proposals against wider public interests. Whilst Members of the Planning Committee should take account of those views, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.
- 2.5 Councillors should also be cautious about accepting gifts and hospitality. The Code requires any Members receiving any gift, benefit or hospitality or a series of gifts, benefits and hospitality in their official capacity as Members to provide within 28 days of its receipt written notification of the details to the Monitoring Officer of the council.
- 2.6 Similarly, officers, during the course of carrying out their duties, may be offered hospitality from people with an interest in a planning proposal. Wherever possible, such offers should be declined politely. If the receipt of hospitality is unavoidable, officers should ensure that it is of a minimal level and declare its receipt as soon as possible, having obtained the approval of their line manager. Such offers must be recorded in the council's register of gifts and hospitality whether or not accepted.
- 2.7 Employees must always act impartially. In order to ensure that senior officers do so, the Local Government and Housing Act 1989 enables restrictions to be set on their outside activities, such as certain political activity and serving on another Council.

3. Training

- 3.1 No councillor shall serve on the Planning Committee, whether as a permanent member or as a substitute, without having received training provided by, or on behalf of, the Assistant Director of Planning and Regeneration.
- 3.2 Members of the Planning Committee must have a good knowledge of planning policies, law and procedures, as this is essential for the effective working of the Committee. To this end the Council will provide mandatory training to planning committee members and their substitutes.
 - a. All new Members and substitute Members must receive bespoke training in planning law and procedures within six months of a new Council having been elected and otherwise all new Members and substitute Members must receive such training within three months of being appointed to the Planning Committee.
 - b. The Council will provide places for Members of the Planning Committee at the annual Planning Summer School. Officers will circulate Members with details of any relevant training courses during the year.
 - c. A record of member's attendance at training events will be kept so that training needs can be reviewed regularly.
- 3.3 Members shall have training at least once during each term of office or as and when new issues or legislation make additional training necessary. The Assistant Director Planning and Regeneration will determine when this is the case.

4. Registration and disclosure of interests

- 4.1 The Localism Act 2011 and the Code place requirements on Members relating to the registration and declaration of their interests and sets out the consequences for the Member's participation in consideration of an issue, in the light of those interests. Councillors should review their situation regularly. Advice may be sought from the council's Monitoring Officer on these issues. Ultimate responsibility for fulfilling the requirements rests individually with each councillor.
- 4.2 A register of Members' interests will be maintained by the Council's Monitoring Officer, which will be available for public inspection. A Member must provide the Monitoring Officer written details of relevant interests within 28 days of adoption of the local code, or within 28 days of his election, or appointment to office. Any changes to those interests must similarly be notified within 28 days of the Member becoming aware of such changes.
- 4.3 The Code sets out definitions of Disclosable Pecuniary Interest (DPI) (which must be registered under the Localism Act, it is a criminal offence not to do so) and Other Significant Interests (OSI) which must be registered/disclosed under the Council's code.
- 4.4 The Members' Code of Conduct states that, in general terms, simple membership of a body, such as a Town/Parish Council or Health Authority, does not prevent a councillor from participation in a decision on a matter which relates to that body.
- 4.5 Where Members are present at a meeting and have a Disclosable Pecuniary Interest or Other Significant Interest (and are aware that they have such an interest) in any matter to be considered, or being considered, at the meeting, they must:
- a. disclose the Interest; and
 - b. explain the nature of that Interest at the commencement of that consideration or when the Interest becomes apparent (unless the Monitoring Officer has accepted it is a 'sensitive interest'); and unless a dispensation has been granted:
 - c. not participate in any discussion of, or vote taken on, the matter at the Meeting; and
 - d. withdraw from the Meeting room in accordance with the Authority's Procedure Rules whenever it becomes apparent that the business is being considered; and
 - e. not seek improperly to influence a decision about that business.
- 4.6 Where Members have a Disclosable Pecuniary Interest or Other Significant Interest in any business of the Authority where they are acting alone in the course of discharging a function of the Authority (including making an executive decision), they must:
- a. notify the Monitoring Officer of the interest and its nature as soon as it becomes apparent; and
 - b. not take any steps, or any further steps, in relation to the matter except for the purpose of enabling the matter to be dealt with otherwise than by them; and
 - c. not seek improperly to influence a decision about the matter.

- 4.7 Where Members have an Other Significant Interest in any business of the Authority, they may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the Meeting for the same purpose. Having made their representations, given evidence or answered questions they must:
- a. not participate in any discussion of, or vote taken on, the matter at the Meeting; and
 - b. withdraw from the Meeting room in accordance with the Authority's Procedure Rules.
- 4.8 Members serve on the council in different capacities. A member who approves the making of a planning application and who sits on Planning Committee may speak and vote on that application before that Committee but must make it clear to all parties that in putting forward a proposal, there is nothing to suggest his or her mind is closed to argument before or during consideration of the application at the Planning Committee.
- 4.9 When councillors have business or other interests, which are likely to bring them into frequent contact with the planning system, for example estate agents, builders, architects, they shall not serve on the Planning Committee, nor on any working party dealing with planning or regeneration issues.
- 5. Predisposition, predetermination or bias**
- 5.1 Members of the Planning Committee must avoid bias or any appearance of bias or of having predetermined their views before taking a decision on a planning application or on planning policies.
- 5.2 The courts have sought to distinguish between situations which involve predetermination or bias on the one hand and predisposition on the other. The former is indicative of a 'closed mind' approach and likely to leave the committee's decision susceptible to challenge by Judicial Review.
- 5.3 Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a councillor makes it clear they are willing to listen to all the considerations presented at the committee before deciding on how to vote (predisposition). The latter is acceptable; the former is not and may result in a Court quashing such planning decisions.
- 5.4 Section 25 of the Localism Act 2011 allows that a councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter. This reflects the common law position that a councillor may be predisposed on a matter before it comes to Committee, provided they remain open to listening to all the arguments and changing their mind in light of all the information presented at the meeting.
- a. A councillor may not be party to a decision in which their mind is closed to argument or where the circumstances give rise to a real risk that their mind is closed.
 - b. Bias means having a closed mind, and having pre-determined the outcome of the matter to be decided irrespective of the merits of any arguments the councillor might see or hear at a Planning Committee meeting. Bias and predetermination are now dealt with separately from the councillor's new code of conduct.

- c. Councillors are elected to provide and pursue policies, and will have political allegiances. They cannot therefore be completely impartial in decision making, even in Planning Committee, but they must always be fair.
- d. Councillors must address each planning decision before them fairly and on their merits, even if they approach some issues with a view informed by their political views or by policies which they have already pursued. They must be open to new arguments up to the moment of decision.
- e. Any complaint relating to the appearance of bias would need to be justified by evidence showing that the councillor had a closed mind at the time the decision was made. However a member should also consider his own conscience and take the advice of officers.
- f. Officers' advice is that if a member believes that he or she is biased, that he or she should behave as if there is a declarable interest. The member should speak at the beginning of the debate with the members of the public but leave the chamber when he or she has finished speaking
- g. If, on the other hand, the Member has scrupulously avoided forming a view in advance on the matter, he or she should disclose this if challenged and explain the steps taken to remain impartial. The councillor may then address the Committee and vote.

6. Development proposals submitted by councillors, officers and council development

- 6.1 Proposals submitted by serving and former councillors, officers and their close associates and relatives can easily give rise to suspicions of impropriety. So indeed can proposals for the council's own development.
- 6.2 It is perfectly legitimate for such proposals to be submitted. However, it is important to ensure that they are handled in a way which gives no grounds for allegations of favouritism. Therefore the following will apply;
 - a. Prior written notification should be given to the Assistant Director Planning and Regeneration when a councillor, a member of staff or a consultant employed by the council acts on their own planning matter, or on behalf of someone else, or when a planning matter is known to involve a family member, close friend or business associate of that councillor, member of staff or consultant
 - b. Applications by councillors and officers and for council development (whether involving council owned land or not) must be dealt with by the Planning Committee.
 - c. Councillors who submit their own proposal to the council which they serve should take no part in its processing
 - d. Councillors who act as agents for people pursuing a planning matter with the Authority should play no part in the decision-making process for that proposal.
 - e. Proposals for the council's own development must be treated in accordance with Government advice and in the same way as those of private developers

7. Lobbying of and by councillors

- 7.1 Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, a site allocation in a development plan or an emerging policy, will often seek to influence it through an approach to their ward member or to a member of the planning committee. As the Nolan Committee's 1997 report stated:

"It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the councillors themselves".

- 7.2 Lobbying, however, can lead to the impartiality and integrity of a councillor being called into question, unless care and common sense is exercised by all the parties involved. When being lobbied, Members of the Planning Committee should take care about indicating that they have already made up their mind on the issue before they consider the matter in Committee. In such situations, they should restrict themselves to giving procedural advice, including suggesting to those who are lobbying, that they should speak or write to the Head of Planning in order that their opinions can be included in the report to the Planning Committee or the delegated report. If they do express an opinion, they should make it clear that they will reserve their position as to how they will vote until the meeting of the Planning Committee which considers the application.
- 7.3 If any councillor, whether or not a committee member, speaks on behalf of a lobby group at the decision-making committee, they should withdraw once any public or ward member speaking opportunities had been completed in order to counter any suggestion that members of the committee may have been influenced by their continuing presence.
- 7.4 It is very difficult to find a form of words which conveys every nuance of these situations and which gets the balance right between the duty to be an active local representative and the requirement when taking decisions on planning matters to take account of all arguments in an open-minded way. It cannot be stressed too strongly, however, that the striking of this balance is, ultimately, the responsibility of the individual councillor.
- a. Planning decisions cannot be made on a party political basis in response to lobbying; the use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration.
 - b. Members of the Planning Committee should avoid organising support for or against a planning application and avoid lobbying other councillors.
 - c. Councillors should not put pressure on officers for a particular recommendation or decision, and should not do anything which compromises, or is likely to compromise, the officers' impartiality or professional integrity.
 - d. Where an application is referred by a councillor to the Planning Committee, where it would otherwise normally be determined under the delegated authority, reasons for the referral should be submitted in writing and to refer solely to matters of material planning concern. The referral should be sent to the Assistant Director of Planning and Regeneration/Head of Planning within 21 days of the application being published on the Council's website
 - e. Councillors who openly support a particular outcome prior to the debate at Committee, should declare their position at the committee meeting and may speak but shall then

withdraw from the meeting and not take part in the vote. (see the advice on bias and predetermination above)

- f. A member is not prohibited by the above bullet point from visiting a site and/or listening to what his or her constituents have to say.
- g. When a Planning Committee Member, who is also a single Ward Councillor or Parish Councillor, is canvassed/lobbied by constituents and wishes to remain impartial, he or she may ask a neighbouring Ward Councillor to speak on their behalf. If this is not possible and the councillor decides to speak on behalf of constituents prior to the Committee meeting, he/she may not vote.
- h. Where a councillor has received written representations directly in relation to a planning application he/she should pass the correspondence to the Assistant Director of Planning and Regeneration/Head of Planning in order that those representations may be taken into account and referred to in any committee report.
- i. Unless they have an interest in the item being discussed, Members of the Planning Committee are encouraged to remain in the meeting for the whole time that an item is being debated and are strongly encouraged not to vote on the matter unless they have done so.
- j. Members of the Planning Committee should not leave the meeting to discuss decisions just taken with applicants/objectors, since to do so may give the wrong impression to the public

8. Pre-application discussions

- 8.1 Discussions between a potential applicant and council officers prior to the submission of an application can be of considerable benefit to both parties and are encouraged by the Audit Commission. It is also encouraged by the Local Government Association, the National Planning Forum and the Planning Advisory Service. With the recognition of the need to allow and encourage councillors to be champions of their local communities, there has followed a realisation that councillor engagement in pre-application discussions on proposed development, in particular major schemes, is necessary to allow councillors to fulfil their role.
- 8.2 However, it would be easy for such discussions with Members to become, or be seen (especially by objectors) to become, part of a lobbying process. The Localism Act, particularly S25, has given councillors much more freedom to engage in pre-application discussions. Although the term 'pre-application' has been used, the same considerations should apply to any discussions which occur before a decision is taken. In order to avoid perceptions that councillors might have fettered their discretion, such discussions should take place as follows;
 - a. Clarity at the outset that the discussions will not bind the council to making a particular decision and that any views expressed are personal and provisional. By the very nature of such meetings not all relevant information may be at hand, nor will formal consultations with interested parties have taken place. An acknowledgement that consistent advice should be given by officers based upon the development plan and material planning considerations.
 - b. Officers should be present with councillors' at all pre-application meetings.

- c. Councillors should avoid giving separate advice on material considerations as they may not be aware of all the issues at an early stage. Neither should they become drawn into any negotiations, which will be done by officers to ensure that the council's position is co-ordinated.
- d. A written record of meetings, correspondence and telephone calls will be maintained by the planning officer and kept on the case file to ensure a public record is maintained. If there is a legitimate reason for confidentiality regarding a proposal, a note of the non-confidential issues raised or advice given can still be placed on the file to reassure others not party to the discussion.
- e. The planning officer will make all necessary arrangements for meetings.
- f. Care shall be taken to ensure that advice is impartial, otherwise the subsequent report or recommendation to committee could appear to be advocacy.

8.3 These guidelines would apply to Major development, defined as follows;

- a. residential development of more than 10 dwellings or where the site area is larger than 0.5 hectares;
- b. commercial development where the floor space is larger than 1000 sq. metres; or
- c. any development where the site area is larger than 1 hectare.

8.4 Councillor engagement in the pre-application process will take one or more of the following forms;

- a. Developer presentations to committees to be held in public to ensure transparency
- b. Ward councillor briefings by officers on pre-application discussions.

8.5 Any opinion expressed by planning officers on a pre-application proposal is an informal view and does not bind the planning authority to a particular decision. Officers from other departments should make it clear that their comments relate only to their own professional area and should not be construed as a "planning view". Officers should only give advice in accordance with the guidance given by any professional bodies to which they belong as this may prejudice planning decision making.

8.6 Councillors must not discuss development proposals or planning applications which may come before the Council with developers, architects or landowners on their own. In normal circumstances councillors should not attend pre-application meetings with officers and developers, unless in one of the forms set out above.

9. Reports to committee

9.1 As a result of decisions made by the courts and ombudsman, officer reports on planning applications must have regard to the following:

- a. Reports should be accurate and should include the substance of any objections and other responses received to the consultation.

- b. Relevant information should include a clear assessment against the relevant development plan policies, relevant parts of the National Planning Policy Framework (NPPF), any local finance considerations, and any other material planning considerations.
- c. Reports should have a written recommendation for a decision to be made.
- d. Reports should contain technical appraisals which clearly justify the recommendation.
- e. If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated. This is not only good practice, but also failure to do so may constitute maladministration or give rise to a Judicial Review challenge on the grounds that the decision was not taken in accordance with the provisions of the development plan and the council's statutory duty under s38A of the Planning and Compensation Act 2004 and s70 of the Town and Country Planning Act 1990.
- f. Any oral updates or changes to the report should be recorded in the minutes.
- g. Reports should include a clear and reasoned recommendation based on the local plan and any material considerations.

10. Public speaking at Planning Committee

- 10.1 The council has agreed that members of the public can address the Planning Committee in relation to individual planning applications. Public speaking encourages involvement of the public in the planning process. This system may help Committee members who are lobbied to remain impartial. It also allows district councillors who are not members of the Planning Committee to address the Committee. The procedure for this is set out in Appendix B
- 10.2 New documents should not be circulated at the committee; councillors may not be able to give proper consideration to the new information and officers may not be able to check for accuracy or provide considered advice on any material considerations arising. This will be made clear to those who intend to speak.
- 10.3 Messages should never be passed to individual committee members, either from other councillors or from the public. This could be seen as seeking to influence that member improperly and will create a perception of bias that will be difficult to overcome.

11. Decisions which differ from a recommendation

- 11.1 The law requires that decisions should be taken in accordance with the development plan, unless material considerations (which specifically include the NPPF) indicate otherwise (s38A Planning & Compensation Act 2004 and s70 of the Town and Country Planning Act 1990). This applies to all planning decisions. Any reasons for refusal must be justified against the development plan and other material considerations.
- 11.2 The Planning Committee's reasons for making a decision should be clear and convincing. The personal circumstances of an applicant or any other material or non-material planning considerations which might cause local controversy will rarely satisfy the relevant tests.

- 11.3 Planning Committees can make a decision which is different from the officer recommendation. However, certain steps should be followed before making a decision which differs from the officer recommendation:
- a. Record the detailed reasons as part of the mover's motion
 - b. Adjourn the meeting for a few minutes for those reasons to be discussed and then agreed by the committee
 - c. Where there is concern about the validity of reasons, consider deferring to another meeting to have the putative reasons tested and discussed.
 - d. Conditions should be clearly understood before the Committee votes on applications to grant permission.
 - e. Should the Planning Committee make a decision contrary to the officers' recommendation (whether for approval or refusal or changes to conditions or S106 obligations), a detailed minute of the committee's reasons should be made and a copy placed on the application file.
 - f. Councillors should explain in full their planning reasons for not agreeing with the officer's recommendation.
 - g. Pressure should not be put on officers to 'go away and sort out the planning reasons'. The officer should be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome, and chances of a successful award of costs against the council, should one be made.
- 11.4 All applications that are clearly contrary to the development plan must be advertised as such, and are known as 'departure' applications. If it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and how these considerations justify overriding the development plan must be clearly demonstrated. The application may then have to be referred to the relevant secretary of state, depending upon the type and scale of the development proposed (s77 of the Town and Country Planning Act 1990). If the officers' report recommends approval of such a departure, the justification for this should be included, in full, in that report.

12. Committee site visits

- 12.1 The Planning Committee may only defer the determination of applications for a site visit in accordance with guidelines approved by the committee – see Appendix C. Site visits should be run in accordance with procedures laid down by the committee - see Appendix D.
- 12.2 National standards and local codes also apply to site visits. Site visits should only be used where the benefit is clear and substantial; officers will have visited the site and assessed the scheme against policies and material considerations already. Where a site visit can be 'triggered' by a request from the ward councillor, the 'substantial benefit' test should still apply

- 12.3 A site visit is only likely to be necessary if:
- a. The impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers the comments of the applicant and;
 - b. Objections cannot be expressed adequately in writing and/or
 - c. The proposal is particularly contentious.
- 12.4 Site visits are for observing the site and gaining a better understanding of the issues. Visits made by committee members, with officer assistance, should not be used as a lobbying opportunity by objectors or supporters. This should be made clear to any members of the public who are there.
- 12.5 A written record of the reasons why a site visit is called will be kept.
- 12.6 The procedure and protocol set out in Appendices C and D must be followed in all cases.

13. Annual review of decisions

- 13.1 Councillors should visit a sample of implemented planning permissions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, thereby strengthening public confidence, and can help with reviews of planning policy.
- 13.2 Such a review will be undertaken at least annually. It should include examples from a broad range of categories, such as, major and minor development, permitted departures, upheld appeals, listed building works and enforcement cases. Briefing notes should be prepared on each case. The Planning Committee should formally consider the review and decide whether it gives rise to the need to review any policies or practice
- 13.3 This policy will also be kept under review by the Planning Committee and Standards Committee of the Council.

14. Complaints and record keeping

- 14.1 Whatever procedures a Council operates, it is likely that complaints will be made. However, the adoption of this local code should reduce the occasions on which complaints are justified. It should also provide less reason for people to complain in the first place.
- 14.2 The Council already has a fully developed local complaints system. So that complaints may be fully investigated (and in any case as a matter of general good practice) record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case.
- 14.3 Every planning application file should contain an accurate account of events throughout its life. It should be possible for someone not involved with that application to understand what the decision was and how and why it was reached. Particular care needs to be taken with applications determined under Officers' delegated powers.
- 14.5 Such decisions should be as well documented and recorded as those taken by the Planning Committee. These principles apply equally to Planning Enforcement and Development Plan

matters. Monitoring should be undertaken regularly. Every report should contain a full planning history of the site.

15. Applicability of the Code

- 15.1 This code of practice is intended to be binding upon councillors and act as a guide to others (including members of the public) as to the conduct expected of all parties on matters relating to planning in the District.
- 15.2 Members of the Planning Committee and others to whom this code applies must make their own judgments as to its application to specific planning matters, including individual planning applications. In most cases, its applicability will be clear. If any councillor is in doubt, he or she may seek advice from the Monitoring Officer. However, the final decision must be for the councillor to determine.
- 15.3 A breach of the code is a serious matter and, although usually not amounting to a breach of the criminal law, may incur an adverse report from the Local Government Ombudsman and/or action under the Councillors' Code of Conduct.

Probity in Planning appendices

Appendix A

Representations and submissions of information to the Planning Committee

Only material planning considerations will be reported to Committee and taken into account in decision making.

Only representations which are material planning considerations will be taken into account by the Assistant Director of Planning and Regeneration/Head of Planning in his/her exercise of his/her delegated powers.

Appendix B

Protocol for public speaking at Planning Committee

Any member of the public wishing to speak at the Planning Committee should e mail or telephone the Senior Democratic Services Officer who supports the Planning Committee. Speakers should give their name and address, indicating whether the speaker is in favour of, or opposed to, the planning application and whether they are speaking on behalf of a parish council.

Notice may be given not later than 12.30 in the afternoon on the day before the meeting of the Planning Committee

Speaking opportunities shall be allocated on a first come, first served basis but with the applicant being given first chance of supporting the scheme. Applicants and third parties will be notified of any other requests to speak. The identified speaker may defer to another at the discretion of the Chairman of the Committee.

When any member of the public wishes to speak at committee or another body of the Council as a representative of an organisation or group they must answer the following questions and the answers provided to the meeting:

- a. What is your position within the organisation?
- b. How many members does it have?
- c. By what means were the views of Members obtained to enable you to speak on their behalf?

Criteria for public speakers at meetings of the Planning Committee

The number of speakers for each planning application is limited to 3 in favour, 3 against the proposal;

- a representative of the Parish Council, Canterbury Conservation Advisory Committee, Whitstable Society, or Herne Bay & District Residents Association in whose area the proposed development is situated, and that representative gives notice that he/ she would attend the Committee to support the representation;
- a representative of an advisory/amenity group or resident association speaking for a proposal, and one against a proposal whose terms of reference have a direct interest in the proposal;

- the Applicant or Agent but not both who shall also be afforded the opportunity to speak last.

No more than one person per household shall be entitled to speak, including persons wishing to speak on behalf of someone else, unless offering opposing views.

In circumstances where more than 3 persons wish to speak, those not selected, shall be provided with the names of ward councillors and the nominated speakers in order that they can seek to have their points raised.

All persons speaking shall be strictly limited to 3 minutes each.

There will be no speakers heard on any application where they are supporting the officer recommendation and no councillor wishes to speak against it.

All persons shall have a maximum of two opportunities to speak i.e. at two meetings of the Committee or at one Committee and one Member site visit.

In addition, District Councillors, who are not Members of the Committee, may be permitted to address the Planning Committee in relation to planning applications in their Ward or immediately adjacent to their ward. At the discretion of the Chairman of the committee other Members whose wards may be affected by a planning application may be permitted to address the committee

Procedure at committee

All speakers should sit in the public speaker's area in the public gallery before the start of the meeting. The chairman will call them to the public speaker's chair at the appropriate time.

The chairman will explain procedures and order of applications at the start of the meeting.

The Committee will normally decide on site visits at the start of the meeting. Where Members discussion identifies a need for a site visit this may be decided upon during the meeting. Items recommended and agreed for deferral will also be considered at this stage.

Where speakers still wish to speak on an item deferred for a site visit or deferred for a future committee, they must wait until the application is due to be heard on the public speakers list

Planning applications will normally be taken in the order they appear on the Agenda.

The item may be brought forward in the Chairman's discretion in situations where, for example,

- a. Someone attends to hear the debate but needs to leave the meeting early because of illness, disability or caring responsibilities; or
- b. An exceptionally large number of people are in attendance for one particular item.

Items on the agenda may be delayed at the meeting at the Chairman's discretion in order to allow the Ward Member(s) to attend for the Ward item(s).

The procedure when members of the public address the Committee is as follows:

- a. Chairman introduces item

- b. Planning Officer updates and presents item with reference to IT facilities, unless no member wishes to speak on the item, in which case the officer will refer to updates only
- c. Chairman invites members of the public to speak.
- d. Committee debates the application with the ward councillor invited to speak first.
- e. Planning officer clarifies as appropriate during the debate
- f. The voting process takes place. There are only 3 types of decision, grant, refuse, or defer. The grant or refusal may be subject to a delegation to officers to carry out further work on the application – a section 101 delegation. (The Local Government Act 1972).

A properly seconded amendment to a motion is taken before the motion, provided it isn't simply a direct negative of the original motion. If the amendment is passed then a vote is taken on the amended motion. If the amendment falls then a vote is taken on the original proposal. Any decision is taken by a recorded vote of the members present in the chamber. The Chairman has a casting vote where there is equality in the votes cast for and against a motion. The Chairman will then announce the result to the meeting. The Chairman may, in exceptional circumstances, alter or amend this procedure as deemed necessary.

Display screens

The Council has installed electronic visual equipment in the Guildhall. Public speakers should submit hard copies of any photographs and drawings they wish to display at the meeting. The Council cannot accept images on CDs or memory sticks. The equipment will display maps and photographs up to A4 in size. The officers will display photographs for members of the public, but can only deal with a limited number for any one speaker. The officers will exercise their discretion when displaying material.

Written material

Members of the public may not circulate written material or images at the meeting.

Appendix C

Procedure for agreeing site visits

- a. All site visits must be agreed at a meeting of the Planning Committee.
- b. At the start of the meeting, the Chairman will ask whether any Member wishes to recommend a site visit. Any Member so doing (including ward members) should give a reason falling into one of the categories set out in Section 12 above. If the Planning Committee agrees to a site visit (if necessary by a vote), members of the public who had indicated a desire to speak at Committee, will be offered the opportunity of speaking on site rather than at that meeting. A member of the public who is unable to attend the site visit will be entitled to speak at the Committee, even though a decision may have been taken to go on a site visit.
- c. Where a member of the site visits panel has already expressed a view on the planning merits of an application, he or she should consider whether a substitute member should attend in their place.

- d. Following the Committee, members of the public and other interested parties will be notified of the decision to go on site by the Chief Executive's Democratic Services section. Notification will give an approximate time of the meeting and also an indication where Members will meet on site.
- e. Planning Officers will ensure that the applicant is aware of Members' decision for a site visit, and will make necessary arrangements to ensure that access to the site is available.

Appendix D

Procedures on site

- a. The Chairman will introduce him/herself and identify all officers and Members present. The Chairman will also explain the decision making procedure, i.e. that the Sub-Committee will make a recommendation to the Planning Committee.
- b. The Chairman will clarify from those present whether the Sub-Committee ought to view the development proposals from any particular vantage point. Agreement to do so will be at the discretion of the Chairman, depending on practicalities and time constraints, although every effort will be made to do so where adverse impact to the individual is alleged.
- c. Planning officers will present application proposals, followed by other specialist officers as appropriate. The Chairman will then invite any submissions to be made by representatives of a Parish Council, members of the public and the applicant and/or his/her agent.
- d. Where a ward member is also a member of the Planning Committee, he or she should restrict comments on site to points of information or clarification and should avoid commenting upon the merits of the proposal or otherwise, until the following meeting of the Planning Committee.
- e. Members of the public who wish to speak at the site meeting should contact the Senior Democratic Services Office not later than 12.30 on the day before the site visit. The Chairman may decide to hear members of the public who have not given prior notice at the site visit. This is at the Chairman's complete discretion.
- f. Members of the public will each be given a maximum of three minutes to explain their points, subject to discretion by the Chairman.
- g. If the Sub-Committee has to go on private land and the landowner objects to members of the public doing the same, then the Chairman will ensure that members of the public have the opportunity to make their views known to the Sub-Committee before it goes on the land.
- h. Before leaving the site, Members of the Sub-Committee may ask questions or seek clarification of any issues which have been raised.
- i. At the conclusion of the visit, the Chairman will explain where and the approximate time the Sub-Committee will reconvene in order make a recommendation to the Planning Committee. The Chairman will also explain that members of the public can attend the reconvened meeting, but cannot participate in any discussion. The Chairman will announce the date of the next Committee.
- j. The Chairman will explain that subject to prior notice to the Chief Executive's Democratic Services section by 12.30 pm on the working day before the meeting, the interested parties may

also attend the following Committee to speak on the application for a period not exceeding three minutes.

Adopted May 2015



CHESHIRE EAST COUNCIL

CONSTITUTION

EDITION: 5th February 2016

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PLANNING PROTOCOL OF CONDUCT IN RELATION TO THE DETERMINATION OF PLANNING MATTERS

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3	Membership of Parish Councils and outside bodies
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5	Contact with Applicants, Developers, Objectors
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11	Officers
12	Decision Making
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15	Monitoring and review

The aim of this Planning Protocol is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well-founded in any way and **applies to members of the Strategic Planning Board and Northern and Southern Planning Committees and visiting Councillors to any of the three Planning Committees when they are involved in the planning process.**

The Council was required under section 27 of the Localism Act 2011 to adopt a new code of conduct from July 2012 based on the core principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty, respect for others and leadership. The new code of conduct is entitled 'Cheshire East Council Code of Conduct for Members – 2012' and this Planning Protocol (and the Public Speaking Protocol mentioned in it) has been reviewed and amended in light of it. It is referred to as the Code of Conduct for Members throughout this Planning Protocol.

The Code of Conduct for Members should be applied throughout the decision making process and this Planning Protocol seeks to explain and supplement the Code of Conduct for Members in relation to planning control. If you do not follow this Planning Protocol you may put the Council and yourself at risk of proceedings on the legality or maladministration of the related decision. Furthermore section 34 of the Localism Act 2011 introduced new criminal offences of failing to declare or register certain interests and debating or voting whilst having such an interest.

The Code of Conduct for Members requires Disclosable Pecuniary Interests (which are specified and defined in it) to be notified to the Monitoring Officer. Non Pecuniary Interests may be required to be notified but none have yet been specified.

If you have any doubts about the application of this Planning Protocol to your own circumstances you should seek advice early, from the Monitoring Officer, and preferably well before any planning meeting takes place.

In this Planning Protocol “planning meeting” covers all meetings of the Strategic Planning Board and the Northern and Southern Planning Committees.

SUMMARY

Important things to remember –

1. apply the rules in the Code of Conduct for Members first, and continue to comply with them throughout the decision making process, and disclose the existence and nature of any interest set out in the Code at the relevant planning meeting unless you have already registered it.
2. understand what Disclosable Pecuniary Interests as referred to in the Code of Conduct for Members are, and the implications of such interests arising. If you have a Disclosable Pecuniary Interest in a matter you must not speak or vote on it.
3. If you have a non-pecuniary private interest in a planning matter, declare it and leave the room, although you may exercise public speaking rights before you go.
4. don't make your mind up on how you will vote on a matter before the formal consideration of the matter at the planning meeting
5. be aware that if you do lobby or campaign on a particular issue it may mean you can't take part in the decision making process
6. if you are a cabinet member, don't take part in a planning meeting in a matter where you appear to be the advocate of a proposal
7. if you are approached for technical planning advice or receive any materials relating to an application (other than those circulated by an Officer), refer the person who approached you or the material to Officers
8. if you attend meetings individually with developers or lobby groups be careful not to put yourself in a position where you appear to favour a person or a group over another
9. if you do attend a meeting with a developer or lobby group make sure it is clear that you do not bind the authority to a particular course of action, or views, and that the meeting is noted in your diary

10. you can ask that Officers attend and/or organise meetings
11. avoid accepting gifts, benefits or hospitality from anyone involved in a planning proposal
12. it is not advisable to become a member of a group or organisation whose primary purpose is to promote or oppose specific planning proposals in your area
13. a site inspection is the opportunity to seek information and observe the site, not to start the debate into the merits of the application.
14. you can call-in an application to be determined by Committee that would otherwise be delegated to Officers, and can seek advice from Officers over the wording. Take care that the wording of your call-in does not give the impression of bias for or against an application
15. you can discuss applications with Officers but the Officer must be able to reach their own conclusion
16. make sure you are present at the planning meeting for the entire item, including the Officer's introduction and update, otherwise you cannot take part in the debate or vote on that item
17. do not allow members of the public to communicate with you during planning meetings
18. you must not exercise your public speaking rights on a matter at a planning meeting if you have a Disclosable Pecuniary Interest in that matter
19. make sure your decisions at a planning meeting take into account the development plan and other relevant material planning considerations
20. put your and your local community concerns forward at the planning meeting, and consider whether planning gain requirements under s106 could help make acceptable development that would otherwise be unacceptable in planning terms
21. include the content of s106 agreements in the debate at a planning meeting
22. if you are proposing or seconding a decision that is contrary to Officer recommendation, you need to identify the planning reasons for doing so, if necessary with the assistance of the Officers at the planning meeting
23. you must attend mandatory training and should try to attend all training sessions arranged by the Council

This summary provides a list of the main points to remember while the body of the Protocol provides more detailed information, explanation and assistance.

1 DEVELOPMENT PROPOSALS AND INTERESTS UNDER THE CODE OF CONDUCT FOR MEMBERS

1.1 DISCLOSABLE PECUNIARY INTERESTS

It is your responsibility to register Disclosable Pecuniary Interests and where such an interest has not been registered to declare its existence at the relevant planning meeting, and any informal meetings or discussions with Officers and other Councillors. Preferably, disclose any Disclosable Pecuniary Interest that you have not already registered at the beginning of the planning (or other) meeting and not just at the commencement of discussion on that particular matter. The requirements for you to declare any Disclosable Pecuniary Interest that you have not already registered apply whenever you are in attendance at a planning (or other) meeting, regardless of whether you are a member of the Committee.

1.2 Where you have a Disclosable Pecuniary Interest:

- You must register it in the register of interests held by the Monitoring Officer
- If a matter related to it is on the agenda of a planning meeting, you must not participate in, or give the appearance of trying to participate in, the making of any decision on the matter by the planning authority, including the processing of the application. You must withdraw from the planning meeting room when the matter is announced and you must not exercise public speaking rights in respect of it.
- You shouldn't try to represent local, Ward or Area views; get another Member to do so instead.
- Be careful not to seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a Councillor. This would include, where you have a Disclosable Pecuniary Interest in a proposal, using your position to discuss that proposal with Officers or Councillors when other members of the public would not be able to do the same.
- Whilst you are not prevented from seeking to explain and justify a proposal in which you have a Disclosable Pecuniary Interest to an appropriate Officer, in person or in writing, be aware that the Code of Conduct for Members places greater limitations on you than would apply to a normal member of the public.

1.3 You do need to notify the Monitoring Officer and Development Management and Building Control Manager ("DMBCM") in writing if you are submitting your own application, or if you are employed as an agent and:-

- The notification to the Monitoring Officer and the DMBCM should be made no later than submission of the application;
- the proposal will always be reported to a planning meeting and not dealt with by Officers under the scheme of delegation; and
- it is advisable that you employ an agent to act on your behalf on the proposal in dealing with Officers and any public speaking at the planning meeting (where appropriate) to avoid public criticism

- you can make written representations to Officers about the proposal but may not address the planning meeting pursuant to the Public Speaking Protocol.

1.4 NON PECUNIARY INTERESTS

The Code of Conduct for Members has not specified any Disclosable Non Pecuniary Interests. However, the general obligation of honesty requires you to declare any non-pecuniary private interests relating to your public duties and to resolve any conflicts arising, in a way which protects the public interest. In practice this will mean declaring a non-pecuniary interest at the Planning Meeting and leaving the room for the duration of the item, although you may exercise public speaking rights before you go. So, if you attend a planning meeting at which a proposal is to be considered and you have some close association or connection with the site or applicant or objector by reason of, for example, a friendship or membership of a body or organisation then you should not take part in the debate or vote and should leave the planning meeting room prior to consideration of the proposal. In the interest of openness you should declare the nature of your interest.

If you have an association or connection with the site, applicant, consultee or objector which is not close enough to affect your judgment but which it would be advisable to declare in the interests of openness, do this but then stay to take part in the debate and vote. This is likely to happen where you are a member of a consultee body which has expressed an opinion regarding an application.

2 PRE-DETERMINATION (FETTERING DISCRETION) IN THE PLANNING PROCESS

- 2.1 Councillors making decisions in planning meetings should exercise an independent mind and decide proposals in accordance with the relevant planning considerations, so must not favour any person, company, group or locality or commit themselves to a particular point of view on a planning application prior to its full consideration at the Council's planning meetings. Not to do so puts the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination.
- 2.2 S25 Localism Act 2011 provides that previous acts shall not be taken by themselves as proof of predetermination. However, predetermination is still unlawful: the intention of this provision is just to make it easier for members to form legitimate predispositions and to discuss planning matters in the community before they make up their minds and come to a final decision at the Planning Meeting. Prior involvement with an application could still justify a challenge on grounds other than predetermination, for example on grounds of bias or of taking an immaterial consideration into account and should be approached with caution. In the rest of this Protocol references to bias include these other grounds of challenge. However, paragraph 2.11 should be taken into account.

- 2.3 In order to avoid allegations of bias and therefore jeopardising your ability to participate in planning decision-making, wait until the formal planning meeting to hear the Officers' presentation, any public speakers and arguments on both sides before expressing your view on an application.
- 2.4 Take care in the wording of your planning reasons on a call-in that you do not suggest that you have already formed a view on the application, if you have not done so, and that you are biased for or against it. Seek advice on this from Officers if necessary prior to completion of your form. Wording such as "I consider that this application may raise issues of ..." will help avoid claims of pre-determination if you have not done so.
- 2.5 If the Council is the landowner, developer or applicant and you have acted as, or could be viewed as being, a chief advocate for the proposal then you may appear biased in its favour. This is more than a matter of dual membership: it arises where significant personal involvement in preparing or advocating the proposal means that you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.
- 2.6 You are always free to listen to a person's point of view about a planning proposal, give basic procedural advice and can agree to forward any comments, but beyond this you should refer the person to the appropriate planning Officer.
- 2.7 If there are other ward Councillors available that do not sit as a member of the same planning meeting then they will not be subject to the same restrictions regarding pre-determination and can therefore be an alternative contact for members of the public or lobby groups.
- 2.8 Political group meetings prior to the planning meeting should not determine how you or other Councillors should vote. There is no objection to a political group having a predisposition, short of predetermination, for a particular outcome or for you to begin to form a view as more information and opinions become available but you should not make up your mind until you have read the planning Officer's report and update and heard any further representations and the debate at the planning meeting.
- 2.9 You should not speak and vote on a proposal as a member of the planning meeting where you have pre-determined an application. You are not legally obliged to withdraw from the room but in most circumstances doing so will counter any suggestion that you influenced the remaining members by your continued presence. If in any doubt you should seek advice from the Monitoring Officer. If you do not withdraw, as a minimum you must withdraw to the public area of the meeting room for the whole of the consideration of the matter, whether or not you are also exercising your right to speak.
- 2.10 If you have pre-determined an application you should explain that you have already made up your mind on an application so that this can be recorded in

the minutes. You may then exercise separate speaking rights, where you do wish to speak:

- advise the democratic services Officer or Chairman that you wish to speak in this capacity before the planning meeting;
- remove yourself from the member seating area to the public gallery for all of that item and consider whether you need to leave the room; and
- ensure that your actions are recorded in the minutes.

- 2.11 If you foresee that prior involvement in a planning matter could give you an appearance of bias (to a fair-minded and informed observer), make it plain beforehand and again at the Planning Meeting that you will retain and have retained an open mind throughout and are going to take the final decision on planning merit. If the appearance of bias is so strong, in the circumstances, that an assurance will not be sufficient to rebut it, then you should declare an appearance of bias or predetermination and, unless you want to exercise public speaking rights, you should take no part in the item and, ideally, leave the room.

3 MEMBERSHIP OF PARISH COUNCILS AND OUTSIDE BODIES

- 3.2 The Code of Conduct for Members that you are bound by because you are a member of Cheshire East Council may be the same as or different from the one you are bound by because you are also a member of a town or parish council. Nonetheless, all Member Codes are based on the same principles including selflessness, integrity, objectivity, accountability, openness, honesty, respect for others and leadership. If you are bound by different Codes, you need to be aware of this, and if necessary you may want to seek advice on any issues you are not clear about.
- 3.3 You need to exercise discretion in deciding whether or not to participate where you have been significantly involved in the preparation, submission or advancement of a planning proposal on behalf of:
- (a) another local or public authority of which you are a member; or
 - (b) a body to which you have been appointed or nominated by the Council as its representative; or
 - (c) you are a trustee or company director of the body submitting the proposal and were appointed by the Council

In such cases, whilst no Disclosable Pecuniary Interest arises, an issue of lack of impartiality arises, and you should withdraw from the planning meeting.

- 3.3 You can take part in the debate on a proposal when acting as part of a consultee body for a planning application (where you are a member of the Parish Council, for example), provided:
- the proposal does not relate to any Disclosable Pecuniary Interest you may have
 - you make it clear to the consultee body at the time they consider the matter that:
 - (a) your views are expressed on the limited information before you only;

- (b) you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Planning meetings and you hear all of the relevant information; and
- (c) you will not in any way commit yourself as to how you or others may vote when the proposal comes before the planning meeting.

It is also advisable in the interests of openness to mention your membership or role when the planning meeting ultimately comes to consider the proposal.

4 CABINET MEMBERS

- 4.1 There is no Constitutional or legal reason why a Cabinet member should not also be a member of the planning meeting and take part in the decision-making processes which are not part of the executive function.
- 4.2 You should not speak or vote as a member of any planning meeting on any matter which you have discussed at Cabinet unless you have declared in both meetings that you will approach the planning decision afresh, taking material planning considerations into account at the Planning Meeting. Again, if the assurance will not rebut appearances, declare an appearance of bias and, unless you want to exercise public speaking rights, take no part in the matter: ideally, leave the room.
- 4.3 Where you do wish to speak:
 - advise the democratic services Officer or Chairman that you wish to speak in this capacity before commencement of the item;
 - remove yourself from the member seating area to the public gallery for the duration of that item and consider leaving the room after you have spoken; and
 - ensure that your actions are recorded in the minutes

5 CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS

- 5.1 If you are approached for technical planning advice you should refer the person to Officers, and can always refer a person to Officers if you are uncomfortable giving procedural or other advice.
- 5.2 Where you feel that a formal meeting would be useful in clarifying issues, you should request the DMBCM to organise this. The Officer will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action and that views expressed are provisional, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the planning meeting.
- 5.3 If you are invited to attend a meeting with applicants, developers or groups of objectors you should exercise care particularly between the submission of an application and the planning meeting where it is to be determined. You can

attend meetings but, to avoid complaints of bias, you need to be careful not to express views or opinions on the application if you are intending to take part in the planning meeting.

- 5.4 In addition you should consider:
- the advice on lobbying;
 - whether or not it would be prudent in the circumstances to make notes when contacted;
 - notifying the DMBCM of any significant contact with the applicant and other interested parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file;
 - asking relevant questions for the purpose of clarifying your understanding of the proposals but do not express any strong view or state how you or other Councillors might vote.
- 5.5 Don't attend a planning presentation unless an Officer is present and/or it has been organised by Officers, as it is a form of lobbying and you need to be careful not to express any views on the application or give the impression you have made up your mind.
- 5.6 Remember that a presentation is not part of the formal process of debate and determination of any application, this will be carried out by the appropriate planning meeting of the planning authority, but you are able to ask relevant questions for the purposes of clarifying your understanding of the proposals.

6 PRE-APPLICATION DISCUSSIONS

- 6.1 It is recognised that pre-application discussions can be of great benefit to the planning process, however, this may create some risks for Councillors and for the integrity of the decision making process and therefore they should only take place within clear parameters and governance arrangements and always with Officers present and a written record of the discussions made and kept.
- 6.2 If you are involved by an Officer in pre-application discussions ensure that it is made clear that the discussions will not bind the Council to making a particular decision and that any views expressed are personal and provisional, as by their very nature not all relevant information will be available and no formal consultation will have taken place.
- 6.3 Officers should deal with any queries or give advice in pre-application discussions upon policies within the Development Plan and other material considerations that may be relevant to a particular proposal or be drawn into negotiations. This ensures a consistent and co-ordinated approach from the Council.
- 6.4 Where there is a legitimate reason justifying non-disclosure, respect a request for confidentiality. Seek advice from the Officers present if you are unsure.

- 6.5 Make sure you provide information on matters of fact, local knowledge and geography to any pre-application meeting rather than dealing with the merits of any proposed application.
- 6.6 Make sure you do not use your position to improperly influence decisions in pre-application meetings.
- 6.7 You can ask an Officer for a briefing or update on the content of pre-application meetings if you are uncomfortable about attending those meetings yourself.

7 LOBBYING OF PLANNING COMMITTEE MEMBERS

- 7.1 While you can listen to those lobbying or attempting to lobby you, you should explain that it prejudices your impartiality and therefore your ability to participate in the planning meeting's decision-making to form an intention to vote one way or another or express such a firm point of view that you could appear biased.
- 7.2 As a member of the planning meeting your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- 7.3 You should not accept any gifts, benefits or hospitality from a person involved in or affected by a planning proposal. Where a degree of hospitality is entirely unavoidable, you must ensure it is of a minimum level, its acceptance is declared as soon as possible and remember the Code of Conduct for Members requires that you register any gift, benefit or hospitality which you have accepted where its value is over £100.
- 7.4 Remember you can copy or pass on lobbying correspondence you receive to the DMBCM, if relevant or raising new issues, or declare the receipt of lobbying information at the planning meeting.
- 7.5 If you receive any offer of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise, refer the offer to the DMBCM.
- 7.6 If you feel that you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts, benefits or hospitality), notify the Monitoring Officer who will in turn advise the appropriate Officers to follow the matter up.
- 7.7 Unless you have a Disclosable Pecuniary Interest, you will not have fettered your discretion or breached this Planning Protocol through:
 - listening to or receiving viewpoints from residents or other interested parties;

- making comments to residents, interested parties, other Councillors or appropriate Officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
- seeking information through appropriate channels; or
- being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

8 MEMBERSHIP OF LOBBY OR GENERAL INTEREST GROUPS

- 8.1 Avoid becoming a member of, lead or represent an organisation whose primary purpose is to lobby, to promote or oppose planning proposals or those within a limited geographical area, as if you do, you are likely to have fettered your discretion and have to withdraw from the planning meeting.
- 8.2 Depending on your degree of involvement with a group and its purpose, you can sometimes continue to participate but note that if it could realistically lead to allegations of bias, you should withdraw from the meeting.
- 8.3 If a matter relates directly to the lobby group of which you are a member rather than to the views it holds, or is submitted by the group you should ordinarily withdraw from considering the matter.
- 8.4 Where your lobby group has expressed a public view on a matter you need to consider whether a reasonable member of the public, knowing the relevant facts, would think that you appear biased. The factors you should consider are:
 - the nature of the matter to be discussed
 - the nature of your involvement with the lobby group
 - the publicly expressed views of the lobby group
 - what you have said or done in relation to the particular issue
- 8.5 If the local branch of a general interest group has been vociferous or active on a particular issue or you are closely associated with the management or decision making process of that organisation such as its Chairperson or a member of the planning meeting, it will become increasingly difficult to demonstrate your ability to judge the matter with an open mind and you may appear biased and therefore you should consider whether it is appropriate for you to take part in the decision making process.
- 8.6 Remember that if you publicly support a particular outcome on a proposal within your Ward or actively campaign for it, you will not be able to take part in the decision making process. It would be very difficult for you to demonstrate that you had the necessary degree of impartiality to properly weigh the arguments presented and the decision would be open to challenge, particularly where the campaign included factors or expressed viewpoints which were not material planning considerations. This would, however, not

prevent you from expressing the views of your constituents provided you are capable of determining any application in accordance with the law.

- 8.7 You are able to join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society, but it is sensible at a planning meeting to refer to your membership where that organisation has made representations on a particular proposal; you should also make it clear to that organisation and the planning meeting that you have reserved judgement and the independence to make up your own mind on each separate proposal.
- 8.8 Don't excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken. It is difficult to define "excessively" but you need to consider whether a member of the public, knowing the facts, would think that, through your representations, the lobbied member was no longer able to take a view on the matter in the public interest.
- 8.9 You should never decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Councillors should vote on a planning issue.

9 SITE INSPECTIONS

The Council has a separate protocol that deals with Site Inspections in more detail.

- 9.1 Site Inspections can play a legitimate part in the decision making exercise but must be limited to inspections by viewing and as a fact finding exercise. They are not to be used to determine a proposal prior to the meeting of the Planning meetings. It should be noted that this Section applies to both Councillors' requests for a Site Inspection and those the DMBCM may arrange without prior discussion where, in his professional opinion, there is a real benefit from viewing the site.
- 9.2 It is important to ensure that Councillors taking planning decisions are in possession of all the facts, including matters that may have been pointed out or come to light during a site visit. Attendance of Councillors at site visits will not only demonstrate that Councillors are fully informed but will also ensure that high quality consistent and sound decisions are made, and that the risks of legal challenge are minimised. The expectation is that all planning meeting members will attend all formal site inspections and a record of attendance will be maintained and monitored.
- 9.3 You should try to attend site inspections organised by the Council.
- 9.4 You can request a site inspection if you feel it is strictly necessary because:

- particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
 - there are significant policy or precedent implications and specific site factors need to be carefully addressed; or
 - details of the proposed development cannot be ascertained from plans and any supporting information to Councillors' satisfaction at the planning meeting; or
 - where design considerations are of the highest importance particularly in relation to the surrounding locality.
- 9.5 The site inspection is an opportunity for you to seek information and to observe the site, and therefore you can ask the Officers at the site inspection questions or seek clarification from them on matters which are relevant to the site inspection. Officers may seek clarification from the applicant or an objector on your question, but you should not do this directly.
- 9.6 Be careful not to be drawn into arguments or detailed discussions on the individual merits of an application or give the impression that you have made up your mind while on a site inspection by expressing opinions or views to anyone. The decision can only be made at the planning meeting and you should make this clear to any applicant or other party who approaches you and suggest that they make written representations or use of the Public Speaking arrangements and direct them to, or inform, the Officer present.
- 9.7 Information that you gain from the site inspection should be reported back to the planning meetings, so that all Councillors have the same information.
- 9.8 You should not enter a site, which is subject to a proposal other than as part of an official site inspection, even in response to an invitation, as this may give the impression of bias. If you feel it is essential for you to visit the site other than through attending the official site inspection you should speak to the DMBCM about your intention to do so and give him the opportunity of an Officer accompanying you. If you do attend site on your own ensure you comply with these good practice rules on site inspections.

10 PUBLIC SPEAKING AT MEETINGS

The Council has a separate protocol that deals with the procedure for Public Speaking at meetings in more detail.

- 10.1 Members of the public and non-committee members should not communicate with you during the planning meeting (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- 10.2 Make sure that you comply with the Council's Protocol for Public Speaking at planning meetings if you are attending the planning meeting other than as a member.

- 10.3 Councillors are entitled to speak at a planning meeting in accordance with the Public Speaking Protocol either as an individual, representative or ward member.
- 10.4 Where you have a Disclosable Pecuniary Interest in an application then you must as soon as the item is announced leave the planning meeting room whilst the meeting considers the proposal.
- 10.5 Where you have a non-pecuniary interest in an application then you may exercise public speaking rights but leave the room immediately afterwards to counter any potential suggestion that the remaining members were influenced by your continued presence.
- 10.6 Planning Councillors who have pre-determined a matter may also exercise public speaking rights and should consider withdrawing from the meeting room having spoken on a matter to counter any potential suggestion that the remaining members were influenced by your continued presence.

11 OFFICERS

- 11.1 Councillors and Officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate whilst Officers are responsible to the Council as a whole. Their relationship is based upon mutual trust and understanding and this must never be abused or compromised. Instructions to Officers can only be given through a decision of the Council, the Cabinet, Board or Committee or under delegated powers and not by individual Councillors acting outside those powers.
- 11.2 You can submit views on current applications to the DMBCM, which can be incorporated into any committee report.
- 11.3 Officers are part of a management structure and you can discuss a proposal, outside of any arranged meeting, with those Officers who are authorised by the DMBCM to deal with the proposal at a Member level or the DMBCM. However, you should not seek to do anything that would compromise, or is likely to compromise, the impartiality of Officers who must be free to reach their own conclusion.
- 11.4 Officers who are involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning Officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the planning meeting or its Councillors.
- 11.5 Remember the Council's Member/Officer Relations Protocol.

12 DECISION MAKING

The Council has adopted a separate protocol that deals with the Call in of planning applications in more detail.

- 12.1 Ensure that the planning reasons in your request for a proposal to go before the planning meeting rather than be determined through Officer delegation are recorded and repeated correctly in the report to the planning meeting.
- 12.2 Comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless other material considerations indicate otherwise.
- 12.3 It is important that you reach your decision only after due consideration of all of the information reasonably required upon which to base a decision. You should come to meetings with an open mind and if you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information, and if necessary, defer or refuse the application.
- 12.4 It is vital that you have been present to hear the entire item, including the Officers' introduction to the matter before you vote or take part in the planning meeting's discussion on a proposal.
- 12.5 Check that the minutes of the meeting record correctly the reasons for the planning meeting's decision to grant, refuse or defer any proposal.
- 12.6 The planning meeting can delegate to the DMBCM in conjunction with the Chairman, if necessary, the specific wording of conditions that the planning meeting may wish to add or amend when they are considering an application for approval. An explanation of why the change or addition is required should be given to the planning meeting.
- 12.7 Be aware that if you are proposing, seconding or supporting a decision contrary to Officer recommendations or the development plan that you need to clearly identify and explain the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and will be recorded and Officers will be able to assist with formal wording. Be aware that you may have to assist in defending a resulting decision by giving evidence in the event of any challenge.
- 12.8 Where necessary, you can consider deferring the determination of sensitive applications that the planning meeting wish to approve against Officer recommendation to the next meeting of the planning meeting to allow Officers to formulate appropriate conditions and provide the planning meeting with any relevant further new information.
- 12.9 Where necessary, you can consider deferring the determination of an application to another meeting if there is a very strong objection from Officers on the validity of reasons for refusal against Officer recommendation, to allow

the proposed reasons to be further investigated and form the basis of an updated report to a future meeting.

- 12.10 You should ensure that you are aware of, and comply with the Protocols adopted by the Council.

13 TRAINING

- 13.1 You must attend the mandatory planning training prescribed by the Council before you participate in decision-making at planning meetings.
- 13.2 You should try to attend any other specialised training sessions provided, as these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and assist you in carrying out your role properly and effectively.

14 INVOLVEMENT IN SECTION 106 AGREEMENTS

- 14.1 The guidance in respect of planning obligations is similar to that of planning conditions in that they must be relevant to planning and directly related to the proposed development if they are to be taken into account in making a decision on a planning application. Local Planning Authorities should not grant planning permission for unacceptable development because of unrelated benefits offered by the applicant and should not be unduly influenced by such benefits offered.
- 14.2 Remember that the purpose of Section 106 Agreements is to help make acceptable, development which would otherwise be unacceptable in planning terms, by prescribing the nature of the development, or compensating for loss or damage created by the development, or to mitigate a development's impact. They must therefore be relevant to planning and relate fairly and reasonably to the development.
- 14.3 Requirements of Section 106 Agreements should be considered and discussed at pre-application stage. The Officers will provide advice on general requirements, but if you are aware of any additional potential requirements please refer these to the DMBCM as soon as you become aware of them.
- 14.4 The content of Section 106 Agreements needs to be discussed at planning meetings, whether you are a member of the planning meeting or a visiting Member who wishes to speak on the application.
- 14.5 If you feel that a meeting would be useful to clarify issues of content of potential Section 106 agreements, you should ask the DMBCM to arrange a meeting with relevant Officers. Participants can be made aware that the discussions will not bind the authority, and that the meeting can be properly recorded on the application file and the record of the meeting disclosed when the application is considered.

- 14.6 Do remember **that it is imperative that** a Ward Councillor's role continues after the completion of the Section 106 Agreement, by assisting Officers in ensuring that the Agreements are complied with. This includes noting when development is being undertaken and assisting Officers in ensuring triggers within Section 106 Agreements are complied with. Ward Councillors can contact Officers for any information required on completed Section 106 Agreements.

15 MONITORING AND REVIEW

- 15.1 The DMBCM will report annually to the Portfolio Holder regarding compliance with the arrangements set out in this Planning Protocol and will identify any proposals for amendment in light of issues that have arisen, although any amendments would be required to go through the Council's formal process.
- 15.2 In particular, the DMBCM shall monitor the following:-
- (a) the number of complaints made about breaches of the Planning Protocol and the outcome of those complaints;
 - (b) the number of appeals upheld;
 - (c) any external inspection reports in respect of relevant issues;
 - (d) the level of awareness of the Planning Protocol among Councillors and Officers; and
 - (e) the number of Ombudsman reports finding maladministration by Councillors in the conduct of planning issues.

PROTOCOL ON PUBLIC SPEAKING RIGHTS AT STRATEGIC PLANNING BOARD AND PLANNING COMMITTEES

- a) The Strategic Planning Board and Planning Committees have to make decisions on the merits of each individual application, upon the basis of what is in the Development Plan and other material considerations. All written representations made to the Council will be taken into account in the Officers' written report to Committee, but this procedure allows members of the public and Councillors who are not members of the Strategic Planning Board or Committees to attend a Strategic Planning Board or Planning Committee meeting and speak for or against an application prior to the Strategic Planning Board or Planning Committees making a decision about a planning application or other item on their public agenda.
- b) The Strategic Planning Board usually meets at Macclesfield at 10.30 am every 3 weeks.
- c) The Planning Committees usually meet at the Crewe Municipal Buildings, Earle Street, Crewe, CW1 2BJ (Southern) and at the Macclesfield Town Hall, Market Place, Macclesfield, SK10 1DX (Northern) every 3 weeks.

NB. As both venues and start times of meetings are subject to change, it is important that members of the public check details on the relevant agenda (available a week before the meeting) or contact Democratic Services for confirmation.

- d) The agenda for each Strategic Planning Board or Planning Committee meeting is available five clear working days before the meeting and is available via the Council's website. Interested groups and individuals should keep themselves informed about when a planning application will come to the Strategic Planning Board or Planning Committees. A list of meetings can be obtained from the Council Offices and officers will be able to advise on the progress of applications.
- e) This protocol has been amended in light of the Code of Conduct for Members – 2012

PROCEDURE:

1. WHO CAN SPEAK AND FOR HOW LONG

- 1.1 The following individuals/groups are eligible to speak
 - Objectors
 - Applicants or their agents
 - Supporters
 - The relevant Parish or Town Council
 - Ward Members if they are not on the Board/Committee provided that they do not have a Disclosable Pecuniary Interest

- Members who are not on the Board/Committee and are not Ward Members provided that they do not have a Disclosable Pecuniary Interest

[Note: lobby groups shall be included within the time allowed for objectors/supporters to speak.]

- 1.2 Each person or group identified shall be entitled to speak for a period of up to three minutes (subject to paragraph 2.6) except for representatives of the relevant local parish or town council who may speak for up to five minutes. If there is more than one person wishing to speak from a particular group e.g. objectors, people are encouraged to consult each other and agree how to share their time slot. The Chairman has a general discretion which may be exercised to extend time limits, but this will normally only be exercised in exceptional cases.
- 1.3 The site plan will be shown and may be referred to throughout the consideration of the application. In order to be fair to all parties, no other presentation aids will be permitted. Similarly, the circulation of information, photographs and/or plans at the meeting will not be allowed.

2 HOW TO SPEAK AT STRATEGIC PLANNING BOARD AND PLANNING COMMITTEES

- 2.1 It is necessary to inform, in writing (email, fax or letter), the Democratic Services Section of an intention to speak at a Strategic Planning Board or Planning Committee meeting no later than 12.00 noon the day before the day of the planning meeting. Any emails should be sent to Speakingatplanning@cheshireeast.gov.uk Members should note that they still need to register their intention to speak even if they have called in an application.
- 2.2 Speakers are advised to arrive for meetings approximately 10-15 minutes prior to the start of the meeting in order to register with the Democratic Services Officer.
- 2.3 A statement to the Strategic Planning Board or Planning Committee should only refer to planning issues, for example:
 - exterior design, size, appearance, layout, etc
 - residential amenity
 - highway safety
 - character of the area
 - trees and historic buildings
 - planning policy (Local Plan/Structure Plan)
 - Government guidance
- 2.4 The Strategic Planning Board or Planning Committee cannot take into account non-planning issues, for example:

- boundary disputes/property rights
 - personal comments about any individual
 - loss of property value or loss of view
 - matters covered in other laws
- 2.5 Speakers are reminded of the law relating to slander. If, at the meeting, they say something which is not true about another person, they could be at risk of legal action. Further, Race Relations and Human Rights legislation will not allow any discriminatory comments, for example race, religious beliefs or disability.
- 2.6 The order of speaking at the meetings of the Strategic Planning Board and Planning Committees is as follows -
- Announcement of the item by the Chairman
 - Introduction and description of the application by the Planning Officer, including any update of the Committee report and an oral report of any site visit and highlighting of the key issues
 - Ward Councillor(s) (5 mins) (NB. In single Member Wards, the Ward Member may at his or her discretion delegate the right to speak to an alternative Member.)
 - Members who are not on the Board/Committee and are also non-Ward Members (3 mins)
 - Parish/Town Council representations (5 mins)
 - Objectors' representations (3 mins)
 - Supporters' representations (3 mins)
 - Applicants' representations (3 mins)
 - Further comments by Planning Officer
 - Ward Councillor if a Member of the Board/Committee
 - Board/Committee Members debate and decision taken
- 2.7 At the Chairman's discretion, members of the Strategic Planning Board or Planning Committee may ask, through the Chairman, any of the speakers listed above to clarify an issue of fact after their statement is concluded. Visiting Members, including Ward Councillors, may be questioned for 5 minutes, or longer at the Chairman's discretion. The Chairman may also ask that questions of fact are answered by any speakers during the Members' discussion to clarify matters. Speakers will not be permitted to ask questions of the Strategic Planning Board or Planning Committee or other speakers or to interrupt the Members' discussion on an individual planning application. The Constitution (Paragraph 58 of the General Procedure Rules) provides Chairmen with powers to ensure good order during meetings.
- 2.8 In exceptional circumstances, the Chairman may (with the approval of the Board or Committee) extend the speaking period for some or all speakers or allow more speakers if appropriate. This power will be treated with caution for controversial or complex schemes and if additional time is granted to objectors, a similar allowance will be given to supporters and/or the applicant.

- 2.9 Members who have a Disclosable Pecuniary Interest in an application must not speak on it and must leave the planning meeting room as soon as the application is introduced. If a member has a non pecuniary private interest they should declare it and leave the planning meeting room but may exercise public speaking rights before doing so. If a member of the committee has pre determined an application they may exercise public speaking rights and then, ideally, leave the planning meeting room.

3 AFTER THE DECISION

- 3.1 Speakers are asked to respect the decision made by the Strategic Planning Board or Planning Committee during the course of the meeting. The Strategic Planning Board's or Planning Committee's decision is final, but the applicants do have the right to appeal to the Secretary of State if their application is refused or if conditions are attached which they do not like. Objectors do not have the right to appeal a decision to the Secretary of State but they can seek to have a decision quashed by an application to the High Court by way of judicial review.
- 3.2 If an application is deferred to a future meeting for consideration, speakers will be required to register to speak for that meeting in accordance with this protocol.
- 3.3 This scheme will be monitored and reviewed by the Strategic Planning Board annually.

LOCAL WARD MEMBER PROTOCOL

1. Scope

- 1.1 Local ward members as community champions have an important role to play in representing the Council in their wards, responding to the concerns of their constituents, in meetings with partners and serving on external bodies and organisations. It is essential for the proper running of the Council that members are fully informed about matters on which they may be required to make decisions or which affect their wards. **Quite simply, members should be “the first to know” of events and issues affecting their wards.**
- 1.2 The basic building blocks of democratic representation are at ward level. Therefore, the Council accepts that members need to be aware of significant developments within their wards if they are to be effective in their roles as spokespersons on behalf of their local communities.
- 1.3 The following protocol sets out a framework of rights or practices, which are to be applied to local ward members. The protocol cannot be comprehensive and its provisions must be interpreted flexibly and with regard to any special circumstances, which may apply in any particular case. They represent a base line from which any departure should be capable of justification. Except where impractical the Chief Executive and the Leader should approve any departure from this protocol.

2. Definitions

- 2.1 A “local matter” is an item where relevance is restricted to a particular ward. In this protocol “local ward member” shall mean the member(s) for a ward to which a matter relates exclusively or which relates solely to an elector of that ward and “local matter” shall be interpreted accordingly.
- 2.2 Where a single matter contains a series of discrete items some or all of which relate exclusively to the ward of a member(s) then each item shall be treated as a “local matter”.
- 2.3 Where a single matter applies to not more than three wards the Chief Executive or the Management Group Board shall give consideration to treating the matter as a “local matter” for each of the relevant members and shall apply the spirit of this protocol accordingly.

3. Duty on Chief Executive and Management Group Board

- 3.1 It is the duty of each chief officer to ensure that all relevant staff are aware of the requirement to keep local ward members informed and that the timing of such information allows members to contribute to those discussions.

Local ward members should also be kept informed about matters affecting their wards during the formative stages of policy development. It is important in an effective democratic process that they know early on if they are to deal with their constituents' concerns or to exert influence on their behalf.

4. Business Conducted in Committee s etc

- 4.1 The Chief Executive, Directors and Managers should normally ensure that local matters being reported through the committee process are identified and marked accordingly on the front page of the report. The Chief Executive should ensure that a copy of the agenda and papers are supplied by electronic means to the local ward member(s) at the same time as the Committee papers are despatched.
- 4.2 ***Subject to the Council's Code of Conduct for Members, the usual rules regarding bias and predetermination and any special rules regarding regulatory committees (including the protocols on public speaking at meetings of the Strategic Planning Board and Planning Committees), the current rules permit local ward members to attend and ask questions at meetings of Council and to speak at meetings of Cabinet, committees and sub-committees. Members must give 3 clear working days' notice of the intention to ask a question at Council and must obtain the permission of the Leader or Chairman to speak at Cabinet, committees or sub-committees. Where permitted to do so, visiting Members may speak for up to 5 minutes.***
- 4.3 If local ward members do not attend such a meeting for whatever reason, they should be advised by the convenor of the meeting (provided the meeting is convened by the Council or its officers) of any significant outcome.

5. Business Conducted Outside Committee

- 5.1 Senior Officers as well as the Leader and Committee Chairmen and Vice-Chairmen are expected to keep local ward members apprised of **significant** matters that are not the subject of a report to Council or its Committees, but which relate specifically to the local member's ward or which may have a material impact in the local area of which the ward is a part. Significant matters

include matters or items that are of concern to the general public and local ward members.

6. Consultation

- 6.1 Whenever the Council undertakes any form of consultation exercise, the local ward member(s) will be notified at the outset of the exercise.
- 6.2 Local ward members will be advised of all planning applications relating to their wards (and be able to view them within the Planning Department dealt with by the Council as the Planning Authority). Licensing applications are available for viewing on the website, which is routinely updated.

7. Expedited Procedures – Consultation

- 7.1 Where an officer *or an individual Portfolio Holder* makes a decision in accordance with the scheme of delegation on a local matter, a letter setting out the details of the matter and the course of action it is proposed to take, detailing the options and giving reasons for making the decision should normally be sent, by electronic means, to the local ward member(s) by the relevant chief officer.

8. Local Meetings

- 8.1 Where any public meeting to be held in a member's ward is arranged by the Council the local ward member(s) for the ward in which the public meeting takes place will be informed of the event and invited to attend by the Chief Executive or relevant Director e.g. a Planning Inquiry.
- 8.2 Local ward members will be invited to the opening of any Council buildings/projects or launches of services in their wards though if present the Mayor/Deputy Mayor, Leader/Deputy Leader, relevant Committee Chairman/Vice-Chairman shall take precedence unless otherwise agreed.
- 8.3 A copy of the Mayoral Engagement List shall be sent by electronic means to all members in order that they are kept informed of the Mayor/Deputy Mayor's attendance at any occasion in their ward.
- 8.4 Where a local liaison or local consultation group is established by the Council consideration should be given to whether the local ward member(s) should be invited to attend to observe if not appointed as a member of the group.

9. Publicity

- 9.1 Any publicity activity organised by officers in a member's ward whether of a local nature or borough wide nature will seek to involve the relevant local ward member(s) where possible.

10. Officer Meetings and Correspondence

- 10.1 The nature and extent of correspondence between the Council's Directorates on the one hand and the public or specific clients or recipients of services including their representatives on the other is such that it is neither always appropriate or practical for local ward members to be advised of all such matters.
- 10.2 Where any officer is invited to attend a meeting of a Parish Council they shall inform the ward members, by electronic means. Further, where senior officers are invited to attend a meeting with a public body in relation to a local matter, the local ward member(s) should normally be made aware, by electronic means, of the general circumstances.
- 10.3 Any information communicated to the local ward member(s) shall be without prejudice to the right of an officer to communicate with any relevant Committee Chairmen, Group Leader or other member(s) as appropriate in the circumstances.

11. Action Relating to Other Members' Wards

- 11.1 Where a member wishes to propose a motion or seek a debate or otherwise speak in a meeting of the Council or a Committee in relation to a local matter in another member's ward, they should seek wherever possible, as a matter of courtesy, to give prior warning to the local ward member(s).
- 11.2 All members who involve themselves in matters relating to the Council or its functions in wards other than their own should seek, as a matter of courtesy, to advise the local ward members of these actions and should do so in advance if circumstances permit. (This shall not apply to canvassing or other party political activity.) However, it must be accepted that Cabinet and Scrutiny Members will on occasion have a need to consider issues which involve individual wards and it may not always be possible to inform local ward members in advance.

12. Community Amenities

- 12.1 Under this protocol all Directorates must notify local ward members if they become aware of any proposals for the closure or opening of community amenities, including post offices, bank branches, health facilities etc.

13. Confidentiality

- 13.1 The local ward member(s) under this protocol must not make public nor make personal use of any information or material supplied to them where the supplier of the information has indicated that it is of a confidential nature. They must also comply with any relevant provisions of the Data Protection Act and the Freedom of Information Act.

14. Commitments

- 14.1 Local ward members are reminded that they do not have the right to commit the Council or its officers to any particular course of action and should ensure that they do not convey to the public any false impression of commitment or give any undertaking that they are not in a position to personally fulfil.

15. Freedom of Information Requests

- 15.1 Local ward members will be advised of any Freedom of Information requests that affect their wards.

16. Dissemination of the Protocol

- 16.1 The protocol will be disseminated throughout the Council to ensure that all officers communicate with and involve local ward members and therefore it is proposed to do this by the following means:

- Talking East - Council intranet
- Management Group Board's minutes
- Departmental Management Teams
- Talking East – Your Monthly Staff Newsletter
- Induction
- As part of the Communications Strategy

17. Review of this Protocol

- 17.1 The Local Government and Public Involvement in Health Act 2007 contains provisions regarding the role of local ward members, which may require amendment of this policy in due course. The Council's Audit and Governance Committee may issue revisions from time to time.

TAMWORTH BOROUGH COUNCIL



CONSTITUTION

13th Edition

As approved at the meeting of the Council on the 15 December 2015

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SCHEDULE 16 - LOCAL PROTOCOL FOR COUNCILLORS AND OFFICERS DEALING WITH PLANNING MATTERS

1 INTRODUCTION

1.1 This protocol has been prepared to guide members and officers in the discharge of the Borough Council's statutory planning functions. This protocol will also inform potential developers and the public generally of the high standards of ethical conduct adopted by the Council in the exercise of its planning powers.

1.2 For the avoidance of doubt, when an Executive Member attends and participates in the decision-making of the Planning Committee, s/he does so as a Member of the Committee and not as a Member of the Executive. Accordingly, s/he must, along with other Members of the Committee, exercise an independent mind on issues before the Committee.

1.3 The provisions of this protocol are designed to ensure that planning decisions are taken on proper planning grounds, are applied in a consistent and open manner and that Members and officers making such decisions are held accountable for those decisions. The protocol is also designed to assist Members and officers in dealing with approaches from property owners.

1.4 If you have any doubts about the application of this protocol, you should seek early advice, preferably well before any meeting takes place from the Head of Planning and Regeneration and/or the Solicitor to the Council & Monitoring Officer

1.5 Members should always appreciate that when the Council is dealing with planning matters (especially when determining a planning application at Planning Committee) it must act fairly because it is exercising the Council's discretion as local planning authority. As such, the Committee and each individual member of it should avoid the appearance (as well as the substance) of having pre determined an issue or having a fixed opinion about it, or being biased about the outcome.

1.6 Members should always appreciate that the appearance of what they do is just as important as the substance of it.

1.7 This advice applies, with necessary modification, to Officers as well as Members. In the case of delegated decisions there is a risk of accusations of impropriety because of the lack of any public meeting to discuss applications. If a Member would have to declare an interest and take no part in the processing of or decision on an application, then an Officer in the same position must take no part in it, either directly or in a management/ supervisory capacity.

1.8 This advice does not prevent contact between applicant and case officer, nor does it rule out the case officer tendering advice to an applicant or officer, but it does mean that it must be clear on the appropriate file that the ultimate decision on an application was made or verified by another, unconnected officer. In rare circumstances it may be appropriate for the delegation to be declined and an otherwise delegated item put before Committee.

1.9 Make sure that you always comply with the statutory requirements in respect of Disclosable Pecuniary Interests, and apply the rules in the Members' Code of Conduct. Then apply the rules in this protocol.

2. CONTEXT

2.1 Planning is not an exact science. Rather it relies on informed judgement within a firm policy context. It is often highly contentious because its decisions affect the daily lives of everyone and the private lives of individuals, landowners and developers. This is heightened by the openness of the system (it actively invites public opinion before taking decisions). This is reinforced by the legal status of development plans and decision notices. It is essential, therefore, that the planning process is characterised by open and transparent decision-making.

2.2 One of the key purposes of the planning system is to ensure development takes place through a framework whereby the public interest is well represented at every point from the preparation of Development Plans and policies, the determination of planning applications and in undertaking enforcement action. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. It is important, therefore, that planning authorities should make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable planning reasons. The process should leave no grounds for suggesting that a decision has been partial, biased or not well-founded in any way.

2.3 This protocol applies to both Councillors and planning officers who become involved in operating the planning system – it is not therefore restricted to professional town planners and Planning Committee members. The successful operation of the planning system relies on mutual trust and understanding of each other's role. It also relies on both Members and Officers ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so.

2.4 The Human Rights Act provides additional safeguards for citizens, and encourages the application of best practice. Article 6 is concerned with guaranteeing a right to procedural fairness, transparency and accountability in the determination of civil rights and obligations.

3. GENERAL PLANNING CONSIDERATIONS

3.1 The Council's Cabinet is responsible for preparing and recommending to Council the adoption of the Statutory Development Plan, Development Briefs and other forms of Supplementary Planning Guidance. Members of the Planning Committee, when determining planning applications, must have regard to the Council's policies contained in the Development Plan and Supplementary Planning Guidance adopted by the Borough Council together with Government Guidance contained in the National Planning Policy Framework and other material considerations. Where this is relevant, applications must be determined in accordance with the Plan unless material considerations indicate otherwise.

3.2 Tamworth Borough Council's Code of Conduct for Members must be complied with throughout the decision making process, which includes mandatory requirements with regard to member interests.

3.3 The responsibility for declaring an interest rests with individual Members and Officers of the Council. This protocol outlines further rules applicable to the planning process in Tamworth.

3.4 Councillors and Officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate, whilst Officers are responsible to the Council as a whole. This applies equally to traditional forms of political management based on committees and to models based on forms of executives or elected mayors. Officers advise Councillors and the Council and carry out the Council's work. They are employed by the Council, not by individual Councillors, and it follows that instructions may only be given to Officers through a decision of the Council, the executive or a committee. A successful relationship between Councillors and officers can only be based upon mutual trust, respect, courtesy and understanding of each others positions. This relationship, and the trust which underpins it, should never be abused or compromised.

3.5 Both Councillors and Officers are guided by codes of conduct. Tamworth's Code of Conduct for Members, provides standards and guidance for Councillors. Employees are subject to the Employees' Code of Conduct. In addition to these codes, a Council's standing orders set down rules which govern the conduct of Council business.

3.6 Tamworth's Code of Conduct for Members sets out the requirements on Councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to Council business, including the need to register and declare interests, but also appropriate relationships with other Members, staff and the public, which will impact on the way in which Councillors participate in the planning process. Of particular relevance to Councillors serving on the Planning Committee or Executive, or who become involved in making a planning decision is the requirement that a Member should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

3.7 The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved.

3.8 From time to time applicants may submit confidential information for example a financial appraisal in support of an application. Such appraisals will be taken into account in relation to determination of the application but such information due to its confidential nature should not be disclosed to third parties and members of the public.

4 LOBBYING AND ATTENDANCE AT PUBLIC MEETINGS

4.1 As a Member of the local planning authority (LPA), and particularly if you are a Member of TBC, you are likely to be approached by members of the public in connection with planning policies or individual planning applications which have been or are about to be made to the Council. The approach may come from an applicant (or his/her agents), or from an objector, or indeed from an amenity society or similar grouping. Ideally, such

approaches should be discouraged, or redirected to planning officers, but realistically they cannot be avoided. You should deal with those approaches having careful regard to the advice in this guidance note.

4.2 Especially with the smaller applications, applicants will frequently wish to seek advice on making or promoting their proposals. If an applicant, or potential applicant, approaches you asking for such advice that person should immediately be directed to the appropriate planning officer in the Directorate of Communities, Planning and Partnerships. Officers will happily assist applicants who are unsure of what to do.

4.3 Approaches may be by way of letter, e-mail or personally either over the telephone or perhaps at a surgery. If the approach is by letter, or e-mail, the advice is that the letter should be copied to or handed to a planning officer. The views expressed can then be taken into account by the case officer. As a courtesy to the writer, the letter, or e-mail, can be simply acknowledged, together with confirmation that it has been passed to the Planning Officer and will be taken into account.

4.4 Personal approaches to Members are more difficult. You may feel that you are "put on the spot" by the person concerned and in such cases the response must be carefully considered.

4.5 In such cases, you may listen to the views being expressed, you may also ask questions by way of clarification. In some cases it might even be appropriate to identify aspects of the proposal which might cause you concern or to suggest possible contrary views to the person making the approach to assess their reaction or simply to make sure that the views they are expressing are in the full knowledge of all the arguments.

4.6 However, you should NEVER

4.6.1 state unequivocally that you are opposed to or in favour of a particular outcome to an application;

4.6.2 promise to or actually campaign for or lobby other Members for a particular result of an application;

4.6.3 promise to take a particular stand or vote in a particular way when an application is presented for decision.

4.7 You may express an understanding of, and sympathy with or opposition to particular aspects of the proposal, but you must (rarely) sympathy for a particular view. You may even express a preliminary view on an application, but you must make it clear that:

4.7.1 you are expressing a view before the meeting and you will only make a final decision at the meeting itself

4.7.2 that you are reaching your current view on the basis of the facts you know at that time and that it does not preclude you from reaching a different decision in the future if further or new circumstances come to light; and

4.7.3 when at the meeting making the decision you state that you are not bound by previous decisions or comments that you have made but that you are considering the application on the information before the meeting and with an open mind.

4.8 It would be most unwise to advise any applicant of the likely outcome of an application, even where you are fully aware that the planning policies for the particular area would be very likely to support or conflict with the proposal. You should also always tell a constituent that you can give no promises on how you will speak or vote at a meeting and that you will listen to all the arguments before coming to your own personal decision.

4.9 It should go without saying that it is highly inappropriate to negotiate in respect of a planning application directly with an applicant or with the planning officer on behalf of an applicant or objector. Although it may be tempting to suggest to an applicant that their scheme might be improved by their addressing certain factors, such views should only be expressed via the case officer. That way, any promises made by the applicant can be properly noted and incorporated into planning conditions or any Section 106 agreement.

4.10 If you are unwittingly drawn into doing this, as unfortunate as it may be, you should consider whether you are compromised. If you are now effectively committed to vote for or against the application, can no longer consider the application purely on its merits, or are likely to be perceived as committed to acting as an advocate for either the applicant or the objectors, you should take no further part in its processing and absent yourself from the discussion at the meeting when it comes up for decision.

4.11 You must not put pressure on officers to put forward a particular recommendation. You may ask questions and submit written views, and provide the officers with any local knowledge which you consider to be material. However, outside a meeting, you should only discuss a matter with that officer who is authorised by the Director Communities, Planning & Partnerships or Head of Service to discuss such issues with Members. Officers must act in accordance with the Council's Code of Conduct for Officers and their own professional codes of conduct and their recommendations will be presented on the basis of professional expertise and independence. You must accept that, on occasions, this may be at odds with the views and opinions of individual Members and at times, the decision of the Planning Committee.

4.12 You may certainly help members of the public with procedural advice. Many members of the public come into contact with planning perhaps only once or twice in their lifetimes and so may not be familiar with such things as:

4.12.1 how to submit a planning application;

4.12.2 how to inspect a planning application and to make representations in support of or object to an application;

4.12.3 how to find out the relevant planning policies;

4.12.4 which planning applications are determined by officers under delegated powers and which come before the Planning Committee;

4.12.5 whether they can attend the meeting of the Planning Committee and make verbal representations.

You can happily help constituents with this sort of information, but it is a matter of judgement where simple help stops and 'professional advice' begins.

4.13 If you feel that despite having taken all the necessary precautions, you could reasonably be perceived as having pre-determined an application or to have been unduly influenced by your involvement, then you should explain at the meeting that you do not intend to speak and vote because of this and leave the meeting room. This can then be recorded in the minutes.

4.14 Whilst Members involved in making decisions on planning applications may begin to form a view as more information and opinions become available, a decision can only be taken by the Planning Committee after all available information is to hand and has been duly considered. In this regard, any political group meetings prior to the Committee meeting should not be used to determine how Councillors should vote. Decisions can only be taken after full consideration of the Director's report and any public speaking at the Planning Committee.

4.15 The Chair and vice Chair of the Planning Committee should attend a briefing with Officers prior to a Committee, to help give an effective lead in the Committee.

5 SITE VISITS

5.1 Except in accordance with the following provisions of this part of the protocol, you should avoid entering any premises which are the subject of a planning application.

5.2 Whilst the Council has right to enter property on notice to inspect, individual Councillors have no such rights of entry. You should not enter any neighbouring premises unless there is general public access to those premises or if, for instance, they are crossed by a public footpath. Even where the public normally have access to the premises, as in the case of a shop, that invitation is for the purpose of shopping and not for inspection. It may be appropriate for you to view the site from public vantage points, but you should be extremely wary of any situation where you need to gain permission to view a site.

5.3 Where you feel that you need to inspect the site before you can make up your mind on the application, the same is probably true for all members of the Planning Committee. If you genuinely feel that you cannot make up your mind about an application until you have seen the site then the correct course is to attend the appropriate deciding meeting and request or move a site visit stating the reasons. On an official site visit you will attend the site with other Members, with senior Planning Officers in attendance and therefore with professional advice to hand to assist you in interpreting the proposal and what you see, and ensure that any information gained in the site visit is reported back to all members of the Planning Committee.

5.4 Members and Officers are obligated not to waste Council resources and, as such, a site visit is only likely to be necessary if:

5.4.1 the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers (although if that is the case, additional illustrative material should have been requested in advance); or

5.4.2 there is good reason why the comments of the applicant and objectors cannot be expressed adequately in writing, or the proposal is particularly contentious.

5.5 The site visit shall take place in accordance with strict guidelines as follows:

5.5.1 Under the Chair's guidance the role of the Planning Officer attending the site visit will be to brief Members on the planning applications(s) the subject of the visit and explain the reasons why the application was deferred for a visit.

5.5.2 The Chair (or Member chairing the visit) shall explain the purpose of the visit and how it will be conducted to all persons present at the site visit.

5.5.3 Members of the Planning Committee should inspect the site as a group. They must ensure that they see or inspect all relevant matters so they can fully assess the planning merits of the proposal.

5.5.4 Members may ask questions, through the Chair, of the applicant or any third parties on the site.

5.5.5 Members should not enter into discussions of the merits of the proposal with the applicant, third parties or other Councillors during the site visit.

5.5.6 Members shall be seen to be perfectly scrupulous and fair to both the applicant and third parties at all site visits.

5.5.7 Members should not leave the site visit until the Chair has indicated the meeting has ended.

5.5.8 Officers shall ensure, where practical, that applicants, Members and interested parties are invited to attend the visit and that they are able to view all key parts within or adjoining the site.

5.6 The purpose of a site visit conducted by Members and officers is to gain information relating to the land or buildings which are the subject of the planning application and which would not be apparent from the planning application to be considered by the Planning Committee. A site visit may also assist Members in matters relating to the context of the application in relation to the characteristics of the surrounding area. Discussions on site visits shall be confined to the application as currently submitted. A Member of Planning Committee who has a personal and prejudicial interest in a planning application, or who has acted in a way that amounts to predetermination, can not attend the site visit in his or her capacity as a Member of Planning Committee. However, the Member concerned would be entitled to attend the site visit in his or her personal capacity as a member of the public.

5.7 Results of the site visit will be reported to the next available meeting of the Planning Committee and should any new material considerations have been identified the application will be deferred for a further report.

5.8 Once the results of a site visit have been reported back to Planning Committee, Members of the Planning Committee who were not present at the site visit can ask questions, offer opinions, take part in discussions and vote in relation to that planning application.

5.9 If you do attend an official site visit, or otherwise visit a site, this should not be considered to be an opportunity to discuss the matter with either the applicant or any objectors. You may suggest questions to be put to the applicant or objectors, but any discussion of the merits of the application should be reserved to the Planning Committee meeting.

5.10 If you are invited onto land, either by a constituent or applicant, you should have careful regard to the advice in part 2 and (if appropriate) part 9. Remember that such activities are very much open to misinterpretation by the public at large. If you have been invited onto a site it would be as well to announce that when speaking on the application at the Planning Committee meeting.

5.11 Ward Councillors and MPs may attend and participate in site visits putting forward their point of view. However, the determination of planning applications rests solely with the Planning Committee and no indication should be given by Members of the Committee of the likely decision during the course of the site visit.

5.12 Prospective election candidates who are not already Members of the Council are welcome to attend a site visit on the same basis as members of the public.

6 MEETINGS OF THE PLANNING COMMITTEE

6.1 A clear distinction has to be drawn between a Member and an Officer attending a Public Meeting and their roles when they attend meetings of the Planning Committee.

6.2 No material revision to any planning application which might lead to a change in the recommendation of the Director shall be considered at Planning Committee unless it has been submitted at least 14 clear days before the relevant Planning Committee meeting, and has been the subject of a written report prepared by the Director of Communities Planning and Partnerships.

6.3 Chairship – The chair should ensure:

6.3.1 Members' comments at Committee only relate to the planning merits of the application before them;

6.3.2 Reference at Committee to non-planning issues by the public/Members are discouraged;

6.3.3 The cross-questioning of speakers should only take place if there is need for clarification of what a speaker has already outlined; and

6.3.4 Late evidence from public speakers – Members and the public should be made aware that the late submission of evidence will not be permitted at Committee as late submission can lead to allegations of unfairness.

6.4 Voting –

6.4.1 A decision is made by simple majority of those members voting and present in the meeting at the time the motion is put.

6.4.2 if there are equal numbers of votes for and against the Chair has a second or casting vote. There is no restriction on how the Chair of the meeting chooses to exercise this vote

6.5 Training

6.5.1 Members dealing with planning issues will be required to attend training sessions each year to receive guidance in relation to planning regulations and procedures and on declarations of personal or prejudicial interests. This training should include a balance of the following:-

- ☐ Organised visits to review permissions granted, with evaluation and lessons learned presented as a paper;
- ☐ Short (half day) sessions on special topics of interest or where overturns have indicated problems with planning policy;
- ☐ Special topic groups to consider difficult and challenging issues in depth;
- ☐ Formal training by internal and external speakers;
- ☐ Visits to other authorities who have received good inspection / audit feedback;
- ☐ Quick presentations by officers on hot topics, e.g. new legislation, white papers and their impact, followed by a brief question and answer session;
- ☐ Attendance at inquiries where officers have identified that there is something specific to learn which will benefit members.

6.5.2 The report of the Audit Commission 'Building in Quality' recommend that Councillors should revisit a sample of implemented planning permissions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision making, thereby strengthening public confidence in the planning system, and can help with reviews of planning policies. Such reviews are best undertaken at least annually. They should include examples from a broad range of categories such as major and minor development; permitted departures; upheld appeals; listed building works and enforcement cases. Briefing notes should be prepared on each case. The Planning Committee should formally consider the review and decide whether it gives rise to the need to reconsider any policies or practices. The Director Communities, Planning and Partnerships will take responsibility for organising the training and the reviews.

7 OUTSIDE BODIES

7.1 Many Members are also members of outside bodies. In some cases you may have been nominated for membership by the Council. In other cases you may simply have joined because of an empathy with that body's view or because of a feeling of civic duty to

assist. In some cases you may have been invited to join by the body itself. The advice in this paragraph applies equally to Parish and County Council Members.

7.2 It may well be that the body on which you sit is called on to respond to a consultation on a planning application. There is no absolute bar on your attending that meeting, but if you do you may find it difficult to avoid the problems set out above. You might find it appropriate to avoid taking part in the discussion if you know you are likely to be part of the meeting which makes the ultimate decision on an application. If you do take part in the meeting of the consultative body, it would be advisable for you to declare at the start that you are going to listen to the views expressed by the body but that you cannot be bound by any decision of that body, neither are you bound to take the same line at the Borough Council meeting deciding the application.

7.3 If you are an employee of, hold paid office in, or have a significant shareholding in a body which has submitted a planning application, you will have a Disclosable Pecuniary Interest in the application and must not participate in the discussion or vote on the application unless you have obtained a dispensation from the Monitoring Officer. Unpaid directorships or membership of the Management Committee of an organisation is likely to amount to bias and so preclude your participation on this matter at Planning Committee. Ordinary membership of that organisation may not amount to bias, but you should still consider carefully whether an applicant or objectors might perceive you as being biased as a result of your membership, in which case you should not participate in this matter.

7.4 As a County Councillor, it may be appropriate for you to take part in a meeting even though that meeting is deciding an application made by the County or is considering a response to an application which is made to the County Council. However, if you took the decision within the County Council to submit the planning application, or if you are likely to be part of the County Council meeting that decides the application (as appropriate) you might consider it appropriate not to take part in the Borough Council meeting that considers the matter.

7.5 Similarly, if you took part in the decision within the Borough Council to submit the planning application, it would not be appropriate for you to take part in the planning meeting which considers planning consent for that scheme. A Member who feels obliged to support a Council scheme at the Borough Council because he or she supported the scheme when it was initiated at the meeting prompting it might have difficulty demonstrating that all the proper planning considerations were taken into account when considering the grant of consent.

8 POLITICAL PARTIES

8.1 As a general rule, party politics should have no place in the consideration of individual planning applications. The views of your party may be a material consideration, but should never dictate the outcome or replace your personal judgement on an application.

9 DISCLOSABLE PECUNIARY INTERESTS

9.1 The Disclosable Pecuniary Interests which members are required to register are now defined by The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, the list of definitions is appended to this Guidance Note.

9.2 Where you have a Disclosable Pecuniary interest in an item of business, you should disclose that interest to the meeting before or at the start of the consideration on that matter, or as soon as it is apparent and you should not participate in the discussion of, or vote on, the item of business. Failure to comply with these requirements may constitute a criminal offence. The Council's Standing Orders also require you to withdraw from the room in which the meeting is being held for the duration of consideration of the item of business.

9.3 Where you have not previously registered a Disclosable Pecuniary interest in a matter, you are now required to do so within 28 days of becoming aware of the interest, or of the date when the agenda for the meeting was sent out to members, whichever is the earlier.

10 OTHER MEMBERS' INTERESTS

10.1 The Council has adopted a Members' Code of Conduct which requires members to register and disclose 'Non-Disclosable Pecuniary Interests and Non-Pecuniary Interests' as defined in that Code (the full requirements of the Members' Code of Conduct are set out in Part 5 of the Council's Constitution). For ease of reference, these interests are referred to as "Other Interests" in this Guidance Note.

10.2 A member will have an "other interest" in an item of business where:

10.2.1 A decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of the member, or of a member of that member's family or a person with whom they have a close association to a greater extent than it would have on the majority if the Council Tax payers, ratepayers or inhabitants of the ward or electoral area for which the member has been elected or otherwise of the authority's administrative area; or

10.2.2 it relates to or is likely to affect any of the interests listed in the Appendix to the Code (appended to this Guidance Note), but in respect of a member of family or a person with whom the member has a close association, and that interest is not a Disclosable Pecuniary Interest.

10.3 Where you attend a meeting at which you have an "other interest" in an item of business, you must make a verbal declaration of the existence and nature of that interest at or before the consideration of the item of business or as soon as the interest becomes apparent.

10.4 The Ombudsman has previously advised that the Council is at risk of a finding of maladministration if a Member who has an interest in an application exercises any of the powers or privileges accorded to Members in respect of that application. There may be a general perception that calling-in a delegated item to Planning Committee ensures that the public will conclude that everything is 'above board'. The Ombudsman does not share that view, so a member who has a Disclosable Pecuniary Interest or an "other interest" in a planning application should not exercise powers of call-in in respect of that application.

10.5 In some cases you may not become aware of your potential interest until after you have submitted comments as local Member or taken some other action. If this happens,

you should contact the case officer urgently as soon as you realise the situation so that Officers can take the appropriate action. You should also register this interest with the Monitoring Officer.

10.6 If you do find yourself having to disassociate yourself from an application, you may well feel that your constituents have been disenfranchised. This does not entitle you to set aside this advice. In these cases it is the Ombudsman's view that:

10.6.1 You should invite a Member from the same ward or from a neighbouring ward to take an interest in the matter

10.6.2 Constituents who approach you should be invited to contact that other Member or any other Member of the deciding body

10.6.3 You should avoid expressing any view about the application to other Members (save as set out below) and you must never communicate to other Members of the deciding meeting what you would have said had you been able to do so.

10.7 Having said this, in some circumstances it may be appropriate to comment on a planning application in your private capacity. If this is the case your comments can be reported simply, as third party comments rather than as local/ward Member comments, but to ensure that your comments are treated properly only write in on plain, notepaper, never headed Councillor note paper, and try to avoid contact with the case officer. If you do need to contact the case officer, please remember to advise him/her that you do have an interest and are calling/visiting purely as an ordinary resident.

11 APPLICATIONS BY MEMBERS AND OFFICERS

11.1 Nothing in this Guidance Note should be taken to prevent a member or an officer of the Council from making an application for planning permission in their personal capacity. Where a member or an officer does make such a planning application, it will be dealt within accordance with these provisions, which follow the recommendations of the Local Government Association.

11.2 If you are making an application, or if a close relative or business partner is making one, you or the agent should make this clear in a covering letter with the application. A copy of the letter will be lodged with the Monitoring Officer. Equally, if you act professionally as agent for an applicant or objector this should be declared in the same way.

11.3 If the application is one which would normally be dealt with under delegated powers the Director of Communities, Planning and Partnerships may decline the delegation and the matter submitted to Planning Committee for determination.

11.4 Prior to the matter being included on a Planning Committee agenda the file and draft report will be submitted to the Monitoring Officer. The Monitoring Officer will certify that the application has been properly dealt with and the report will show this. If it cannot be so certified, the matter will be the subject of a Monitoring Officer's report to full Council prior to any decision being made. You will be asked to consent to the eight week determination period being extended to allow for this extra procedure to take place.

11.5 This guidance applies equally to applications submitted through or which affect companies which are owned by a Councillor or Officer. This includes companies in which a Member or Officer has a controlling or significant interest. You are reminded of the rules regarding pecuniary interests as well. Nothing in this guidance overrides or alters that position.

11.6 Applications which affect an Officer (as opposed to a Member) will be dealt with in the usual manner. Any letter of representation should identify you as an Officer of the Council or, if submitted by a close family member or on behalf of a company in which you or your family are interested, identify that relationship. The file may be referred to the Monitoring Officer before a decision is made if there is a real potential for an allegation of improper influence. In such cases the Monitoring Officer will be asked to certify that the correct procedures have been followed and that all other matters have been dealt with properly. If the Monitoring Officer considers it appropriate, an otherwise delegated item may be submitted to Planning Committee for decision. This will be the norm when applications affect any Officer whose duties include direct involvement in the planning process. As set out above, this review procedure might result in a Monitoring Officer's report being submitted to Council depending on the application submitted.

11.7 It should go without saying that any attempt by an Officer to improperly influence the outcome of a planning application in which there is a personal interest, other than strictly in accordance with normal procedures and the above guidance, would be looked on as a matter of the gravest misconduct and is likely to result in immediate suspension and dismissal.

11.8 Applications by or which affect Directors or the Monitoring Officer may be the subject of external review if the Chief Executive (after consultation with the Mayor, Chair of Planning Committee and all Group Leaders) considers it appropriate.

12 PUBLIC SPEAKING

12.1 Public speaking as currently constituted allows an objector to an application which is recommended for approval the opportunity to address the Planning Committee. The Ombudsman has made it clear that if you have declared an interest as a Member it is highly inappropriate for you then to attempt to exercise your right as an objector to address the Committee. The Ombudsman has made it clear that his view is that this completely defeats the object of the declaration of interest.

12.2 Even more so, under no circumstances should you exercise a right of reply if you are an applicant or act (professionally or as a friend) on behalf of an applicant.

12.3 At no time during a meeting should you allow a member of the public to communicate with you (either orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.

13 APPLICANT/OBJECTOR MEETINGS

13.1 For the larger applications it is not unusual for Members to be invited to "presentations" by both promoters and opposers of the scheme. You are advised to be

extremely cautious about accepting such invitations. If, for instance, the invitation is to attend a presentation at a smart hotel where a lavish buffet is laid on for those attending it would be highly inappropriate for you to attend.

13.2 In some limited circumstances it may be appropriate for you to attend such presentations, but you should always seek advice from the Director of Communities, Planning and Partnerships or the Solicitor to the Council before attending. It would also be wise to check whether the invitation to attend has been extended to Planning Officers, and if it has not, or more importantly if the organiser has intimated that Planning Officers are definitely not welcome, then it would be less appropriate for you to attend.

13.3 If having weighed the above advice you decide that you do wish to attend, you should be careful not to express any views at the presentation, should decline to express a view if called on to do so, and should be careful in the way you phrase any questions that you ask. You should make it clear to the organisers that their presentation material should be copied to the case officer so that he/she may take it into account and advise on it.

13.4 Any hospitality offered to a Member over the value of £25 (this excludes reasonable and normal meeting refreshments such as tea, coffee and light snacks), whether or not accepted, should be notified to the Monitoring Officer who will record it in accordance with paragraph 5 of the Members' Code of Conduct.

14 DECISIONS CONTRARY TO OFFICER RECOMMENDATION AND/OR THE DEVELOPMENT PLAN

14.1 Legislation requires that where the Development Plan is relevant, decisions should be taken in accordance with it unless material considerations indicate otherwise (Section 38 (6), Planning & Compulsory Purchase Act 2004). Local members may be well placed to identify circumstances in which it might be justified to determine a particular application as a departure from the policies set out in the Development Plan.

14.2 If the Council wants to approve an application which is not in accordance with the Development Plan, the material considerations which lead to this conclusion must be clearly identified by Members and they must also clearly justify why they are overriding the Development Plan. The personal circumstances of an applicant will rarely provide such grounds. The officer should be given opportunity to explain the implications of the contrary decision.

14.3 If the officer's report recommends approval of an application which conflicts with the Development Plan, the report will include full justification for this.

14.4 Where the Committee has concerns about the validity of reasons for approving or refusing an application, consideration should be given to deferring the application to the subsequent meeting to another meeting to have the putative reasons tested and an updated report produced for consideration at the next meeting at which a decision will be made.

14.5 When a planning application has been deferred following a resolution of "minded to approve" or "minded to refuse", contrary to the officer's recommendation, the Chair shall put to the meeting a proposed statement of why the Director of Communities Planning and

Partnership's recommendation for refusal or approval is not considered acceptable to the Committee, which, when agreed by the Committee, will be formally recorded in the Minutes.

14.6 When a planning application has been deferred following a resolution of "minded to approve" "or minded to refuse", contrary to the officer's recommendation, then at the subsequent meeting the Director Communities, Planning & Partnerships shall have the opportunity to respond both in a further written report and orally to the reasons formulated by the Committee for granting or refusing permission. If the Planning Committee is still of the same view, then it shall again consider its reasons for granting or refusing permission, and a minute of the Committee's reasons should be made. Such reasons should be clear and justified. Councillors should be prepared to explain in full their planning reasons for not agreeing with the officer's recommendation. Pressure should never be put on officers to 'go away and sort out the planning reasons'. The officer should also be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome, and chances of a successful award of costs against the council, should one be made

14.7 If a councillor is concerned about an officer recommendation they should discuss their areas of difference and the reasons for that with officers in advance of the committee meeting.

If the Planning Committee makes a decision contrary to the Director of Communities Planning and Partnership's recommendation, the officer should be given an opportunity to explain the implications of the contrary decision. The Courts have expressed the view that reasons for the contrary decision should be clear and convincing. The personal circumstances of an applicant will rarely provide such grounds.

14.8 A senior legal officer should always attend meetings of the Planning Committee to ensure the probity and propriety of the planning and decision-making processes. Whilst authorities make extensive use of standard wordings for conditions, in the case of any conditions which Members may wish to add or amend, an officer should be asked to draft any such conditions and bring them back for approval at the subsequent meeting of the Planning Committee.

14.9 Where there is any doubt as to the voting or of the actual counting of votes in relation to any particular application, clarification should be immediately sought by the Chair prior to dealing with the next agenda item, by requesting from each member as to how they have voted, noting this and the member's name.

15 CONCLUSION

15.1 At all times you must appreciate that as a Member of the Council in general and as a Member of Planning Committee that you take on an onerous duty. As the Code of Conduct points out, your duty is to the whole community and not to any one section of it. By the same token, the whole community has a right to look to you and to the Council as a whole to consider matters dispassionately, having regard only to the relevant factors and disregarding irrelevant ones.

16 GUIDELINES ON PRE-DECISION DISCUSSIONS

16.1 It should always be made clear at the outset that the discussions will not bind the Council to making a particular decision and that any views expressed are personal and provisional. By the very nature of such meetings not all relevant information will be to hand, neither will formal consultations with interested parties have taken place.

16.2 Advice should be consistent and based upon the Development Plan and material considerations. There should be no significant difference of interpretation of planning policies between planning officers.

16.3 A written note should be made of the meeting. If it is known beforehand that a meeting is likely to be contentious arrangements should be made for at least two officers to be present. What was discussed or concluded should be confirmed in a follow up letter, and the receipt of any written material also confirmed. If the other parties produce a meeting note it should always be carefully scrutinised, compared against the notes taken by Council Officers and any discrepancies challenged in writing. Care must be taken to ensure that advice is not partial (nor seen to be) otherwise a subsequent report could appear to be advocacy.

16.4 To maintain impartiality, as well as the appearance of impartiality, it is preferable that Councillors do not take part in such discussions. However, should there be occasions when Councillors are involved they should always be advised by appropriate professional officers from the Council (which must always include a senior Planning Officer) and be authorised on a case by case basis.

16.5 The involvement of Councillors in such discussions should be recorded in the relevant Panel or Committee minutes.

16.6 A senior legal officer always attends the meeting to ensure that procedures have been properly followed. Whilst the Council makes extensive use of standard wording for conditions, in the case of any conditions which councillors may wish to add to or amend, officers have delegated powers to draft such conditions which need to be reasonable and relevant to the permission.

1 TRAINING

- 1.1 Reading the above guidance will have emphasized the potential minefield that could result as a breach of the rules. For that reason, you may not participate in the decision making process on planning matters until you have attended the mandatory training prescribed by the Council. These are run at regular intervals and cover planning law, regulations, procedures, codes of practice and the Development Framework that will assist you to carry out your role properly and effectively.

PART 5.2

PLANNING CODE OF GOOD PRACTICE

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Practice Notes referred to in this part of the Constitution

These documents are not a part of the Code but provide additional guidance and interpretation and do not require the approval of Full Council

- i) December 2015 – Material Planning Considerations
- ii) December 2015 – Site Visits (pending)

5.2.0 INTRODUCTION

- 5.2.0.1 The Planning Code of Good Practice is primarily aimed at Planning Committee Members and provides practical advice to councillors when dealing with planning matters, keeping decisions sound and mitigating the risk of possible challenge. It should be read in conjunction with other Parts of the Constitution which covers all aspects of councillors' conduct. Cross references will be included where necessary
- 5.2.0.2 The scheme of delegation in Part 3 of the Constitution provides that all planning applications are delegated to the Director of Sustainable Communities, with certain exceptions (see 3.4.2 (g) xix to xxvii). The Director of Sustainable Communities determines approximately 97% of all planning applications received under delegated powers. The main role of the Planning Committee is to make decisions on the other 3% of applications.
- 5.2.0.3 This Code must be read in conjunction with the Code of Conduct for Councillors in Part 5.1.1 of the Constitution. Any Complaints made in relation to a breach of this Code by councillors will be dealt with in accordance with the Complaints Procedure in Part 5.1.2 of the Constitution and as regards breaches by officers in accordance with the Council's Corporate Complaints Procedure which can be found at <http://www.chelmsford.gov.uk/complaintsprocedure>

5.2.1 ROLES AND RESPONSIBILITIES

- 5.2.1.1 Councillors and officers have different but complementary roles in the planning process. Some councillors will have more than one role, with some acting as both Ward Councillors and Planning Committee Members. Cabinet Members may be members of the Planning Committee but when taking decisions on planning applications they are doing so as members of the Planning Committee and not as Cabinet Members.

Councillors who are on the Planning Committee

- 5.2.1.2 In making decisions on planning applications, councillors will:
- a) Act reasonably.
 - b) Act honestly, fairly and openly.
 - c) Approach each application on its own merits.

- d) Weigh up all relevant material planning considerations and planning policies. (add link to practice note and to policies)
- e) Avoid undue contact with interested parties.
- f) Ensure that the reasons for the decisions are clearly stated and based on relevant planning policies and any other material considerations.

5.2.1.3 Officer reports to the Planning Committee will identify what Policies apply and what are material considerations and if councillors are unclear they should seek advice from officers. Decisions of the Planning Committee should never be made on political or personal grounds.

[Material Planning Considerations Practice Note](#)

5.2.1.4 The weight councillors attach to the relevant considerations is a matter of their planning judgement. Weight should not be given to non-planning related matters that may be raised by members of the public.

Cabinet Member on the Planning Committee

5.2.1.5 Under Part 3.2.3(f) of the Council's Constitution the Cabinet Member for Planning and Economic Development is specifically identified as a member of the Planning Committee. However, there may, therefore be occasions when that councillor will want to press or promote a particular development, such as one on the Council's own land, because it is beneficial to the development of the City's area and may be so committed to the development as the result of their Cabinet responsibility that this is the determining factor for them.

- a) In these circumstances, the appropriate approach is to allow the Cabinet Member to address the Planning Committee for this item, but:
- b) Only from the area set aside for Ward Councillors and other statutory consultees; and
- c) Not take part in the vote on the relevant application..

Ward Councillors on the Planning Committee

- 5.2.1.6 Ward Councillors who also sit on the Planning Committee wishing to campaign for or against a proposal could speak at a planning committee on behalf of their constituents but will have to declare their pre-determined position. The councillor can continue to represent those ward interests as a spokesperson for their local community but would have to declare their position and not take part in the vote to avoid accusations of bias

Ward Councillors not on the Planning Committee

- 5.2.1.7 Ward Councillors who are not on the Planning Committee are in a position to represent the interests of their Ward on planning related matters. They may;

- a) attend the Planning Committee as an observer;
- b) make a statement about applications at the Planning Committee meeting, but cannot vote or participate in the general discussion of the application by the Committee;
- c) speak at pre-application presentations to the Planning Committee; and
- d) request briefings from officers on applications.

- 5.2.1.8 Ward Councillors must not sit amongst the Committee members but in the specific area set aside for them and other statutory consultates such as the Parish or Town Council representatives.

All Councillors

- 5.2.1.9 Councillors should not put pressure on officers for a particular recommendation or decision, and should not do anything which compromises, or is likely to compromise, the officers' impartiality or integrity. The rules related to this are set out in part 5.4 of the Constitution. Councillors must also not lobby Planning Committee members.
- 5.2.1.10 If Councillors wish to obtain any information on a particular application they should in the first instance contact the case officer by either telephone, email or in person. If in person, councillors are requested to phone in advance to check that the officer is in the office. If a meeting with a constituent and/or applicant is required this should be arranged through the case officer as there are no meeting rooms with unaccompanied public access in the planning offices.

- 5.2.1.11 In accordance with the Officer Scheme of delegation in the Constitution:
Where a representation has been received in respect of an application before the end of the 21 day consultation period which is contrary to the recommendation of the case officer, then the ward councillor(s) for the ward or wards in which the application site lies can request that the application be reported to the Planning Committee for determination.
- 5.2.1.12 In the event that a councillor has concerns over the way an application is progressing, they should contact either the Development Management Manager, Development Manager or Strategic Development Manager in the first instance to discuss the matter.

Lobbying

- 5.2.1.13 If a member of the Planning Committee is lobbied extra care is needed to avoid any perception of predetermination or bias. Therefore councillors should seek to;
- a) Restrict themselves to giving advice about the process and what can and cannot be taken into account and not express any views on the merits or otherwise of the application or objections.
 - b) Make it clear that planning decisions cannot be made on a party political or personal basis in response to lobbying.
 - c) Direct the person to make their representations to officers instead. However where a Committee member decides to make representations as a Ward Councillor to raise issues which have been made by objectors or supporters, they must follow the procedures set out in the preceding paragraphs of this Code.

Officers

- 5.2.1.14 The Director of Sustainable Communities has a dual role in the decision making process by:-
- a) Using delegated powers to make decisions on the majority of planning applications. These can be found in the officer Scheme of Delegation in Part 3.4 of the Constitution; and
 - b) Making recommendations on planning matters which are determined by the Planning Committee. When making such recommendations the function of officers is to advise councillors. This ensures that any decision they make is lawful and identifies any possible consequence of taking that decision.

- 5.2.1.15 All planning officers shall follow the RTPI's Code of Professional Conduct. As with all other employees of the Council they have a duty to act impartially.

**5.2.2 DISCLOSABLE PECUNIARY INTERESTS AND OTHER
PECUNIARY AND NON-PECUNIARY INTERESTS,
PREDETERMINATION AND BIAS AND LOBBYING**

Disclosable Pecuniary Interests (DPIs)

- 5.2.2.1 If a member of the Planning Committee has a Disclosable Pecuniary Interest in any planning matter the councillor must declare that interest, in accordance with the Code of Conduct for Councillors in Part 5.1.1 of the Constitution and the Localism Act 2011. In particular they must;
- a) declare their interest and the nature of it as soon as they become aware that they have such an interest,
 - b) withdraw from any meeting at which the matter is being considered, and
 - c) not give the appearance of seeking to influence any decision on the application nor participate in the debate or voting on that application.

Other Pecuniary and Non-Pecuniary Interests

- 5.2.2.2 If a member of the Planning Committee has any other pecuniary or non – pecuniary interest in any planning matter the councillor must declare the interest and state the nature of the interest but can take part in the discussion and vote on any decision to be taken.
- 5.2.2.3 However, they should also consider whether in doing so they may be breaching any aspect of the Code of Conduct for Councillors, in which case they are advised to participate in the debate but not the vote. Advice on this can be obtained from the Monitoring Officer or the Legal and Democratic Service officers serving the Committee.
- 5.2.2.4 When a member of the Planning Committee is also a Parish Councillor and that Parish Council is a consultee on a planning application, that councillor should declare an interest and withdraw from consideration of that application if he or she has been involved in formulating the Parish's comments.

Predetermination and Bias

- 5.2.2.5 Members of the Planning Committee should avoid any appearance of bias or having predetermined their views before taking a decision on a planning matter.
- 5.2.2.6 If a member of the Planning Committee is predetermined or biased on any item of business they should declare this and withdraw from the Committee during its consideration as otherwise the decision of the Committee could be challenged. Alternatively the Committee member can declare that they will not vote on the decision to be taken and address the Committee as a Ward Councillor from the seating are set aside as referred to in paragraph 5.2.1.6 above.
- 5.2.2.7 If a member of the Planning Committee is predisposed to vote in a certain way, even if they have made these views publicly known, Section 25 of the Localism Act 2011 allows that councillor to take part in the decision as long as they have retained an open mind before hearing all relevant information. A statement to that effect should be made by the councillor at the committee meeting before the item is discussed.

5.2.3 COUNCILLOR AND OFFICER CONTACT WITH APPLICANTS AND DEVELOPERS

Officers

- 5.2.3.1 The Government encourages applicants to enter into pre-application discussions. These discussions provide an opportunity for the applicant to receive advice and information and to seek to identify concerns with and possible solutions or improvements to the proposal. It should be made clear that any guidance given by an officer will not bind the local Planning Authority to making a particular decision.

Councillors

- 5.2.3.2 Planning Committee members or substitutes should be accompanied by an officer when meeting with applicants or developers either before or after an application is submitted. It is accepted that this may not always be possible, for example where an applicant raises an issue at a meeting that is not specifically called to deal with the application

(PN suggested as to when it would be inappropriate to meet without officers)

- 5.2.3.3 Councillors should refer applicants who approach them for advice to officers.

- 5.2.3.4 If Planning Committee members do take part in meetings with potential applicants, agents or objectors extra care is needed to avoid any perception of predetermination or bias.

5.2.4 DEVELOPER PRESENTATIONS TO THE PLANNING COMMITTEE

- 5.2.4.1 From time to time some proposals of a complex nature may require the developer to make a presentation to the Planning Committee in advance of its consideration. Any such developer presentations should be held in public with notes taken. It should be made clear at the beginning that only facts will be presented to the Committee and no decision taken.

5.2.5 DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS AND OFFICERS

- 5.2.5.1 Proposals submitted by or on behalf of City Councillors or officers including a member of their household shall be referred to the Planning Committee unless the Monitoring Officer has notified the Director of Sustainable Communities in writing that he or she is satisfied that the matter can be dealt with under delegated powers (See 3.4.2 (g) xxiii) of the Officer Scheme of Delegation in the Constitution.
- 5.2.5.2 A Councillor or Officer submitting, or having submitted on their behalf or on behalf of another, a proposal or application to the Council, shall make it clear in writing at the time that they are a councillor of or employed by the Council. The Director of Sustainable Communities shall keep a record of all such applications and inform the Monitoring Officer.

5.2.6 OFFICER REPORTS TO COMMITTEE

- 5.2.6.1 All applications placed before the Planning Committee shall be accompanied by a written report of the officers together with a recommended course of action for the Committee.
- 5.2.6.2 Each report shall be accurate and shall fairly reflect the views of those consulted and the content of any objections.
- 5.2.6.3 Information on the application shall include details of the relevant policies in the development plan, the relevant planning history of the site and any other relevant information.
- 5.2.6.4 Recommendations shall be in writing and supported by existing policies, guidance and technical information together with all material planning considerations.

- 5.2.6.5 Any amendments and alterations to the printed agenda (the “green sheet”) will be tabled at the meeting and published on the Council’s website. The deadline for comments on the green sheet is midday on the day before the meeting.
- 5.2.6.6 If a material issue is raised at the meeting but not covered in the written report and could affect the decision, it may be necessary to defer the item unless the issue can be properly addressed at the meeting.
- 5.2.6.7 Presentation material from public speakers may be allowed at the discretion of the Chairman. It must be provided in a specified form three working days before Committee so that officers can check that no new points have been included. The Chairman has the discretion to allow new information raised under the public speaking section of the agenda to be considered at the meeting rather than be deferred. A deferral will still be needed where additional advice or investigations by officers was needed to properly advise members.

(PN suggested on how delegated applications are handled)

5.2.7 DECISIONS CONTRARY TO OFFICER RECOMMENDATION

- 5.2.7.1 If the Planning Committee wants to make a decision contrary to the officer’s recommendation the material planning reasons for doing so shall be clearly stated, agreed and minuted. The application should be deferred to the next meeting of the Committee for consideration of appropriate conditions and reasons and the implications of such a decision clearly explained in the report back.
- 5.2.7.2 Only those Members of the Committee present at both meetings can vote on the reason for the decision. Exceptionally, the Committee may decide that circumstances prevent it from deferring the decision but its reasons must be clearly stated and recorded in the minutes. The Committee may be asked to nominate a ‘member witness’ at any subsequent appeal hearing in order to justify their decision.
- 5.2.7.3 Certain Council applications can be approved even if they are contrary to planning policy. However they must be referred to the Secretary of State to consider whether the decision should be taken by the Government. This will only be where there is a major development proposed and a full justification and reasons for the recommendation is required

5.2.8 CONDUCT AT THE MEETING

- 5.2.8.1 The Chair of the Planning Committee is responsible for the conduct of the meeting in accordance with the relevant Council Procedure Rules and for the effective delivery of business. (See 4.2 and 4.3)
- 5.2.8.2 The Planning Committee meetings are open to the public and are often well attended. It is important to demonstrate that decisions have been made fairly and transparently. Any debate should be confined to the merits of the matter and all speakers must be afforded due respect.

5.2.9 PUBLIC QUESTION TIME AND CONTRIBUTIONS BY OTHER BODIES AT PLANNING COMMITTEE

- 5.2.9.1 In accordance with paragraph 4.2.14.3 of the Constitution, members of the public may speak at Planning Committee and the following process will be followed:
- a) Each person is allocated two minutes to ask a question or make a statement on any item before the Committee. The Chairman may in exceptional cases and at his/her discretion extend the 2 minutes time period for individual questions/statements, provided no unfairness will result.
 - b) A total of fifteen minutes is allocated to each meeting for public questions although the Chairman can extend this.
 - c) These arrangements also apply to applicants and agents.
 - d) No supplementary questions or statements will be allowed by the same person other than at the discretion of the Chairman of the Committee as set out in paragraph 5.2.6.7 above.
- 5.2.9.2 In accordance with 4.2.23.1 of the Constitution, a representative of a Parish or Town Council may speak at a Planning Committee meeting for up to 5 minutes on any application to be decided by the Committee, provided it is a matter about which that Parish/Town council has been consulted.
- 5.2.9.3 All those members of the public wishing to speak should be asked to;
- a) give their name and address
 - b) confine their comments to planning merits, and
 - c) not to repeat comments made by previous speakers on the same item.

5.2.9.4 Generally new documents cannot be circulated at the Committee meeting as Members of the Committee may not be able to give proper consideration to the new information and officers may not be able to check for accuracy or provide considered advice on any material considerations arising. The Chairman may in exceptional circumstances, and at his or her discretion, allow documents to be circulated at the meeting if the alternative would be to defer the item and provided no unfairness results.

5.2.9.5 Messages should never be passed to individual Committee members, either from other councillors or from the public. This could be seen as seeking to influence that councillor improperly and could create a perception of bias.

5.2.9.6 Other City Councillors may attend and address the Committee and at the Chairman's discretion follow up with any supplementary information if necessary but cannot vote.

5.2.10 SITE VISITS

5.2.10.1 Site visits by members of the Planning Committee will only usually be necessary if the impact of the proposed development is difficult to visualise from the plans and any supporting material including photographs taken by officers.

5.2.10.2 The Planning Committee, after having agreed the need for a site visit, shall clearly specify the reason(s) for the site visit and indicate those aspects which it would wish to consider on the application site or adjoining site and any other arrangements for the site visit. The application will be deferred to a future meeting once the site visit has taken place.

Site Visits Practice Note (pending)

5.2.11 TRAINING

5.2.11.1 Councillors involved in taking decisions should have undertaken appropriate training on planning matters. The subjects covered by the training will be decided by officers in consultation with councillors. Such training should include all aspects of probity in planning and the need not to put pressure on members of the Committee to vote in a particular way when determining applications.

5.2.11.2 No councillor should be appointed to the Planning Committee as a member or substitute without having agreed to undertake training in planning procedures as specified by the Council. Planning Committee members and substitutes who attend less than two training events in a year will be ineligible to serve on the Committee or act as a substitute for members of the committee.

5.2.11.3 New Members of the Planning Committee are required to attend as many of the training sessions as they can and in any case at least two in the first six months following their appointment to the Committee.

5.2.11.4 All Planning Committee training presentations will be published on the Members' area on the Council's Intranet.

5.2.12 REGULAR REVIEW OF DECISIONS

5.2.12.1 From time to time arrangements will be made for members of the Planning Committee to visit a sample of implemented planning permissions, so that a regular review of the quality of decisions can be undertaken.

5.2.13 PETITIONS

5.2.13.1 Whilst petitions are generally covered by the Constitution at part 4.3, those received in respect of planning applications are not subject to that procedure.

5.2.13.2 Any such petitions;

- a) will be summarised as to objections or support in the same manner as other consultation responses,
- b) will have the number of signatories reported and the chief signatory advised if the matter is being brought before the Planning Committee.
- c) Whether the decision is taken by Committee or officers, the summary of the issues raised will be addressed in any report produced before the decision is taken.

5.2.14 GIFTS AND HOSPITALITY

5.2.14.1 The rule on the receipt of Gifts and hospitality received by councillors and officers is set out in part 5.1.2 Annex 7 of the Constitution. However, in addition, Planning Committee members and substitutes must declare any Gifts or Hospitality from anyone, other than cups of tea or similar refreshment.



EAST RIDING OF YORKSHIRE COUNCIL

CONSTITUTION

August 2015

CONSTITUTION OF THE COUNCIL

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PART 5

CODES AND PROTOCOLS

CODES AND PROTOCOLS

1 Councillors Code of Conduct

The Council adopted a revised Code of Conduct for Councillors and Co-opted Members in July 2012 and all Councillors are required to abide by it. A copy is attached at Annex A.

2 Protocol for Councillor and Officer Relationships

In addition to the Code of Conduct, the Council has adopted a protocol to guide Councillors and officers of the Council in their relations with one another in such a way as to ensure the smooth running of the Council.

A copy is attached as Annex B.

3 Other Codes of Practice

(a) Planning

In addition to the Code of Conduct and the Protocol referred to in 1 and 2 above, the Council has adopted the following in relation to the planning function:-

- A Code of Practice for Councillors and officers dealing with planning applications. Failure to sign up to the Code of Practice will debar any Councillor from sitting on any Committee or Sub-Committee dealing with planning applications.

When a Councillor has signed up they are required to abide by the Code of Practice.

- A Code of Practice for neighbour notifications and publicity for planning applications.
- A Code of Practice for Planning Site visits.
- A Code of Practice for dealing with major planning applications.
- Protocol on Public Speaking (as set out in paragraph 8 of the Non-Executive Procedure Rules).

Copies are attached at Annex C.

(b) Health Service Scrutiny

Following consultation with the various health authorities, the Council has adopted a Code of Practice in relation to its responsibilities for scrutiny of the Health Service which is attached at Annex D.

4 Interest of Councillors in Contracts and Other Matters

- #### **(a)**
- All Councillors are required by the Code of Conduct to disclose non-pecuniary and pecuniary interests at meetings of the Council, its Committees or Sub-Committees.

- (b) Within 28 days of his/her election or appointment to Office, a Councillor must register his/her pecuniary interests in the Authority's Register in accordance with the provisions of the Localism Act 2011. Any amendments required by a change in Members' circumstances must be registered within 28 days of the change occurring.

5 Protocols for the Monitoring Officer and Chief Finance Officer

These protocols are outlined in paragraphs 12.06 and 12.07 of Article 12 of this Constitution.

6 Code of Conduct for Employees

This code is outlined in the Officer Employment Procedure Rules in Part 4 of this Constitution.

A CODE OF PRACTICE FOR COUNCILLORS AND OFFICERS FOR DEALING WITH PLANNING APPLICATIONS

1 Code of Practice

- 1.1 This Code of Practice has been produced after taking into account current advice and examples of good practice. It will be reviewed annually. The Code of Practice may only be varied by formal resolution of The Cabinet.
- 1.2 In the Code of Practice, the word “Committee” means any Committee or Sub-Committee with a responsibility for the determination of planning applications. The words “planning application” mean any application for permission or consent under the provisions of the Town and Country Planning Acts and related legislation.
- 1.3 This Code of Practice is relevant to all Councillors when they are sitting on the relevant committees, including acting as a substitute. Failure to abide by it may prevent a Member being able to act as a substitute on a committee when required.

2 Training

- 2.1 Training on planning procedures and issues, particularly important, new or changed policies and procedures, will be provided each year and will include events presented by officers with the help of experts from outside the Council, where appropriate. All Planning Members will be expected to attend.
- 2.2 A basic induction course for Councillors will be prepared for presentation by Council officers, and attendance at this will be compulsory for all Planning and Area Planning Sub-Committee Members and their substitutes. Councillors who have not undergone training should not act as a substitute.
- 2.3 Planning officers responsible for the preparation of written reports and for advising Councillors at Committee meetings will be qualified to an appropriate level in town planning. Whether or not they are Members of the Royal Town Planning Institute (RTPI), they will be required to undertake continuing professional development training to the level required of its Members by the RTPI.

3 Publicity for Planning Applications

- 3.1 The Council will prepare, adopt and regularly review a Code of Practice for publicising planning applications having regard to the requirements of Best Value. From July 2005, this will be incorporated into the “Statement of Community Involvement”. As a minimum, the Code of Practice will satisfy statutory requirements and comply with current Government advice, but its intention will be to ensure that planning applications are publicised in accordance with their likely impact (see Annex 1).
- 3.2 Planning officers have discretion to provide more, but not less, publicity than specified by the Code of Practice where they judge that the nature of the application requires them to do so.
- 3.3 In most cases, the provisions of the Code of Practice coupled with the discretion given to officers to afford additional publicity will be sufficient. If a Councillor feels that the level of publicity afforded is insufficient in any particular case and decides to undertake significant additional publicity at ward level, the following procedure is recommended:

- the relevant Divisional Manager or Team Leader should be informed;
- the information must be factually accurate;
- a copy of any publicity material circulated, together with details of how and where it was distributed should be provided to the Divisional Manager for inclusion on the planning file;
- the publicity material should include the relevant planning reference number and should give details about where the application may be inspected. The publicity should advise that any comments should be made in writing to the relevant Divisional Manager;
- any responses received directly by the Councillor should be forwarded to the relevant Divisional Manager.

4 Lobbying of Councillors

- 4.1 This section deals with the balance between the legitimate constituency concerns of Councillors and the requirements for the Council to reach an objective decision in full knowledge of all relevant information. It is based on the premise that Councillors should not approach a planning application with a 'closed mind', that is, make a final decision on an application in advance of all the relevant information being available. The Localism Act provides that a Councillor should not be taken to have had a 'closed mind' simply because they have indicated what view they take on a matter prior to the matter being decided. Councillors are therefore free to express opinions about a planning application prior to Committee provided they approach the planning decision with an open mind and are prepared to change their views if persuaded that they should. If a Councillor has a 'closed mind' in relation to an application he or she will be prevented from voting to avoid compromising the Committee's decision.
- 4.2 Any Councillor, whether a Planning Committee Member or not, who is prevented from voting, shall, nevertheless, be able to seek permission from the Committee to speak on the planning application. A Planning Committee Member should leave the room after speaking.
- 4.3 Any significant contacts which influence, or may reasonably be regarded by the fair-minded observer as appearing to influence, the opinion of Councillors or officers should be declared.
- 4.4 When a Councillor is approached by an individual or group attempting to enlist support either for or against a planning application, then the Councillor should:
- listen to and note the facts offered and opinions expressed;
 - encourage the lobbyists to submit views in writing to the Divisional Manager;
 - explain that the decision will be taken by the relevant Committee (or officers under delegated powers) who will take account of all views expressed, and that, if the application is taken to a Committee, the lobbyist may attend and may, subject to the rules governing public speaking, be able to address the Committee;

- make it clear that any views expressed are personal and not necessarily the views of the Council;
 - pass any significant information that is likely to influence the outcome of the application to the relevant Divisional Manager;
 - determine whether the application warrants a request from the Councillor for the application to be referred to Committee and inform the relevant Divisional Manager on the standard referral form if this is requested;
 - Planning Members should declare any significant contact with either applicants or third parties at the Committee meeting before a vote is taken.
- 4.5 Planning Members will not normally need to meet formally with applicants or their agents or third parties, to discuss prospective or current planning applications, unless the purpose of the meeting is to obtain or clarify information about the nature of the proposed development which cannot reasonably be obtained from the submitted information. When a formal meeting is considered necessary, it should be arranged through the relevant planning manager, who will arrange for an appropriate officer to attend to advise and keep a record of the meeting for inclusion in the officer's report. Normally, such meetings should only involve the local ward Councillors and the relevant Chairman/Vice-Chairman, but ward members from adjoining areas may be included if the proposal affects the wider community.
- 4.6 Councillors and officers should avoid being committed to a particular course of action because of membership of an organisation which plays a role in the planning process (for example a parish council or pressure group). This does not prevent Councillors from expressing views on a particular matter or from participating in debate on a matter. Councillors are therefore free to take part in the debate and vote on matters at a Parish Council provided they approach the application at Committee with an open mind. This means that they are prepared to change the way in which they vote at a Planning Committee from the way in which they voted at the Parish Council if the information available at that point persuades them that they should.

5 Contact with the Media

- 5.1 If asked to comment on a planning application, before its determination, Councillors should adopt the general approach outlined in Section 4, and whilst they may express views on the matter they should make it clear that they will reach a final decision on the matter at Committee.
- 5.2 The Council's Constitution sets out the rules relating to contact with the media. The rules should be followed but, for planning matters, Chairmen or anyone nominated to speak on their behalf should make it clear that any response is personal and not on behalf of their Group.
- 5.3 If commenting to the media after a decision is taken, Councillors and officers should avoid saying anything which is likely to compromise the Council's ability to successfully defend that decision.

6 Meetings involving Planning Officers

- 6.1 Officers will inevitably meet applicants and third parties during their normal duties. They will:
- record any significant contacts and include them in the officer's report to Committee;
 - report orally to the Committee any significant contacts made subsequent to the officer's report being prepared;
 - avoid giving, or what may reasonably be regarded by the fair-minded observer as appearing to give, a commitment as to the likely outcome;
 - make it clear that any views expressed are their own and not necessarily those of the Council;
 - not disclose the content of the officer's report until after publication.

7 Reporting Planning Applications

- 7.1 The planning officer will prepare a written report about each planning application which is to be considered by the Committee. This will include reference to relevant policies contained in the development plan and to other material planning considerations. Representations made both for and against the application will be reported in a summarised form. Any representations made after the written report has been completed, but before the meeting date, will be reported orally in the same form. The officer's report will outline the key planning issues, including a clear indication of the strength of the relevant planning policies, and will conclude with a firm recommendation for action. In cases where the Committee agrees with the officer's recommendation, it will form the basis of the formal decision notice.

8 Site Visits

- 8.1 Site visits by the Committee have a place in the planning process but only as a means of providing Councillors with an opportunity to inspect the application site and its surroundings, in order to gather information which enables them to better understand the proposal under consideration. As far as possible, officers will provide information and visual aids which enable the Committee to reach a decision at the formal Committee meeting. Site visits are expensive and time consuming and should be viewed as an exception to the usual process which can be justified only by the importance or complexity of the application.
- 8.2 The Council will prepare, adopt and regularly review a Code of Practice for committee site visits in connection with planning applications. (see Annex 2)

9 Agenda Briefings

- 9.1 Before each Committee or Sub-Committee meeting, the Chairman and Vice-Chairman, together with the officers who will attend the meeting, will hold an agenda review meeting. A representative of each of the other political groups represented on the Committee/Sub-Committee can also attend.
- 9.2 The purpose of the agenda review meeting will be:

- to bring the Councillors up to date with any information received since the officer's report was printed;
 - to ensure that the officer's report is clear and that the rationale behind the recommendations is understood;
 - to allow the Councillors to identify issues of particular concern and where additional information or explanation is necessary.
- 9.3 The agenda review meeting will normally be held not more than two working days before the Committee meeting.

10 Delegation of decision-making to Officers

Certain types of planning application will be delegated to the Director, or other officers as appropriate, to make decisions and take action on behalf of the Committee in line with the Council's Scheme of Delegation. These applications will be specified in the Scheme of Delegation which will be regularly reviewed.

11 Officers' Recommendations

- 11.1 The primary role of officers, when planning applications are to be determined by a Committee, is to present the Committee with all the relevant information and to clearly recommend the appropriate course of action. In doing so, the officer's report should make it clear whether a recommendation is based upon a balance of subjective judgements or fundamental points of principle. The Committee is not obliged to accept the officer's recommendation, but it is important that the implications of not doing so are discussed.
- 11.2 The planning officer will, at the request of the Chairman before the vote is taken, explain the reasons for the recommendation and, as far as possible, the likely implications of the Committee taking a different decision.
- 11.3 It is a requirement that planning decision notices specify the reasons for the Council's decision, whether the application is approved or refused. If the Committee rejects the officer's recommendation, reasons for the decision will need to be specified and those reasons recorded in the minutes of the meeting. The reasons will then be included in the decision notice. Where the decision is to grant planning permission, the Committee will need to consider whether conditions or legal agreements are necessary, as these will need to be specified and included in the decision.
- 11.4 A Planning Member, moving that a decision should be taken contrary to the officer's recommendation, should do so giving clear reasons (with reference to conditions and agreements if appropriate) which are capable of being used in the decision notice if adopted by the Committee. Having regard to the fact that the decision must be taken by the Committee following debate, any Councillor who has concerns about the officer recommendation should consider possible reasons for a different decision in advance on a contingency basis and discuss these reasons with the officers. Officers at Committee will assist in the formulation of reasons, etc. without prejudice to their professional integrity and will indicate if those reasons are not planning reasons. If they are not, then they should not be used and, in the absence of proper reasons, the Committee should reconsider its position prior to taking the vote.

11.5 Where a decision taken contrary to the officer's recommendation results in an appeal, particularly one to be heard at public inquiry or hearing, it may be necessary for Councillors and officers to work together to determine the best way of supporting the Committee's decision. In certain circumstances, it may be determined that evidence is best presented by expert witnesses from outside the Council and/or by Councillors. Planning officers representing the Council in these circumstances will do so to the best of their ability without prejudice to their professional integrity.

11.6 Appeal decisions will be reported to the Committee responsible for the original decision, and a regular report on the outcome of appeals will be presented to the Planning Committee.

12 Special Arrangements for Major Planning Applications

12.1 In exceptional circumstances, the consideration of major planning applications will raise planning issues of such magnitude that special arrangements are necessary. These arrangements will be specified in the "Statement of Community Involvement" in the meantime. The Head of Planning and Development Management will have discretion to organise some, or all, of the following:

- a site visit prior to any Committee debate;
- a presentation to Councillors by the applicant;
- a meeting with statutory consultees and/or interested parties

12.2 In these cases, meetings will be an opportunity for information and clarification, not decision, and will take place at a different time and place from the Committee meeting at which a decision will be taken. (see Annex 3)

13 Applications by Councillors or Senior Officers

13.1 These applications are covered by the Scheme of Delegation.

13.2 The officer's report will state the position of the applicant.

14 Planning Applications made by the Council

14.1 Where a Committee is responsible for determining a planning application, it should act as a 'Planning Committee' basing its decision on matters of national, regional and local planning policy and material planning considerations only, and disregarding all other considerations, however worthy. It is particularly important that this approach is followed when applications submitted by the Council for its own development, or for developments of Council-owned property, are involved.

14.2 The Scheme of Delegation contains provisions to ensure that neither Committees, nor individual officers, will have a conflict of interest in acting on the Council's behalf, and these will be kept under review. In terms of the actions of the Committee responsible for deciding these applications and of the planning officers responsible for processing them, this Code of Practice will apply.

15 Declaration of Interest

Councillors are bound by the Council's Code of Conduct. Dealing with planning applications is an area of activity where there is potential for conflicts of interest, and Councillors will need to keep this possibility in mind and take advice from the Council's Monitoring Officer in cases of uncertainty.

CODE OF PRACTICE FOR NEIGHBOUR NOTIFICATION AND PUBLICITY FOR PLANNING APPLICATIONS

1 Interpretation

In this Code of Practice the term “Planning Committee” means any Committee or Sub-Committee of the Council responsible for determining a planning application.

The terms ‘letter’ or ‘written representations’ include representations received by fax or email, but not by telephone or face-to-face conversations.

The term “planning application” relates to applications for planning permission, listed building consent, conservation area consent and applications for Certificates of Lawful Development (Existing or Proposed). Applications for Prior Notification are not included as the Planning Legislation sets out separate requirements for the applicant to follow in specified circumstances.

2 Introduction

The Council has certain statutory duties in relation to publicity for planning applications as set out in the relevant regulations. Whilst those regulations set a minimum standard, the Council has some discretion, for example whether to provide local notification by way of neighbour letters or a site notice and whether to undertake additional notifications or notices should they wish

This code sets out the arrangements the Council will fulfil to afford planning applications suitable publicity.

3 Press notices

Applications will be advertised press notice if this is a statutory requirement. The application will be advertised in the locally based newspaper for the particular parish in which the application is sited. The Planning service will maintain a list of the relevant newspaper for each parish (which may, from time to time, change as the newspapers change). The use of free newspapers has been specifically excluded from the regulations.

4 Neighbour Notification Letters

Letters will be sent to all occupied addresses which share a boundary with the application site. In applying this rule, properties will be treated as sharing a boundary if they are separated from the application site by a public highway, or by a footpath, or by open public land provided the separation is no more than 20m wide. If a near neighbour does not directly adjoin the property because of intervening private land then they will not receive a notification letter.

Often sites are the subject of amended or repeated applications, and comments may have been made about these previous applications. When a new application is submitted letters will be sent to anyone who has written to the Council about a previous planning application on the same site during the previous 12 month period prior to the date the new submission is valid.

All neighbour notification letters (other than those to people who have previously commented) will be posted to “the occupier” at the relevant address. No attempt will be made to identify property owners.

Neighbour letters will normally be sent within 5 days of receipt of a valid planning application. Letters will be sent out by second class post to addresses identified from the Council's property gazetteer and in the case of previous respondents from planning history files.

When case officers visit the site, they will be asked to check for any obvious errors in the initial notification process. This may be due to recent development or changes on site which have yet to be made to the property gazetteer. An example might be a newly built house, or a recent conversion to flats. The case officer will arrange for additional letters to be sent if necessary.

Letters will advise of the ability to view the proposals at the local Customer Service Centre and via the Council's web site and on the availability of standard notes on procedures and practices to assist them to respond. Where the Parish Council have agreed to make plans available for public inspection details of this option will also be included in the letter.

5 Site Notices

Site notices will be displayed to publicise planning applications in the following circumstances:

- (a) instead of the notification of neighbours by letter in cases where there are no occupied buildings within the prescribed locations;
- (b) in addition to neighbour notification letters, if it is considered that the application is likely to have an impact over a wider area than the direct notification arrangements allow, but there is no statutory requirement for notices to be posted;
- (c) in cases where there is doubt about whether direct neighbour notification will reach its target (for example, on sites which are under construction where it is not clear whether neighbouring properties will be occupied before the application is decided).

Site notices (statutory and non-statutory) will be posted as close to the application site as practicable while being readily visible from public locations and routes. Normally, one notice will suffice but, dependent upon the size and nature of the development and the arrangement of the surrounding area, it may be necessary to post additional notices - for example for major applications (when site notices will be posted in prominent locations in the vicinity) or where a development site is accessed from more than one highway.

Site notices must be posted 'in time' so that they are displayed from a date at least 21 days before the stated "reply-by-date". If this objective is not satisfied, then a new site notice with altered dates will be prepared and posted to ensure that a 21 day period for responses is provided.

Site notices will be printed in a standard format on yellow paper and will be laminated. The standard format will incorporate various types (e.g. headings in bold) and the font sizes shall be as large and clear as possible.

The Council will not routinely check that notices are retained on site for the relevant period, but a replacement will be posted if the premature removal of a notice is brought to the Council's attention.

Council officers will remove out-of-date notices which they see during their normal duties and also advise other bodies or individuals that removal can take place after the specified display date has passed.

6 Record Keeping

A record will be kept on the relevant planning application file of all letters posted and all notices displayed with dates and locations.

7 Determination Dates

All publicity will include a “reply by” date, normally 21 days from the date of posting/display. Applications will not be determined until that date has expired. Where different dates apply (for example because supplementary publicity has been arranged), then the latest date is the relevant date.

Whilst officers will endeavour to consider representations received after the expiry date, including up to the point at which the application is determined, this cannot be guaranteed. The Council receives a high level of correspondence and late responses are at risk of not being received by the case officer in time to influence the decision. Responses which are received after the date of decision cannot be considered.

Where amended plans are the subject of further publicity the ‘reply by date’ will be 14 days rather than 21 days.

In exceptional circumstances, the Director may refer a planning application to Committee for consideration in advance of the publicity expiry date, but in such circumstances any action decided will be deferred for delegated action by the Director subject to no additional material representations being received.

8 Further Publicity for Amendments

If an application is amended to address concerns raised by responses received, it may not be necessary to re-notify. An example would be when a neighbour objects to an overlooking window and the applicant agrees to remove or obscure glaze the window.

Other amendments will however need to be the subject of re-notification as it will be unclear whether the original concern has been overcome, or whether the amended proposal raises new issues which were not present in the original submission. A revised location of a garage may, for example, satisfy one respondent but give rise to concerns from another neighbour. It is a matter for the case officer to judge whether additional publicity/notification is required.

The Planning Committees also need to be alerted to this possibility. If an application is considered acceptable by Committee but only after significant changes, then those changes may need to be the subject of publicity before formal approval. The Committee should be made aware of the need for further notification and frame any decision accordingly.

When an application needs to be fundamentally altered to address concerns an applicant will be advised to withdraw the application, and to re-submit an amended application. This ensures that respondents understand what is now proposed and comment solely on the merits of the revised application.

9 Handling Representations

All written representations received about planning applications will be acknowledged by means of a standard letter or e-mail giving basic information about procedures.

Representations will be considered by the Planning Case Officer in the first instance. When it appears that it may be possible to address the reasonable concerns of the writer by negotiation, the officer will discuss this with the applicant or their agent. If a suitable modification can be obtained which addresses all of the concerns, then the concerns will be treated as dealt with. Similarly, if the reasons for objection can be dealt with by the imposition of an appropriate condition, then they are within the remit of the Planning Officer to deal with. In either of these cases or in the cases where the basis of objections are not material planning considerations or where the only representations are in accordance with the officer's recommendation to approve/refuse the application, then the Director may use his delegated powers to determine the planning application in accordance with the approved scheme of delegation. For the purposes of applying the scheme of delegation responses of "no objection" will be treated as neutral.

Planning applications which are recommended for approval where there are unresolved objections, or for refusal whether there are explicit letters of support (other than those submitted by applicants or their agents), will be referred to the appropriate Planning Committee or special delegation meeting for determination.

The officer's report will summarise any representations received and consider any relevant planning issues raised before coming to a recommendation. Where two or more letters are submitted, they may be summarised together. In the case of reports to Committee, any representations which have been received before the officer's report is printed for circulation will be referred to in that report by reference to the originating address and will be summarised in a way which briefly highlights the main points of the letter. Where representations are received after the relevant Committee report has been completed, they will be summarised orally by the Planning Officer at the Committee meeting using the same approach as set out above. A file note will be kept listing all representations dealt with in this way.

All letters received will be made public on the Council's web-site.

Letters that contain discriminatory, libellous or derogatory comments will not be considered and will be returned to the originator.

10 Advising Third-Parties of Decisions

Once the planning application is determined, the decision will be conveyed to all the third party respondents by means of a letter or e-mail, which will list the conditions in the case of an approved application or the reasons for refusal. Individual letters explaining the decision will not be sent, but a detailed explanation will be provided if requested in further correspondence.

CODE OF PRACTICE FOR COMMITTEE SITE VISITS IN CONNECTION WITH PLANNING APPLICATIONS

1 Introduction

Section 8 of the “Code of Practice for Members and Officers for dealing with Planning Applications” refers to site visits by Committees. This Code of Practice sets out detailed arrangements for Committee site visits. Nothing in this protocol shall prevent an individual Councillor visiting an application site separate from the formal site visit. Councillors doing so should bear in mind the Code of Practice for Councillors and Officers dealing with Planning Applications (particularly section 4.3).

2 The Purpose of Committee Site Visits

The only purpose of a site visit is to enable Councillors to gather information relevant to the application under consideration to aid understanding and to inform the decision. In the main, planning applications are straightforward and sufficient information can be provided by officers, who will always visit application sites, and by Ward Councillors, to enable the Committee to understand the proposal and make a decision. Site visits are time-consuming and expensive and should only be proposed when absolutely necessary. Each case needs to be considered on its merits, but site visits will only normally be necessary in the following circumstances:

- Applications which may have a significant or widespread impact on the surrounding area, which Councillors need to see and understand.
- Applications where, after debate, Councillors are genuinely undecided about where the balance lies between conflicting arguments for and against the proposal and where seeing the site and its surroundings would be helpful in resolving the issue.

3 Authority for Site Visits

The authority for a formal site visit must come from the Committee with the responsibility for decision-making (although an Area Planning Sub-Committee may arrange a site visit in respect of an application, which may ultimately be referred up to the Planning Committee). In most cases, site visits will be arranged after a planning application has been considered and deferred by the Committee. However, in order to avoid delay, the Planning Committee may wish to arrange a site visit in respect of an application known to be under consideration and likely to be reported to the next scheduled meeting. Officers will facilitate this, where possible, by advising the Planning Committee of significant applications likely to be reported to the next meeting. Committees will not visit sites of applications that will be determined by officers under the Scheme of Delegation.

4 Arrangement of Site Visits

Committee Managers will make the arrangements for the date and time of the site visit. The visit will be organised to take place before the next scheduled meeting of the Committee so Councillors are able to debate and decide the application in the knowledge gained at the visit. Often, although not exclusively, the visit will be arranged for the day of the next Committee or the preceding day. Where more than one visit is to be held, they will be held, whenever possible, on the same day and in accordance with a pre-determined timetable. The Committee Manager will be responsible for advising all those invited to the visit(s) of the arrangements and for ensuring that access is available where necessary.

The arrangements for the site visits shall, where appropriate, include matters such as transport arrangements, parking (if councillors are to travel independently) and health and safety issues (including equipment and special arrangements for the site which may involve hazards). Where a number of sites are to be visited during a day, subsistence arrangements will also be considered.

Transport Arrangements and Parking

Wherever possible, transport to site visits should be by minibus running from County Hall with suitable liaison points for those Members not visiting every site on the itinerary. This will not preclude Members from using their own transport, if they are unable to visit all of the sites, or if they have other engagements which would make travelling by minibus impractical.

The responsible officer (ie the relevant Planning Manager) should attempt to identify a liaison point with safe parking near the application site where all those visiting can be directed to meet.

Health and Safety Issues

Prior to a visit taking place, the responsible officer (ie the relevant Planning Manager) should undertake a generic risk assessment and complete a checklist to be used as a site specific risk analysis. This will identify specific risks for each site and the need for any personal protective equipment, eg high visibility jackets, hard hats and safety or waterproof footwear.

If Members wish to view parts of the site that have not been risk assessed, the responsible officer should first make an assessment of the risks and advise whether the risks are too great to proceed or whether Members can proceed with caution.

Members and officers should be aware not only of the risks on site but also of the risks within the surrounding area and from other parties. The responsible officer should manage site visits so as to minimise these risks and, if appropriate, police accompaniment can be arranged.

5 Attendance at Site Visits

The site visit will be arranged with the applicant (or the authorised agent). Application sites are usually private land and access to the site is only possible with the applicant's (or owner's) permission. It is important, therefore, that attendance is limited to those specifically authorised by the Committee Manager and that others are not given any informal advice that they will be able to attend. Those authorised will be:

- Members of the Committee which asked for the visit (who should make every effort to attend)
- Any other Members of the Council
- The Committee Manager
- The relevant Planning Officer(s) (usually the Divisional Manager or Team Leader and/or Senior Case Officer)
- Other specialist officers of the Council, as appropriate
- The applicant and/or authorised agent

- Any other person(s) identified by the Committee when the site visit is approved and who has the applicant's/owner's permission to enter the site. Neighbours, third parties, parish councils and others will not be advised of the arrangements for a site visit, unless they have been identified by the Committee as having an important role to play in relation to a specific visit

(NB: If it is considered appropriate for Councillors to visit the adjoining property to view an application site from that perspective, similar constraints apply. Only those with the permission of the adjoining owner may enter that private property. It is important, therefore, that the need for such a visit is identified early so that necessary authorisation can be obtained).

It is, of course, not necessary for prior consent to be obtained if the application site is to be viewed from the highway or other public land. However, in the interests of good management (including health and safety), attendance should be arranged beforehand as described above.

6 Conduct of Site Visits

It is important that Committee site visits are well regulated so that Councillors have the maximum opportunity for gathering information that they require and so that there can be no substantiated claims of undue influence on councillors by applicants or third parties. The site visit should be viewed as an extension of the formal Committee meeting and normal rules apply. The visit will normally be "chaired" by the Chairman of the Committee or Sub-Committee. Where this is not possible, a substitute will be appointed in advance. Councillors, officers and others must only address the site visit "through the chair". It is particularly important that Councillors do not allow themselves to become targets for lobbying by entering into discussions with individuals away from the main site visit meeting.

The normal format for the site visit will be:

- (a) Chairman formally calls the meeting to order to time. No Members should access the site prior to the commencement time.
- (b) Planning officer introduces the application and explains what is proposed in relation to the site.
- (c) Any specialist Council officer present elaborates on the general description offered by the planning officer.
- (d) Councillors are invited to ask any questions or to point out any relevant facts. Questions will normally be answered by Council officers through the Chairman, but, if appropriate, the applicant, agent or any third parties present may be invited by the Chairman to provide factual information to assist Councillors' understanding of the situation.
- (e) The process may be repeated several times if it is helpful to move to different parts of the site.
- (f) When appropriate (for example, if the visit is to an industrial establishment) the applicant (or authorised agent) may be invited to guide Councillors through the site, providing explanatory commentary as necessary. However, this should not

include a presentation of arguments in support of the application. If appropriate, this will be arranged separately.

- (g) The Chairman formally closes the site visit.

Although the conduct of individual site visits will necessarily be flexible to recognise the particular character of the site and/or the proposed development, visits should always follow the basic principles of this code. It is particularly important that all participants remember that site visits are fact-finding exercises not an opportunity for interested parties to press their opinion on the merits of the planning application.

7 The Decision

Importantly, no decision is taken at the site visit, nor should Councillors give any indication of what the decision may eventually be. The information gathered at the site visit will be of use when the planning application is reported back to the next formal Committee meeting at which a decision will be taken.

ANNEX 3

CODE OF PRACTICE FOR MAJOR APPLICATIONS

- 1 Where it is proposed by the Head of Planning and Development Management that a presentation to Councillors by the applicant and/or objectors or statutory consultees is appropriate prior to Councillors taking a decision on a major planning application, the presentation shall normally take place at the beginning of the week of the meeting of the Committee which is due to take the decision on the application and shall be open to all Councillors. The meeting shall be chaired by the Chairman of the Planning Committee.
- 2 The presentation shall be open to the general public and press.
- 3 Where the applicant is invited to address Councillors, objectors to the proposal shall also be afforded a similar opportunity and vice versa. Each party shall be allowed to speak for a maximum of 30 minutes.
- 4 Presentations shall normally be based on the officer's report, which will be available during the week prior to the relevant Committee.
- 5 Any delegation to address Councillors shall be restricted to a maximum of five persons unless otherwise agreed by the Head of Planning and Development Management. Delegations may include a professional person(s) to put forward technical views but should not make legal representations.
- 6 Councillors shall not ask questions directly of the applicant and/or objectors or statutory consultees during presentations, except for the purpose of clarification, but may, following a presentation, ask officers to investigate issues raised and to report their findings to the Committee meeting at which a decision on the application is to be made.
- 7 In exceptional circumstances and where the Head of Planning and Development Management agrees, applicants may be permitted to make a presentation to Councillors prior to or at the same time that their application is submitted. In such circumstances, the arrangements set out above shall apply where they are relevant.

Part G – Appendices

Section G1B:- Member Planning Protocol

In Part G:-

Section G1A contains the Member Code of Conduct

Section G1B contains the Member Planning Protocol

Section G2 contains the Officer Code of Conduct

Section G3 contains the Officer/Member Relations Protocol

Section G4 contains the Finance and Contract Procedure Rules which govern how the council manages its financial affairs. The Rules are split into the following 8 parts:-

Part G4AA contains an introduction and overview to the principles of good financial management, the roles and responsibilities of Officers and Members and the various documents and processes that form the council's financial management framework.

Part G4A deals with Financial Management

Part G4B deals with Financial Planning

Part G4C deals with Risk Management and Control of Resources

Part G4D deals with Financial Systems and Procedures

Part G4E contains the Contract Procedure Rules

Part G4F deals with External Arrangements

Part G4G contains the glossary of terms used in the Contract and Finance Procedure Rules

Part G – Appendices

Section G1B:- Member Planning Protocol

Introduction

- 1.1 The role of an elected Member on the Planning Committee is a dual one. It involves balancing representing the needs and interests of individuals and the community with the need to maintain an ethos of impartial decision making on what can often be highly controversial proposals.
- 1.2 This section of the Code of Conduct sets out guidance for members of the Council in dealing with planning applications.

Conflicts of Interests

- 1.3 Councillors who have substantial property interests or other interests, which would prevent them from voting on a regular basis, should avoid serving on the Planning Committee.
- 1.4 Serving Councillors, who are themselves, or are acting as agents for people pursuing, a planning matter should play no part in the decision-making process for that proposal. The identification of such proposals is important.
- 1.5 The Councillor concerned should make it clear to the Development Management Service when submitting the planning application. Proposals will always be reported to the Planning Committee and not dealt with under the delegated powers of the Director of Environment. The Council's Monitoring Officer will keep a register of such applications.

Pre-Application Discussions

- 1.6 If Members are involved in any type of pre-application discussions, following submission of an application or other meetings to discuss development proposals or other contact with applicants or their agents, it should always be

made clear that the discussions will not bind the Council to make a particular decision and that any views expressed are personal and provisional.

- 1.7 Members of the Planning Committee should be especially careful in attending such meetings and avoid expressing support or opposition. A written note should be made of all such meetings. At least one officer should attend such meetings and all political parties should be invited to be represented. The exception to this is where a Member takes the view that the meeting is of such a nature that it would be difficult to invite officers or other Members e.g. a small meeting in someone's private residence.
- 1.8 Members should inform the Monitoring Officer of such meetings, who will record them in a register.
- 1.9 Whilst Members may receive information from applicants and give information to applicants and members of the public, to safeguard their impartiality they should maintain a clear distinction between receiving/passing on information and more detailed involvement.
- 1.10 Any developer presentations to Members, outside the normal Committee cycle, should be the subject of a formal request to Head of Planning and Transport. Members will be limited to asking questions to clarify points of detail. There will be no discussion of the merits or demerits of the proposal.
- 1.11 Further advice is set out below in Appendix A (Supplementary Guidance on Pre Application Engagement with Members - non-mandatory).

The Representational Role

- 1.12 It is accepted that a key element of the Councillors role and duties is representing the views of the electorate on matters of local importance. It is in this area that there can be the potential for conflict between this local representational role and the need for the Councillor to be part of the decision making process of the Borough Council.

- 1.13 It is inevitable that Councillors will be lobbied on planning proposals and asked to represent the view of the community. If letters are sent by lobbyists to Councillors, a copy of these should be sent to the Head of Planning and Transport to enable the content to be considered and, if appropriate, included in a Committee report.
- 1.14 It is considered that local Councillors who are also Parish Council Members should be allowed to give their views on particular proposals at Planning Committee meetings.
- 1.15 It is unwise for a member to express a final personal view on the planning application before the Committee meeting at which the application is to be determined if they wish to participate fully in the meeting at which the decision is made (ie vote). Additional information is often received and further representations often made. A member should not give the impression that when voting on an application they would not be influenced by these additional factors. To act in this way would be to appear to be acting partly out of prejudice rather than through reason based on information received and argument considered. A member who acted unreasonably in this way would increase the risk of a successful challenge to overturn the Committee's decision being made by an aggrieved party.
- 1.16 A decision on a committee application cannot be made before the Planning Committee meeting. Therefore no political group meetings or other meetings will take place prior to the Committee meeting with the specific purpose of instructing Councillors how to vote, or for Councillors agreeing how to vote.
- 1.17 Councillors should also not put undue pressure on officers to put forward a particular recommendation.
- 1.18 Visiting Members will be restricted to a period of five minutes speaking per item, with any extension to the time limit or any opportunity to speak again at the end of the debate to summarise their views being at the sole discretion of the Chairman, and there is an expectation that visiting Members comments

would be submitted in writing in advance of the meeting for appropriate circulation.

Pre-Meeting Briefings

- 1.19 Such meetings are helpful to explain the background to the proposals on the Planning Committee Agenda and for Members to seek clarification of any issues.

Site Visits

- 1.20 Site visits can cause delay and additional costs and should only be used when the benefit is substantial ie as an aid to decision making.
- 1.21 Site visits should be carefully organised to ensure that the purpose, format and conduct are clearly established and adhered to.
- 1.22 They will normally take place on the day of the Committee when the application is being considered and will be organised and conducted corporately and not by individual members on their own. Members and officers will travel together by coach from the Council offices.
- 1.23 In accordance with good practice a record will be kept of the reasons why a site visit is called.
- 1.24 Requests for site visits should be made to the Chairman or Vice-Chairman of the Planning Committee or to the opposition spokesperson on Planning Committee. Any Member can request a site visit. Requests should be made at the latest 5 days before the Committee agenda is published. Any Member of the Council will be able to attend.
- 1.25 The Head of Planning and Transport and the Development Control Manager will normally attend site visits to respond to any questions from Councillors on the particular applications.

- 1.26 Site visits do constitute a part of the formal Committee process and standing orders and members' interests provisions apply.
- 1.27 The purpose of site visits is for Members as a group to have facts pointed out by officers and questions responded to, not for there to be a debate about issues, nor for any decision to be made on the application. That will take place at the Committee meeting.
- 1.28 The Parish Clerk, Chairman of the Parish Council or other authorised Representative of the Parish Council, will be allowed to attend Cheshire West and Chester Planning site visits but for the purpose of asking questions only and only under strict guidance. For this purpose only the Parish Clerk will be notified. Otherwise third parties will not be able to attend and speak at Planning Committee site visits.
- 1.29 Unless they are required to permit access to the site, the site owner will not normally be invited to attend.
- 1.30 Whilst it may be necessary for an applicant or his agent to be present on site (eg for safety reasons), discussions with the applicant, their agent or any third party should be avoided. If it is necessary to seek information from the applicant on site this will be done by an officer.
- 1.31 A note of those members attending will be kept.

Declarations of Interest

- 1.32 Councillors should follow scrupulously the National Code of Conduct in relation to declarations of interest.
- 1.33 Not only should impropriety be avoided but also any appearance or grounds for suspicion of improper conduct. In particular, they should not favour any individual person, company or group nor put themselves in the position where they appear to do so. They should carefully consider the need to declare an interest in any planning proposal of an outside body in which the Councillor is closely involved.

1.34 The principles about the disclosure of interests should be applied not only to formal meetings, but also to any of a Member's dealings with Council officers, or with other Councillors. Treatment of Officers by Members should be fair and proper.

1.35 A Member of a Planning Committee may have or had a personal involvement/contact with an applicant, agent, landowner or other interested party (whether or not in connection with the particular matter under consideration by the Committee). This could possibly lead to the reasonable suspicion by a member of the public that there may have been a possibility that the involvement could affect the Member's judgment. In such cases a Member should consider carefully whether the involvement amounts to a personal interest:

- (a) where a personal interest is declared, the Planning Committee Member may take part in the meeting and vote
- (b) and where a prejudicial interest within the definition of the Code of Conduct is declared then a Member can speak and stay in the room but take no part in the Vote on the application
- (c) Members are reminded of their obligation to consider applications objectively and with an open mind by reference to all relevant material considerations. Members who cannot fully discharge that duty in any particular case should not vote and Members whose conduct otherwise would be likely to cause a fair-minded and informed observer to conclude a real possibility of bias on their part similarly should not vote. The onus is on an individual Member to consider personally whether they can be seen to have an open mind.
- (d) that it be noted that Planning Committee Members still need to record their interest regardless as to whether they alight from the organised coach for Council site visits.

- (e) Whilst the final decision as to whether a Councillor needs to declare a personal or prejudicial must always rest with the individual councillor, advice can be sought from the Council's Solicitor, if possible at the earliest opportunity.
- (f) Members who are not Members of the Planning Committee may speak on behalf of constituents even if they have expressed a view beforehand provided they do not have a prejudicial interest.

1.36 A serving Councillor who has submitted a planning application will take no part in the decision making process. All such applications will be considered by the Planning Committee.

Decisions Contrary to Officer Recommendations

1.37 If the Planning Committee makes a decision contrary to the officer recommendation (whether for approval or refusal), the Committee should state its reasons or give an outline of conditions. These will be minuted and a copy placed on the application file. The officer should be given the chance to explain the background to the officer's recommendation and the implications of the contrary decision.

1.38 If Councillors wish to add or amend conditions, the Committee should delegate the drafting of such conditions to the Head of Planning and Transport but must explain why they consider the change is required.

1.39 In sensitive cases, the drafting of conditions may be subject to further consideration at a subsequent meeting of the Committee.

Planning Obligations

1.40 Members of a Planning Committee should, when considering the merits of an individual planning application, consider any relevant planning obligation which has been offered by the applicant or agent.

1.41 Members should avoid becoming involved in discussions with applicants, prospective applicants, their agents, landowners or other interested parties

regarding benefits which may be offered to the Authority or benefits which the Authority itself wishes to obtain.

Review of Decisions

1.42 A review should take place at least annually with a Members' tour and should include examples from a broad range of categories such as:-

- (a) major and minor development proposals
- (b) permitted departures to the development plan
- (c) significant allowed appeals;
- (d) major listed building works;

1.43 Both Planning and Scrutiny Committees should formally consider the review and decide whether it gives rise to the need to review any policies or practices.

Member Planning Protocol – Appendix A

Supplementary Guidance

Pre-Application Engagement with Members

Pre-Application route

Type of Proposal	Possible Route		Approach to Engagement	Frequency
		Filter		
Major Development Proposals - Of Strategic Significance			Special meeting and possible fact finding site visit.	Arranged as and when required (likely 2 -3 a year)
Large/ Medium development proposals of local significance with some local community impact			Strategic Planning Committee	Monthly
			Planning Committee	Every 4 weeks
			Community Forums	Area based (15 Forums)
Small and minor applications			Informal discussion with Ward member	Discretion of Ward Member

Definitions

Filter:- The path outlined is only to be used as a guide to the likely route that can be taken, Officers and Members will take a decision to where pre-application discussions are to be taken.

Major:- Development Proposal - Of major economic benefit contributing new jobs. Significant environmental or visual impact. Major energy projects that contribute towards meeting national carbon reduction targets.

Large / Medium:- Development Proposal - Housing proposals over 20 dwellings or 1 hectare. Employment proposals on sites between 1-10 hectares. Retail of local significance. As a general guide, other proposals on sites over 1 hectare and Minor Development Proposals.

Small:- Development applications that are very localised, and which form the majority of applications dealt with by officers. These include house extensions and changes of use of small premises.

Pre-Application Terms of Engagement

1. Request Made for Pre-Application Discussions

- 1.1 Request for major, large and medium sized proposals passed to Planning Officer. Following liaison with members an appropriate forum is identified.
- 1.2 Direct request to members on small and minor applications dealt with by local Member at their discretion. Member to make decision whether to meet applicant.

2. Response to Potential Applicant

- 2.1 Requestor in respect of a Major to medium sized proposal informed by letter of:-
 - (a) the forum they have been allocated to address
 - (b) a suitable date to attend
 - (c) the general proceedings and terms of engagement

3. Forum Terms of Engagement

Special Meetings

- 3.1 planning officers will have met the requestor beforehand to gain an understanding of the issues and will produce a short briefing note for Councillors
- 3.2 the meeting commences with a short introduction by the planning officer outlining the relevant policy background and the issues identified thus far
- 3.3 the requestor has 30 minutes to make a PowerPoint presentation of the proposed scheme which shall be restricted to factual and contextual issues and not amount to submissions on the planning merits or demerits of the proposed scheme

- 3.4 third parties be allowed an equal amount of time to address the Forum before the Chair invites questions and responses/answers the main points and issues raised are captured and summarised to ensure that they are accurate
- 3.5 this summary is printed and e-mailed to participants
- 3.6 If considered necessary, the meeting will be supplemented by a site visit where members will be able to ask questions to gain greater clarification of the potential development proposals.

Strategic Planning Committee and Planning Committee

- 3.7 planning officers will have met the requestor beforehand to gain an understanding of the issues and will produce a short briefing note for Councillors
- 3.8 the meeting commences with a short introduction by the planning officer outlining the relevant policy background and the issues identified thus far
- 3.9 the requestor has 20 minutes to make a PowerPoint presentation of the proposed scheme
- 3.10 third parties be allowed an equal amount of time to address the Forum before the Chair invites questions and responses/answers
- 3.11 the main points and issues raised are captured and summarised to ensure that they are accurate
- 3.12 this summary is printed and e-mailed to participants

Community Forum

- 3.13 Presentation format at the discretion of the Forum Chairman to ensure community engagement and discussion.

Informal Discussion

- 3.14 The local ward member who will decide whether they meet with the potential applicant or choose to hold an informal discussion. Members can be advised

by the Planning officer. Where the Local ward member also sits on a planning committee due regard shall be had to the risks of predetermination and appropriate advice shall be taken.

4. Overview

- 4.1 Where pre-application engagement proceeds in respect of Major, Large and Medium proposals Cheshire West and Chester Council will:-
- (a) Acknowledge the production of a written record of the pre-application discussions that includes the substantive points discussed and agreed and the actions and associated timescales. The monitoring officer is to be informed of meetings which shall be record in a register.
 - (b) Ensure that at least one officer is in attendance.
 - (c) Ensure that all Members elected to the Council have been invited to attend.
 - (d) Consider any advice given to be a material consideration of due weight in any subsequent processing and determination of a planning application, but make it clear from the outset that discussions are not binding.
 - (e) Recommend that public engagement with the local community in the pre-application process should be carried out prior to Member presentations.



PLANNING COMMITTEE CODE OF PRACTICE

“Everything you need to know about
Planning Committee”

(Updated May 2015)

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1. Introduction

1.1 This Code of Practice is intended to guide the procedures by which Councillors and Officers of the Council deal with planning matters, and to set standards of probity and conduct which the residents of Newport City Council can expect.

1.2 As planning affects people's lives and private interests, it can often be very contentious. It is important that residents of Newport and applicants for planning permission understand the system, have confidence in its integrity and transparency and that Members and Officers involved in the planning process avoid impropriety or even the suspicion of impropriety. This approach is endorsed by the Committee on Standards in Public Life (the Nolan Committee), the Wales Audit Office and the Welsh Local Government Association.

1.3 Members must follow the Codes and Protocols in the Constitution of Newport City Council which cover such matters as declarations of interests, gifts and hospitality and the Protocol for Member/Officer relations. When dealing with planning matters they must also act in accordance with this Planning Code of Practice.

1.4 A breach of these codes whilst not usually amounting to a breach of criminal law, may adversely affect the standing of the Council. It could result in a decision being judicially reviewed or in a complaint of maladministration, being made to the Local Government Ombudsman. A breach of the Members' Code of Conduct can result in a complaint against a Member personally.

1.5 If Members or Officers are in doubt about the application of the Codes they should seek advice from the Council's Monitoring Officer.

2. General Roles, Responsibilities and Conduct

2.1 Members and Officers have different but complementary roles in the planning process. Members of the Planning Committee have different roles to those of other Councillors.

Members of Planning Committee

2.2 There are 11 Members on the Planning Committee and they normally meet once a month.

2.3 Members of the Committee are appointed at the Council's Annual General Meeting, held in May each year.

2.4 Three Members of the Committee constitute a Quorum.

2.5 Councillors who are Members of the Planning Committee are responsible for the determination of planning applications for major regeneration and controversial applications. The Committee must assess proposals against national and local planning policy and carefully balance the benefits of proposed development with any impacts on the surroundings. Members are required to consider all planning proposals in the wider public interest. Decisions are restricted to planning considerations, and cannot seek to control non-planning issues or duplicate other legislative controls.

2.6 Other applications are delegated to the Head of Regeneration, Investment & Housing Services through the Development Services Manager. Details of applications received are available on the Council's website. Members can contact the Case Officer to express an interest in the proposal. In due course that Member will be notified of the Officer's recommended decision. If unhappy with the recommended decision the Member can request referral of the application to Planning Committee for determination.

2.7 However, such requests must be supported by clear planning reasons why the case requires consideration by the Committee. Members shall not put any pressure on Officers to make

particular recommendations or decisions, nor to change recommendations or decisions in respect of any application. However, it is helpful if Members explain their concerns with the Officer in advance of the Committee meeting.

Planning Committee Members shall:-

2.8 For and in meetings:-

- Exercise personal responsibility in deciding whether to declare any personal interest as defined in the Council's Code of Conduct in relation to any planning application that is before the Planning Committee for determination, and withdraw, if so required by the Code. If in doubt, Members shall consult and seek guidance from the Monitoring Officer in advance of the meeting.
- Act fairly and openly.
- Carefully weigh up all relevant planning issues before making a decision
- Make decisions purely on planning grounds in the public interest and not favour, or appear to favour, any person, company, group or locality. Whilst Planning Committee Members have a responsibility to their constituents, the decisions of that Committee must be based on material planning considerations.
- Have reasons and justification for their position and resolutions (this is a requirement of the Code of Conduct)

Members of the Planning Committee who are also members of Community Councils

2.9 Membership of a Community Council provides an opportunity to listen to local views and does not of itself give rise to conflict of interest for a Planning Committee Member provided he or she maintains an open mind until all the evidence and arguments have been presented to Planning Committee.

2.10 A Member does not have to declare an interest at the Community Council that he/she is a Member of City Council's Planning Committee unless the matter under discussion is an application made by the City Council. They would then have to declare a personal interest but not a prejudicial interest.

2.11 If the Planning Committee Member is a Community Councillor, if the particular Community Council they are sitting on is making an application to the Council the interest would be a prejudicial one and the Member should not take any part in discussion or voting on the application at Committee.

Non Planning Committee Members of the Council

2.12 Ward Members who do not sit on the Planning Committee will be allowed to speak at Planning Committee at the Chairman's discretion. This opportunity shall not apply to delegated items unless they are referred to Planning Committee for determination in accordance with the operation of the scheme of delegation.

Who Can Speak

2.13 Ward Members representing the Ward in which the proposed development is located are allowed to speak at Planning Committee at the Chairperson's discretion.

2.14 Applications to be placed before the Planning Committee will be scheduled for the first available meeting. Applications will not be deferred to later Committee meetings on the grounds that an interested Member is unavailable to attend the scheduled meeting. In the case of Wards represented by only one Member, that Member may nominate another Member to attend the scheduled meeting to speak on their behalf. The Chairperson shall be notified of the nominated Member in advance of the relevant Committee meeting.

3. Planning Committee Meetings

3.1 Meetings of the Planning Committee will normally be held on the first or second Wednesday of each month. Dates for Committee meetings can be found on the Council's website or by contacting City Contact Centre on 01633 656656. The time of Committee meetings will be advertised on the Council's website.

All meetings will be held in public. However the public will be excluded from meetings whenever it is likely in view of the nature of the item to be discussed or the nature of the proceedings, that confidential information would be disclosed.

Public speaking items will be taken first on the agenda. All other applications will be heard in the order in which they appear on the Agenda, other than in exceptional circumstances, and always at the discretion of the Chairperson. The procedure at the Planning Committee meetings is explained in paragraph 9 of this Code of Practice.

Webcasting / Broadcasting of Meetings

3.2: The Council has agreed that certain meetings of the Planning Committee may be the subject of live web transmission ('webcasting'), or recorded for subsequent transmission. Fixed cameras are located within the Council Chamber for this purpose.

The Council will ensure that in doing so it is compliant with its obligations under the Data Protection Act 1998 and the Human Rights Act 1998.

The Notice on the agenda and the Chair at the meeting will make it clear that whilst generally the public seating areas are not filmed; by entering the meeting room and using the public seating area, members of the public are consenting to being filmed and to the possible use of those images and sound recordings for webcasting and/or training purposes. The process for prospective public speakers will be explained to them.

Content of Ward Councillor Speeches

3.3 Comments by Ward Councillors should be limited to relevant planning issues.

These include:-

Relevant national and local planning policies;

Appearance and character of the development, layout and density;

Traffic generation, highway safety and parking/servicing;

Overshadowing, overlooking, noise disturbance, odours or other loss of amenity.

Ward Councillors should avoid referring to matters outside the remit of the Planning Committee, such as:

- Boundary disputes, covenants and other property rights;
- Personal remarks [e.g. Applicant's motives or actions to date];
- Rights to views or devaluation of property.
- Competition between businesses/services
- Issues covered by other legislation e.g. Environmental Health

Late Representations

3.4 The deadline for the submission of comments on applications being presented to Committee is midday on the Monday immediately before the Planning Committee meeting (on the Wednesday). Comments received by the Case Officer before that deadline will be summarised and sent to Planning Committee Members and the relevant Ward Councillor(s) by 12 noon the day before the meeting. Comments or any other document or information received after that deadline would not be taken into consideration. This procedure ensures that Planning Committee Members have had sufficient time to read any additional papers.

Officers

3.5 The function of Officers is to support and facilitate the Councillors in their work and to ensure that robust and lawful decisions are made. Planning decisions must be made in accordance with the Development Plan and other material planning considerations.

3.6 The Development Services Manager makes decisions on the majority of planning applications under delegated powers and makes recommendations on more significant and contentious applications and other planning matters for decision by the Planning Committee. Officers will provide professional advice and will provide Members with a recommendation on whether or not planning permission should be granted, based on the Officer's assessment.

In considering applications and in advising members of the public on planning policy, the determination of planning applications, enforcement and other planning matters, Officers must:-

- Act fairly and openly and avoid any actions that would give rise to an impression of bias
- Avoid inappropriate social contact with applicants and their agents, objectors and other interested parties
- Approach each planning application or issue with an open mind, avoiding preconceived ideas
- Carefully weigh up all relevant planning issues before making a decision
- Make decisions purely on planning grounds having regard to the Development Plan and other material considerations
- Give professional, objective and consistent advice
- Carry out the decision of the Committee insofar as they relate to the completion of any legal agreement, or instigation or defence of proceedings etc

4. Administrative Arrangements

Planning Application Notification

4.1 All Members of the Council will be informed of the submission of all planning and related applications through the weekly list of applications published on the Council's website. This list will include basic details about the application and indicate whether it falls within the "delegated" (i.e. dealt with by the Development Services Manager) or "Committee" category for determination. Further detail on the application, including relevant plans and documents, can be viewed on the Council's website.

Meetings with Applicants and Objectors

4.2 The Local Planning Authority does not organise public meetings in respect of any application. The statutory planning process which includes a procedure for notifying occupiers of land neighbouring an application site provides ample opportunity for the public to make its views known about a proposal. Where appropriate it might be possible for Planning Officers to attend public meetings organised by Ward Members for information purposes. In order to be taken into account in the final decision, all comments made by local residents and third parties must be made in writing (an email is sufficient).

Determination Process

4.3 If an application received is of interest to the Ward Member because it is, or becomes, a controversial or significant local issue, the Member should contact the Case Officer to express an interest in the application. That Ward Member will then be notified in due course of the proposed decision. Should that Ward Member wish for that application to be determined by Planning Committee (being unhappy with the Officer recommendation), he/she should notify the Development Services Manager and Case Officer within the 48 hour period prior to the application being determined, giving planning reasons for calling the application to Committee in writing (or by email).

5. Pre-Application Discussion and Enforcement Discussions

5.1 Local Planning Authorities are encouraged to enter into discussions and negotiations which can bring about improvements that can make an application acceptable, and thereby potentially speed up the process. Such pre-application discussions will normally take place at Officer level and Members shall wherever possible refer requests for such advice to Officers. If Members become involved in such discussions they should make it clear that their views are personal and provisional and they may wish to make a record of the discussion.

All Officers taking part in such discussions shall:-

- Identify the decision-making process applicable to the application or issue under discussion
- Make it clear that only personal professional and provisional views can be expressed that will not bind the Council (Officers or Members) to reach a particular decision when determining the application
- Express views in the context of the Development Plan and other material planning considerations
- Be consistent in interpreting planning policies and Government guidance
- Where appropriate advise applicants, neighbours and objectors on procedural matters.

6. Lobbying of Members of the Planning Committee

6.1 Lobbying is the process by which applicants, agents, neighbours, non Planning Committee Members and other interested parties may seek to persuade Councillors on the Planning

Committee to come to a particular decision. It is legitimate for them to approach Members of the Planning Committee (in person or in writing) and such discussions may help Members to understand the issues and concerns. As stated in the Nolan Committee Third Report *“it is essential for the proper operation of the planning system that local concerns are adequately ventilated”*.

6.2 In responding to approaches of this kind, Planning Committee Members may publicly express an opinion provided that they keep an open mind at Planning Committee meetings but must not have closed their mind prior to hearing all the evidence and arguments, which will be presented at the Planning Committee. They should explain their position in respect of probity if they express an opinion on a proposal before consideration at the Planning Committee. They should:-

- Explain the procedures by which representations can be made.
- Indicate that a decision will be taken only when all relevant planning considerations have been taken into account.
- Explain the kinds of planning issues that the Council can take into account.
- Report issues raised to the Officers or direct the public to the Officers so that their views can be considered. It is helpful if this takes place in advance of the Planning Committee meeting so that all relevant issues are fully considered before the agenda is published.

7. Planning Applications Submitted by Members, Community Councils and Officers

7.1 Any application

- made by any Elected Member of the Council, or
- made by any Officer either employed within the Regeneration and Regulatory Services area or by an Officer who works in close association with the Development Services section (for example as a regular consultee), other than where that application is submitted solely in that Officer's professional capacity as a Council employee and where the Officer has no personal or prejudicial interest in the outcome of the application; or
- in respect of which an Elected Member of the Council has been consulted as a neighbour; or
- in respect of which the Head of Regeneration and Regulatory Services has responsibility for any aspect of the management of any land or buildings to which the application relates; or
- any other matter where the Head of Regeneration and Regulatory Services considers it appropriate for the matter to be determined by Planning Committee shall be determined by the Planning Committee.

7.2 The affected Member or Officer must declare the existence and nature of the interest or relationship in accordance with the appropriate Code of Conduct and withdraw from involvement in the decision. The affected Officer shall take no part in the processing of the application and any recommendations made to Planning Committee.

7.3 If the Planning Committee Member is a Community Councillor, if the particular Community Council they are sitting on is making an application to the Council the interest would be a prejudicial one. Members should therefore choose whether they should take part in debates at the Community Council or at the Planning Committee. This does not prevent a Member listening to a debate at a Community Council, so long as the Member does not take part in the debate.

7.4 Where a Community Council submits a planning application, the City Council Members who are also Members of Planning Committee should disclose their interest and not participate on that application should it come to Planning Committee for decision (whether a Committee or delegated decision).

8. Planning Applications Submitted by the Council

8.1 It is essential that the Council treats applications for its own development (or a development involving the Council and another party) in the same manner as all other applications and that this

is seen to be the case. Due to the fact that the Head of Regeneration & Regulatory Services' portfolio contains both Property/Estates and Planning, planning applications relating to Council-owned land must be considered by Planning Committee. Applications which are merely sponsored by the Council, such as applications made through the Housing Renewal Team on behalf of disabled persons, can be decided under delegated powers.

Officers' Reports to the Planning Committee

8.2 All planning matters considered by the Planning Committee will be the subject of appropriate written reports by the Development Services Manager incorporating his/her recommendations. Such reports shall be comprehensive but succinct in setting out the key planning issues to be considered in terms of the provisions of the Development Plan and other material planning considerations, the substance of any representations received and any planning history.

All reports will be submitted on the adopted template and will include the mandatory comments of the Monitoring Officer, Head of Finance and any other relevant consultees.

9. Conduct and Procedure of Planning Committee Meetings

9.1 Broadcasting / Webcasting:

At the start of each meeting to be filmed, an announcement will be made to the effect that the meeting is being, or may be, webcast.

The Chair of the meeting has the discretion to terminate or suspend filming, if in the opinion of the Chair continuing to do so would prejudice the proceedings of the meeting or if the Chair, on advice, considers that continued filming might infringe the rights of any individual.

9.2 Consideration of Planning Applications:-

Planning applications will be considered in the following structure:

a) First there will be a presentation about the application by a Planning Officer, normally using visual aids

b) Members will have been sent an addendum report outlining any late correspondence received since publication of the agenda but before the consultation deadline. This addendum must be considered by the Committee prior to making its decision on the application.

N.B. Late representations are included in an updated Planning Application Schedule and copies are available at the meeting.

c) Public speaking:

In any correspondence notifying applicants, supporters or objectors of the meeting date on which an application will be heard, advice in relation to Broadcasting / webcasting of meetings will be included.

Those who have made requests to speak in accordance with the relevant Protocol will be invited to speak in the following order:

- Objector (5 minutes)
- Supporter (5 minutes)
- Applicant or their agent (5 minutes)

d) The Planning Officer will respond as necessary.

- e) The Chairperson will invite the Ward Councillor(s) to speak, if applicable;
- f) The Chairperson will then open the debate by providing an opportunity for members of the Planning Committee to comment or ask questions of the Planning Officer or any other officer in attendance. The Planning Officer or others will be provided with the opportunity to respond.
- g) When a Member of the Committee wishes to speak, he or she will indicate this to the Chairperson. No Member will speak unless called upon to do so by the Chairperson. When called upon to speak, the Member will address the meeting through the Chairperson. If two or more Members wish to speak the Chairperson will ask one to speak and the other(s) **will remain silent**. While a Member is speaking, other Members **will remain silent** until invited to speak by the Chairperson.
- h) When the Chairperson considers all Members have had an opportunity to contribute he or she will ask for a motion to be moved and seconded. If the motion is to do something other than agree the Officer recommendation set out in the report before Committee, **planning reasons should be given at that time and before taking the vote**.
- i) If the vote is against the recommendation of the Planning Officer but with no alternative motion before the Committee, there is a risk of appeal against non – determination by the Committee
- j) If the motion is not carried, further motions will be requested until a motion is carried
- k) The application will be determined by a simple majority vote by show of hands. All Members of the Committee, including the Chairperson, should cast a vote in favour or against the motion before the Committee. **As all Members of the Committee are performing a quasi - judicial role, then it is not appropriate for Members to abstain.**
- l) If there are equal numbers of votes for and against, the Chairperson will have a second or casting vote. The Chairperson can only use a second or casting vote if he or she has participated in the original vote.
- m) Following the vote, the matter is resolved. There must be no further discussion on the matter.
- n) If the Committee makes a different decision to that recommended by the Planning Officer, it must articulate and record in the minute the relevant planning reasons:
 - If an application is refused against Officer recommendation, the Committee must provide the planning reasons for refusing planning permission
 - If an application is granted against Officer recommendation, the Committee must suggest any conditions that it thinks should be imposed and the reason for those conditions
 - If the Committee requests a site visit prior to making a final decision, the reasons for that visit must be provided.

Officers will provide the Committee with advice regarding relevant policies and conditions where applicable.

Following the Planning Committee meeting, the Development Services Manager will produce a Decision Notice reflecting the Committee's decision on the application. This gets sent to the applicant/agent and published on the Council's website. The Development Services Manager has delegated powers to add, amend or delete conditions or reasons for refusal as is considered necessary to ensure decisions are robust.

N.B. If a Member joins a Planning Committee meeting after the presentation of an item has begun, then the Member should not take part in the debate or vote on that item.

10. Conduct

10.1 The Chairperson of Planning Committee is responsible for the conduct of the meeting in accordance with the Rules of Procedure (Council Standing Order 9) and for the effective delivery of business in a professional, courteous and transparent manner. The Members of the Committee and Officers shall respect the role and behave in a manner that is commensurate with the high standards of conduct and propriety that are expected in public office.

10.2 The Chairperson will seek to ensure that Members and Officers are treated in accordance with the Council's agreed Protocol on Member/Officer Relations (Part 5 Section 3 of the Constitution), with regard to:-

- The political neutrality of Officers
- The independence of Officers
- Mutual respect, courtesy, civility and professionalism with respect of differing views

Where disturbance of the meeting occurs by way of public interference, the Chairperson may suspend proceedings until matters are resolved or in extreme situations may close the meeting to the public.

Please be aware that the Code of Conduct applies to all Members at all meetings of the Council, whether or not they are broadcast. Laws relating to remarks made about individuals apply at all meetings of the Council, whether or not they are being broadcast

11. Procedure

11.1 The Chairperson will ensure that the meetings of the Planning Committee are conducted in accordance with the Council's Rules and Procedures and safeguard that appropriate debate is able to take place in a structured and professional manner. The Chairperson should seek to avoid repetition or irrelevant debate.

11.2 Members should endeavour to give not less than 24 hours notice (preferably in writing) to the Development Services Manager of all questions requiring a technical or detailed response so that an appropriate response can be prepared for the meeting of the Planning Committee

11.3. Appropriate legal and administrative Officers will be responsible for advising the Chairperson and the Committee on matters of procedure and protocol.

11.4 Where Officers advise the Chairperson of material planning concerns or potential consequences of a particular course of action, or any potential liabilities or errors of fact, Officers shall be afforded reasonable opportunity to concisely explain those matters to Planning Committee before it reaches a decision.

12. Site Inspections

12.1 A Sub-Committee of the Planning Committee will be constituted for the purposes of undertaking site visits on behalf of the Planning Committee known as the Planning Site Sub-Committee.

12.2 The Planning Site Sub-Committee shall comprise six named Councillors of the Planning Committee. Rules of political balance as set down in the Local Government and Housing Act 1989 will apply.

12.3 A site visit by the full Planning Committee may be undertaken in lieu of the Planning Site Sub-Committee if the scale or sensitivity of the development merits such consideration. The decision to

undertake a full Planning Committee visit lies with the Committee. Where a full Planning Committee visit takes place, except in exceptional circumstances, the application will be determined at an extra Planning Committee meeting called immediately following the site visit. This meeting will be a public meeting and the relevant Public Speaking Protocol and Member Speaking Protocol will operate.

Purpose of Site Inspections

12.4 Site inspections by the Planning Site Sub-Committee or full Planning Committee will be undertaken for the following purposes:

- To fact find
- To investigate specific issues raised in any request for a site inspection
- To investigate issues arising from the Planning Committee presentation or discussion
- To enable the Planning Site Sub-Committee to determine an application (grant or refuse), authorise formal enforcement action to be taken, or determine that no further action should be taken, or, if it considers that a proposal merits further debate based on the findings of the site visit, it could refer the matter back to full Planning Committee

Requests for Site Inspections

12.5 Any Member of the Council may request that a planning application site be visited by the Planning Site Sub-Committee prior to the determination of that application. Such requests must be made in writing [e-mail is sufficient] to the named case officer dealing with the application or the Development Services Manager. Any such request must include specific planning reasons for the visit.

12.6 Applications subject to a request for a visit will be reported to the Planning Committee. The report will include details of the request and the reasons given. Planning Committee will decide, following a full presentation of the application, whether or not it considers that a site visit is necessary to inform the decision-making process.

12.7 Where no request for a site visit has been made, Members of the Planning Committee may decide, during consideration of an application, that a site inspection would be beneficial. The reasons for the visit should be agreed and recorded as part of the minute of the meeting.

12.8 Occasionally there will be circumstances when timescales for determination will not allow site visits to be programmed in the normal way e.g. those related to telecommunications development. In such **exceptional circumstances**, at the discretion of the Chairperson of the Planning Committee, a site visit may be undertaken prior to the presentation of the matter to the Planning Committee. As Members of the Sub-Committee will not have received a formal presentation on the application, a recommendation cannot be given nor a decision made. They will be able to report their findings of fact to the Planning Committee only. Members should make their written request, with reasons, in the normal way. All other aspects of the protocol will apply.

Attendance at Planning Site Sub-Committee Meeting

12.9 Attendance at Planning Site Sub-Committee meetings will be restricted as follows:

- Members of the Planning Site Sub-Committee
- Relevant Officers
- Ward Councillors
- Single representative of the Community Council [if relevant]
- Applicant/Agent to allow access to the site
- Neighbour/other Landowner (where access is required to make any assessment)

Representations at Planning Site Sub-Committee Visits

12.10 A site visit is not an opportunity to lobby on an application. Accordingly, no representations may be made to the Planning Site Sub-Committee during the visit. Members of the Sub-Committee may ask questions of those present to establish matters of fact and inform their consideration of the application.

Procedures

12.11 At the initial consideration of the application at Planning Committee, Officers will make a full presentation of the item, including a recommendation to Committee.

At the commencement of the site visit, the Chairperson of the Planning Site Sub-Committee will state the issues for consideration.

The site visit will not be deferred due to the unavailability of applicants/agents, Ward Councillors, Community Council representatives, neighbour or other land owners (unless access onto the site is essential).

Members are reminded that the rules of declarations of interest apply to site visits, and that if a Member has an interest that would require the Member to withdraw from a Planning Committee, the Member is not entitled to attend the site meeting.

12.12 Following the site visit, the Planning Site Sub-Committee will return to the Civic Centre to discuss their findings and determine the application (as set out in paragraph 12.4 above). This is a public meeting. At this meeting, there will be a brief formal presentation by Officers focusing on the site visit issues. The Sub-Committee could limit their debate to the issues considered at the site visit. However, Members will be free to debate the full range of planning issues relating to the application if necessary. The Public Speaking Protocol will **not** operate at this meeting. However, it will be appropriate to allow Ward Members to address the Sub-Committee prior to it making its decision, at the Chairperson's discretion.

13. Planning Committee Decisions Contrary to Officer Recommendation

13.1 From time to time the Committee will disagree with professional advice given by the Officers and may decide to determine an application contrary to that advice. When this occurs the Chairperson of Planning Committee will ensure that the following principles are followed:-

- Members shall clearly express the planning reasons for their decision and these will be recorded in the minutes.
- A Member proposing refusal of an application for which the Officer recommendation is approval shall state his/her reasons prior to the vote being taken.

14. Appeals against Council Decisions

14.1 Officers will organise and generally appear as witnesses at planning appeals and other proceedings on behalf of the Council. In some circumstances (such as where specialist evidence is required) it may be necessary to appoint Consultants to appear for the Council.

In giving evidence, Officers will present the best possible case on behalf of the Council while complying with the RTPI Code of Professional Conduct. This Code requires that Planning Officers who are members of the Institute do not make statements purporting to be their own, but which are contrary to their *bona fide* professional opinion.

14.2 Members can have an important role to play in appeals and may, within set deadlines, make written representations to the Inspector and may also appear at informal hearings or as a witness at public local inquiries. In doing so they should state whether they are acting in their local Councillor capacity or, representing the Council's case.

14.3 Where Planning Officers are unable to defend decisions on appeal (due to requirements of the professional conduct rules of the Royal Town Planning Institute) the Planning Committee should be aware of this before the final vote is taken. In such cases, the Committee shall nominate at least two of its Members who voted contrary to the recommendations to appear at any appeal and defend the Committee's decisions, thereby presenting the Committee's reasons for its decision. The Members attending any appeal hearing should normally be the proposer and seconder of the proposal that was contrary to the Officers' recommendation. Those Members will then be required to attend any subsequent appeal hearing, and if necessary, to give evidence in support of the Council's decision.

14.4 Planning and Legal Officers will support Members attending or wishing to make representation at appeals and advise them on preparing and delivering evidence. Legal Officers will attend inquiries or assist in preparing representations when legal representation is required.

14.5 Planning decisions are decisions made by the Council. It is therefore not normally appropriate for an elected Member to support an appellant at Appeal. If Members have concerns about delegated applications, the appropriate course of action is to call the application to Planning Committee for decision.

15. Member Training

15.1 Members of Planning Committee should undertake training which, on occasions, should be offered to all Members of the Council.

15.2 Members will be offered and required to attend core (compulsory) training (normally within three months of appointment to the Committee). This training will cover planning procedures, code of conduct and other subjects determined from time to time by Officers in consultation with the Chairperson.

15.3 Attendance at training events will be recorded and published and will be monitored through the relevant Overview and Scrutiny Forum.

16. Review of Decisions

16.1 The Audit Commission's report "Building Quality" recommends that Councillors should visit a sample of implemented planning permissions to assess the quality of decisions. The purpose of such a review is not to change decisions, but to assess and improve the quality and consistency of decisions and thereby strengthen public confidence and assist in reviewing planning policy.

16.2 The Planning Committee will undertake an annual review of a sample of planning decisions made by the Committee. The review will include examples from a range of development types e.g. major residential proposals, listed building consents and enforcement cases, and, where it is considered appropriate and beneficial, include visits to sites.

16.3 The Planning Committee will consider the results of the review and decide whether it gives rise to the need for new policies, procedures and practices.

16.4 The outcome of appeals against the decisions of the Council will be reported regularly to Planning Committee. The outcome of enforcement cases and legal proceedings will also be reported regularly so that Planning Committee can review its own decision-making processes.

Background information

The following documents are available:

[Planning Scheme of Delegation](#) (pdf)
[Member Speaking](#)
[Public Speaking](#)

Public Speaking at “Extra Planning Committee” Meetings
Site Sub Committee

MEMBERS' PLANNING CODE OF CONDUCT

Introduction

1. **The aim of this Code:** to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way. One of the key purposes of the planning system is to regulate the development and use of land in the public interest. Your role as a Member of the Development Control Committee is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons. You are also a democratically accountable decision-taker who has been elected to provide and implement policies. You are entitled to be predisposed to make planning decisions in accordance with your political views and policies provided that you have considered all material considerations and have given fair consideration to relevant points raised.
The guiding principle is that you should always be fair to all parties including having, and being seen to have, an open mind.
2. **When the Code applies:** this code applies to Members at all times when involving themselves in the planning process. (This includes when taking part in the decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.
3. It would be impossible for the Code to cover all situations which might arise and so it instead sets out a series of principles to guide Members. This means that Members will need to exercise their judgment when applying the Code. If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or one of his or her staff, and preferably well before any meeting takes place.

Relationship to the Code of Conduct for Members

4. **Do** apply the rules in the Council's Code of Conduct for Members first, which must always be complied with. This is both the rules on interests and the general rules giving effect to the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
5. **Do** then apply the rules in this Members' Planning Code, which seek to explain and supplement the Code of Conduct for Members and the law on decision making for the purposes of planning control. If you do not abide by this Members' Planning Code, you may put:
 - the Council at risk of proceedings on the legality of the related decision or maladministration; and
 - yourself at risk of being named in a report made to the Council or, if the failure is also likely to be a breach of the interest provisions of the Localism Act 2011, a complaint being made to the police to consider criminal proceedings.
6. **Do** always consider how your actions would be perceived by a member of the public.

Development Proposals and Personal Interests

7. **Do** disclose the existence and nature of your interest as required by the Code of Conduct for Members.
8. **Do** take into account when approaching a decision that the Principle of Integrity in the Code of Conduct for Members is defined in terms that "Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties."

It is therefore advisable that you:

9. **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a Member. This would include, where you have a disclosable or other personal conflict of interest in a proposal, using your position to discuss that proposal with officers or Members when other members of the public would not have the same opportunity to do so.
10. **Do** note that you are not prevented from seeking to explain and justify a proposal in which you may have a conflict of interest to an appropriate officer, in person or in writing, but that your role as a Member may place additional limitations on you in representing the proposal in which you have a personal interest.

Exercising Discretion in the Planning Process

(natural justice, predisposition and predetermination)

11. **Don't** restrict your discretion by approaching the decision with a closed mind.
12. **Do** be aware that in your role as an elected Member you are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the Localism Act 2011.
13. **Do** keep at the front of your mind that, when you come to make the decision, you are entitled to have and to have expressed your own views on the matter, provided you are prepared to reconsider your position in the light of all the evidence and arguments.
14. **You must** keep an open mind and hear all of the evidence before you, both the officers' presentation of the facts and their advice as well as the arguments from all sides.

15. **You are not** required to cast aside views on planning policy you held when seeking election or otherwise acting as a Member, in giving fair consideration to points raised.
16. **You are only entitled** to take account of material considerations and must disregard considerations irrelevant to the question and legal context at hand; and you are to come to a decision after giving what you feel is the right weight to those material considerations and you must explain your planning reasons for doing so.
17. **Do** be aware that you can be biased where the Council is the landowner, developer or applicant if you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)
18. **Do** consider yourself able to take part in the debate on a proposal when you are also a member of a consultee body, for example the parish council, provided:
- the proposal does not substantially affect the well-being or financial standing of the consultee body;
 - you make it clear to the consultee body that you must reserve judgement and the independence to make up your own mind as and when the application comes before the Development Control Committee and you hear all of the relevant information;
 - you declare your position on the consultee body at the meeting of the Development Control Committee to determine the application AND consider whether your membership of the consultee body has in any way prejudiced your ability to determine the application. If it has then

you should not vote on the application but you can consider exercising your right to speak as a local ward Member.

19. **Do** take the opportunity to exercise your separate speaking rights as a Ward/Local Member where you have acted as an advocate for your views or those of local electors and restricted your discretion so that you no longer have an open mind; but you do not have a disclosable or other personal conflict of interest. Where you wish to do this, you should:

- advise the Chair and officers that you wish to speak in this capacity before commencement of the item; and
- remove yourself from the seating area for Members of the Committee for the duration of that item.

Contact with Applicants, Developers and Objectors

20. It is not necessary or practical for 'everyday' contact between Members and the public on planning matters to be documented. However, any significant meetings or correspondence should be subject to the provisions set out below.

21. **Do** refer those who approach you for planning, procedural or technical advice to officers.

22. **Do** make written notes of any significant conversations with applicants, developers and objectors and pass them to officers for inclusion on the planning file. The same applies to emails and letters.

23. **Don't** agree to any meeting with applicants, developers or groups of objectors without first consulting with officers. Where you feel that a formal meeting would be useful in clarifying the issues, you should seek to arrange that meeting yourself through a request to the Group Manager - Development

Management who will organise it. He will ensure that an officer attends. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.

- 24. **Don't** participate in any negotiations on behalf of the Council; these should be carried out by officers who can update Members as necessary.
- 25. **Do** report to the Group Manager – Development Management any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

In addition in respect of presentations by applicants/developers:

- 26. **Don't** attend a planning presentation without requesting an officer to be present.
- 27. **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals. Where possible questions should be raised well in advance in the meeting and be directed to the case officer.
- 28. **Do** remember that the presentation is a fact finding exercise and is not part of the formal process of debate and determination of any subsequent application; this will be carried out by the Development Control Committee.
- 29. **Do** be aware that whilst you may express any view on the merits or otherwise of the proposal presented, you should always make it clear that any views are personal and provisional and do not bind the Council.

Development Proposals Submitted by Members and Officers

30. Planning applications submitted by Members, Council employees within Planning Services or someone who is privately employed in any capacity (e.g. as agent or consultant) who has direct links with the Planning Service will be considered by the Council's Development Control Committee. This ensures that the public can see that such applications are dealt with in a fair and transparent manner. Members and employees have the same rights as any other member of the public.
31. **Do** ensure that if you submit a planning application, you play no part in its consideration. If you are a Member of the Development Control Committee then you should appoint an agent or representative to address the Committee on your behalf.
32. **Do** ensure that if you discuss your application with an officer, you do not seek to improperly influence their decision.
33. **Do** inform the Monitoring Officer in writing of your application.
34. **Do** treat proposals for the Council's own development with the same impartiality and transparency as those of private developers.

Lobbying of Members

35. **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it may subsequently prejudice your impartiality, and therefore your ability to participate in the Committee's decision making, to make any sort of promise to vote one way or another or to give such a firm point of view that it amounts to the same thing.
36. **Do** remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions

impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.

37. **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible, including its addition to your register of interests where relevant.

38. **Do** copy or pass on any lobbying correspondence you receive to the Group Manager and case officer at the earliest opportunity and well in advance of a relevant Development Control Committee meeting. This means that officers will then be aware of what information Members have been sent and can address any issues arising from it.

39. **Do** promptly refer to the Group Manager any offers made to you of planning gain or constraint of development, through a proposed s.106 planning obligation or otherwise.

40. **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.

41. **Do** note that, unless you have a disclosable or overriding other personal conflict of interest, you will not have restricted your discretion or breached this Planning Code through:

- listening or receiving viewpoints from residents or other interested parties;
- making comments to residents, interested parties, other Members or appropriate officers (making clear that you must keep an open mind when it comes to making the decision);

- seeking information through appropriate channels; or
- being a vehicle for the expression of opinion of others in your role as a Ward Member.

Lobbying by Members

42. **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals unless it is your intention to openly campaign on the matter and therefore step away from the Committee when it comes to make its decision.

43. **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals (such as the Victorian Society, CPRE, Ramblers Association or a local civic society). However, you should normally seek to disclose that interest on the grounds of transparency where the organisation has made representations on a particular proposal.

44. **Don't** excessively lobby fellow Members regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.

45. **Don't** decide how to vote on any application at any political group meeting as this means that you will have made up your mind before you have heard all the competing arguments.

Site Visits/Inspections

46. Most planning applications can be determined on the basis of the material presented at the Committee meeting and, as site visits are resource intensive, they should only be undertaken where there are exceptional or unusual circumstances.

47. **Do** try to attend site visits organised by the Council where possible.

48. **Don't** request a site visit unless you are available to attend it and you feel it is strictly necessary because, for example:

- it is difficult to make an informed judgment without seeing the site;
or
- there are specific site factors which need to be carefully addressed.

49. **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.

50. **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.

51. **Don't** hear representations from any party. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.

52. **Don't** express opinions or views to the applicant or third parties.

53. **Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias. If you wish to observe the site on your own, you should confine yourself to viewing it from public vantage points.

Public Speaking at Meetings

54. **Don't** allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking as this may give the appearance of bias.

55. **Do** ensure that you comply with the Council's procedures in respect of public speaking.

Officers

56. **Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Group Manager which may be incorporated into any committee report).

57. **Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's and their own professional codes of conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

Decision Making

58. **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that you provide planning reasons and that the request is made in time. Members who make such requests will be expected to attend the Committee meeting.

59. **Do** come to meetings with an open mind and demonstrate that you are open-minded.

60. **Do** comply with section 38 of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.

61. **Do** come to your decision only after careful consideration of all of the relevant information. If you feel there is insufficient time to digest new information or

that there is simply insufficient information before you, then request that further information is provided. If necessary, defer or refuse.

62. **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter. If Members require a break during a meeting then a request should be made to the Chair.

63. **Don't** make criticisms about the professional conduct or competence of officers in public. Any concerns should be raised with the officer's manager.

64. **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Where an officer recommendation is overturned, or Committee makes a decision which is contrary to policy, the mover and seconder of the motion must be prepared to give evidence at any appeal.

65. **Do** listen carefully to advice from officers concerning the prospects of successfully defending a planning decision at appeal or in Court. Where officers advise that there is a high risk of a costs award or legal challenge against the Council, Members must give detailed reasons for departing from that advice which will be recorded.

Training

66. **Don't** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.

67. **Do** attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plan beyond the

minimum referred to above and thus assist you in carrying out your role properly and effectively. Attendance is compulsory and Members who are unable to attend must provide evidence of their unavailability to the Chair of the Development Control Committee.

Regular Reviews of Decisions

68. **Do** participate in the annual review of and visit to completed developments, the purpose of which is to evaluate the quality of the development and decision making.



Planning Code of Good Practice

Local Code of Good Practice
for Councillors and Officers
dealing with planning matters

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1 Introduction

- 1.1 The conduct of both Officers and Members in Local Government needs to be of the highest standing: on this depends the bond of trust between Councils and their local people, which is essential if Councils are to play their part in leading communities and improving people's quality of life. The local administration of the planning system has come under close scrutiny. The Nolan committee's Third Report investigated standards in public life, and was followed by the Local Government Act 2000 which introduced a structure by which local authorities were to promote high standards of conduct, through a National Code of Conduct for Members. In 2013 the Local Government Association provided updated guidance on 'Probity in Planning' and the Localism Act 2011 created a new Standards regime with a more local focus.
- 1.2 This Code offers clear guidance and advice as to procedures and practices to elected Members, Officers and members of the public in connection with the determination of planning applications and other applications. This Code will ensure that not only are the applications determined in a fair and impartial way, but also in a way which is seen to be fair and impartial. The introduction of the Local Government Act 2000 and associated legislation provides the necessary statutory framework by which these standards may be achieved, maintained and regulated by each local authority.
- 1.3 The key purpose of the planning system is to contribute to the achievement of sustainable development and the approach to decision taking should be in a positive way. When performing this role the Local Planning Authority and elected members are making decisions that necessarily affect land and property interests, as well as the financial value and settings of land holdings. As such, there is a need to make decisions that are open, impartial and based on sound judgment and reason. The process of determining applications should leave no grounds for a suggestion that a decision has been biased or ill founded in any way. Decisions must always be made on planning grounds and planning grounds alone.
- 1.4 This Code of Good Practice has been adapted from national guidelines on probity to take account of the local situation. Two particular areas of the Localism Act are relevant to this code. Firstly, with regard to pre-determination the Act makes it clear that it is proper for councillors to play an active part in local discussions and that they should not be liable to legal challenge as a result, provided they maintain an open mind. Secondly, and related to pre-determination, the Act introduces a new requirement for developers to consult local communities before submitting planning applications for certain developments. This gives Members and local residents a chance to comment when there is still genuine scope to make changes to proposals at both pre-application and post submission stage.
- 1.5 The terms of Reference for the Planning Committee are set out in the Council's Constitution (www.boston.gov.uk) which specifies the matters that are delegated to be considered by the Planning Committee.

2. Status of the Code

- 2.1 This Code sets out the basis as to how Officers and Members should determine planning and other relevant applications submitted to the Council and ensures that conduct accords with the Council's Codes of Conduct for Members and Officers which are contained within the Council's Constitution.
- 2.2 This Code is contained in the Council's Constitution. A breach of this Code, depending on the circumstances, does not usually amount to a breach of criminal law, but may adversely affect the standing of the Council. It could result in a decision being judicially reviewed or allegation of a breach of the Code of Conduct or a complaint of maladministration made to the Local Government Ombudsman.
- 2.3 Participation in consideration of a planning application where a Member has a Disclosable Pecuniary Interest would be a criminal offence under the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

3. The General Role and Conduct of Councillors and Officers

- 3.1 Elected Members are guided by the Council's Code of Conduct, the seven principles of public life and the Localism Act 2012. This Code is further amplified by reference to the Council's Constitution in respect of general Council procedures as well as further explanation in specific Codes of Conduct, such as the advice contained in this Code.
- 3.2 Councillors and officers have different but complementary roles with the determination of planning applications and it is important that an open, respectful and transparent relationship is developed based upon mutual trust and understanding of each other's positions. It is important for the overall standing of the Council and the achievement of local performance targets that they work together as an effective team. The role of a Councillor when determining a planning application is to have an overriding duty to the whole community and, accordingly, in deciding the outcome of an application to make a reasoned decision taking into account the provisions of the Development Plan and all relevant material considerations.
- 3.3 The basis of the planning system is that consideration is given to all development proposals in an open and transparent way against policy. Much is often at stake in such decisions and in the process for local people and development interests, as well as for the Borough of Boston itself. Given the nature of these decisions opposing views are often held by those involved. Whilst these views must be taken into account in the determination of planning applications, as stated above, the Planning Committee must not favour any person, group or locality. Members must therefore take steps to ensure that in the discharge of their Planning Committee duties the distinction between this role and their role as an individual ward councillor is constantly made clear. If Members wish to act in the latter capacity they must make that clear at the outset. Members who do not feel that they can act in this way should consider whether they are best suited to serve on the Planning Committee, especially if they feel they will often be placed in the position of wishing to represent constituents and to speak as a Ward Member rather than a member of the Planning Committee.

- 3.4 In reaching a decision Members should ensure they read, consider and take account of the relevant material considerations connected with the application and should not favour any person, group or locality or put themselves in a position where they may appear to do so.
- 3.5 All decisions should be made in an open and transparent manner by the Members of the Planning Committee and this should not at any time be compromised in any way. Therefore, such actions as messages being passed to Members of the Planning Committee during a debate should be avoided as this could give an impression of undue influence from a third party. In the first instance in an emergency any notes should be passed to the Democratic Services Officer.
- 3.6 Members should always address the Planning Committee through the Chairman and avoid speaking directly to one another. It is important that all matters being discussed are clearly heard and acknowledged by everyone at the meeting.
- 3.7 In order to ensure that decisions are taken on planning grounds and are sound, it is incumbent on all Planning Committee Members to give full consideration to reports prepared by Officers and familiarise themselves with all relevant national planning guidance (including the National Planning Policy Framework), Development Plan policies and other material considerations well in advance of a development proposal at the Planning Committee itself. It is important also that Members are seen to be meeting this provision of the code.
- 3.8 The role of Officers is to advise Councillors and the Council as a whole (through the Cabinet and relevant Portfolio Holders) and to carry out work as set out in the Corporate Plan and agreed business plans. Officers are employed by the Council, not by individual councillors, and it follows that instructions to them may only be given through a decision of the Council, the Cabinet, the relevant Portfolio Holders, or the Planning Committee.
- 3.9 The conduct of Officers who advise on the determination of planning applications is contained generally in the Council's protocol for Member/Officer relations and is supplemented by guidance from their professional bodies, such as The Royal Town Planning Institute, the Law Society etc. Officers may not be instructed by any Member to conduct themselves in a manner which would place them in conflict with their professional codes of conduct.
- 3.10 Members should abide by the following advice:-
- Members should always pass a copy of any lobbying correspondence to the Development Control Manager/Democratic Services Officer at the earliest opportunity;
 - Members should never pressurise or lobby Officers for a particular recommendation;
 - Members should promptly refer to the Head of Built Environment and Development any offers made to them for benefits which are or are not related to the application;

- Members should inform the Monitoring Officer where they feel that they have been exposed to undue or excessive lobbying, approaches including inappropriate offers of gifts or hospitality (see also paragraph 3.12)
 - Members should never use political group meetings to dictate how they should vote on a planning issue and should not lobby fellow Members regarding concerns or views, nor attempt to persuade other Members to vote in a particular way.
- 3.11 Officers are required to act impartially at all times in determining applications and providing advice at the Planning Committee. Officers will be expected to conduct themselves in all they say and do in a manner which totally preserves the position of impartiality.
- 3.12 During the determination of an application, it is possible that Officers and Members may be offered hospitality by an interested party. Even though this rarely occurs, it is important to recognise that these offers should be politely declined.
- 3.13 Under the Member's Code of Conduct there is a requirement for any offers of gift or hospitality received over the value of £50, to be notified to the Monitoring Officer within 28 days of the offer being received. Any offers will be entered into the register of gifts and hospitality which is open to public inspection. **It is particularly important for Planning Committee Members to decline any offers of gifts or hospitality.**
- 3.14 Similarly, for Officers, in the event of any offers of gifts or hospitality being received over the value of £25 these should be declined and reported to the Monitoring Officer as soon as possible after receipt. This is a requirement of the Employee Code of Conduct.

4. Declaration and Registration of Interests

- 4.1 Upon being elected Members are required to complete a form to register their disclosable pecuniary interests and local choice interests and are under a duty to maintain that declaration and amend, as necessary, within 28 days of becoming aware of any such changes, throughout their term of office.
- 4.2 A register of Members' interests will be maintained by the Council's Monitoring Officer and is available for public inspection.
- 4.3 Furthermore, Members are under a duty to declare interests as and when matters arise at the Planning Committee. Guidance on these issues may be sought from the Council's Monitoring Officer. The decision as to whether an interest ought to be declared rests with the individual Councillor involved.
- 4.4 Under the Member Code of Conduct, a member will have a conflict of interest in a Planning Committee decision if:
- The matter relates to an interest in respect of which the Member has given notice in the Register of Members' Interests; or

- The decision might reasonably be regarded as affecting their well being or financial position or that of a relative or friend or employer to a greater extent than other council taxpayers, ratepayers or inhabitants of the authority's area.
- 4.5 Where a Member considers they have such a conflict of interest in a matter, they must always declare it.
- 4.6 Where a conflict of interest is such that if a member of the public with knowledge of the relevant facts would reasonably regard that interest as so significant that it is likely to prejudice the Member's judgement of the public interest, they should declare that interest and take no part in the debate or vote on the item under discussion. There are exceptions to this, however, and full details are given in the Council's Constitution.
- 4.7 Where any Member of the Council considers that they have a significant conflict of interest as described in 4.6 they should:-
- Ensure they do not participate at any stage in the consideration of the planning application if, following advice from the Monitoring Officer, they consider that any decision they take could be challenged on the grounds of bias;
 - Ensure they do not seek or accept any preferential treatment, or place themselves in a position that could lead to the public to think they are receiving preferential treatment because of their position as a councillor.
- 4.8 Pecuniary Interests are defined in regulations. The regulations in general will mean that a member will have to register any interest they or their husband or wife or civil partner, or someone with whom they live as husband or wife or civil partner in:
- Any employment, office, trade, profession or vocation that they carry on for profit or gain;
 - Any sponsorship that the councillor receives including contributions to the councillor's expenses as a councillor, or the councillor's election expenses;
 - Any land licence or tenancy they have in the Borough
 - Any current contracts, leases or tenancies between the Council and them
 - Any current contracts, leases or tenancies between the council and any organisation with land in the Borough area in which they are a partner, paid director, or have a relevant interest in its shares and securities;
 - Any organisation which has land or a place of business in the Borough area and in which they have a relevant interest in its shares or its securities.
- 4.9 If a Councillor has a disclosable pecuniary interest they must leave the meeting immediately and cannot participate, or participate further, in any discussion of the matter at the meeting, or participate in any vote, or further vote, taken on that matter at the meeting. However, the Member can address the Committee as part of the public speaking scheme, but must leave the meeting immediately after taking part.

- 4.10 When an application is to be determined there is an expectation that it will be dealt with transparently, openly and in a fair way. Members will be expected to take account of all relevant evidence and give it appropriate weight in the decision making process and arrive at a reasoned sound decision.

5. Predetermination and Bias

- 5.1 Members of the Planning Committee need to ensure that they do not fetter their ability to participate in the decision making process on an application by making up their mind or clearly indicating that they have made up their mind on how they will vote prior to the consideration of the application by the Committee.
- 5.2 The Planning Committee should, when considering an application, take into account all views that are expressed in such a way that they are openly heard and fairly considered in a balanced way before the Committee reaches a decision.
- 5.3 Members of the Planning Committee can have a predisposition to an initial view, where the Member is clear they are still willing to listen to all material considerations presented at the Planning Committee before deciding on how to exercise their vote on behalf of the community.
- 5.4 The fettering of a members discretion as set out in 5.1 and then taking part in the decision making process will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a risk of bias or predetermination or a failure to not take into account all of the factors enabling the application to be considered on its merits.
- 5.5 The Localism Act 2011 now sets out that a Member who has expressed a preference for a particular outcome of an application as it proceeds to determination, will **not** be taken to have had a closed mind when making the decision just because they have previously done or said anything to indicate their view in respect of the matter. However, it is important that a fair minded observer would think that the Member was open to changing their mind in the light of different or additional information, advice or evidence presented.
- 5.6 Planning Committee Members need to avoid bias and predetermination and take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in an open and fair manner. To do this, Members taking the decision on an application must take account of all the evidence presented before arriving at a decision, and should avoid committing themselves one way or another, or making extreme statements either in favour or against applications, before hearing all the arguments.
- 5.7 A situation can arise when a Member of the Planning Committee represents a Ward within which a contentious application is lodged. If, prior to the matter being considered by the Planning Committee, that Member decides to make a public statement, and either supports or opposes the application, it will be difficult for that Member to be seen to subsequently determine the application transparently, openly and fairly. Accordingly, the Member should make an open declaration in relation to his or her position and not vote on the determination of the application at the Planning Committee. The open declaration should be noted in the Planning Committee minutes. The Member will also be required to leave the room for the

duration of the consideration of the item and vote. Where they have exercised their right to speak as Ward Member, they can address the Planning Committee at the appropriate time, in accordance with the Ward Member speaking arrangements, but must then leave the room immediately thereafter.

- 5.8 Ultimately, it is the responsibility of the individual member to ensure that their role on the Planning Committee is not compromised and it is also for them to strike a balance that may need to be made between ward and other interests and the requirements of the Planning Committee.

6.0 Dual-hatted – Parish and Borough Councillor

- 6.1 It should be appreciated that planning applications submitted to Parish Councils are referred for consultation. Parish Councils do not determine applications, but they have a statutory role as consultees; their role is to make comments to the Borough Council.
- 6.2 Planning Committee Members who are also Members of Parish Councils (Dual-hatted Members) may find that they are expected to express a view at the Parish Council meeting or vote on whether or not that Council should object or comment on a proposal.
- 6.3 In such circumstances, Dual-hatted Members should observe the advice relating to pre-determination and bias set out in section 5 of this Code.
- 6.4 Dual-hatted Members must appreciate that whilst they are entitled to speak and vote at Parish Council meetings, it can cause confusion for the public. Therefore, they should always take the following action:
- Declare at the Parish Council meeting that if the application was to be considered by the Boston Borough Council Planning Committee they may take a different view once they had heard all the relevant policies and guidance, background history and consultation responses from Officers and may find themselves voting differently;
 - If they are attending the Boston Borough Council Planning Committee when the matters if being discussed or reported, declare that they have attended a meeting of the Parish Council when the application was considered, but they have an open mind and will make a judgement based on the evidence provided and solely on planning considerations.

7. Development Proposals Submitted by Councillors and Officers; and Council Development

- 7.1 Proposals to the Council by serving and former councillors and officers and their close friends and relatives can easily give rise to suspicions of impropriety. So indeed can proposals for the Borough's own development. Proposals can take the form of either planning applications or development plan proposals.
- 7.2 It is perfectly legitimate for such proposals to be submitted. However, it is vital that they are handled in such a way that gives no grounds for accusations of favouritism.

- 7.3 Members should not act as agents for planning applications within the borough nor be involved in the preparation of plans associated with any such applications.
- 7.4 Where Members are submitting their own planning applications or development plan proposals these should be reported to the Development Control Manager. For significant applications Members should appoint an architect/agent to act on their behalf and the Council's Monitoring Officer will be informed of such proposals.
- 7.5 Significant applications will be reported to the Planning Committee and will not be dealt with by officers under delegated powers. The Officer Code of Conduct deals with these issues in respect of applications/proposals submitted by Borough Council staff.
- 7.6 The consideration of a proposal from a councillor in such circumstances would be considered as a prejudicial interest under the Member Code of Conduct and as such, the councillor would be required to withdraw from any consideration of the matter.
- 7.7 The Code also provides that the councillor should not seek improperly to influence a decision about the matter. It is important to emphasise that 'improperly' does not imply that a councillor should have any less rights than a member of the public in seeking to explain and justify their proposal to an officer in advance of consideration by a Committee.
- 7.8 Proposals for a council's own development should be treated in the same way as those of private developers (subject to the requirements of the 1992 General Regulations), particularly in relation to officers' advice.

8. Lobbying

- 8.1 It is recognised that lobbying is a normal and perfectly legitimate element of the process of considering planning applications. If a Member, who is not on the Planning Committee, wishes to support a particular viewpoint then that Member has a right to appear at Planning Committee and seek permission to address the meeting.
- 8.2 It is, however, important that Members protect their impartiality and integrity in planning matters. Planning Committee Members will not breach the Code by listening to or receiving viewpoints from residents or other interested parties provided that they make it clear that they are keeping an open mind. However, expressing an intention to vote one way or another before a Planning Committee meeting would prejudice impartiality.
- 8.3 Lobbying may be verbal or by circulation of letters or documents to all or some Councillors. Lobbying can take two forms:-
- Lobbying of Councillors by applicants, agents or objectors
 - Lobbying by other Councillors.

- 8.4 Councillors should not organise support for or against a planning application and should not lobby other Councillors as this would signal that they had made up their mind before hearing the evidence. Each Councillor should make up his or her own mind on the evidence and facts presented to the Committee.
- 8.5 Circulation of papers which have not been formally lodged with the Planning Officer or Democratic Services Officer prior to the meeting is specifically prohibited, as this could constitute lobbying.
- 8.6 Whenever lobbying takes place Members should record the key discussion points on the standard form issued by the Council, copies are available in the Members' Lounge or from Democratic Services. This form should then be submitted to the Democratic Services team prior to the commencement of the meeting so that the information can be formally reported and recorded at the start of each committee meeting.

9. Role of the Borough Council Ward Member

- 9.1 Ward Members have a central role in helping to represent the views of local people and other stakeholders at both pre-application and planning application stage. Ward Councillors bring strong community leadership, extensive local knowledge and an up to date understanding of current issues. Planning officers have to act impartially at all times, but will provide support and advice to ward councillors on planning matters in order for them to play this community leadership role.
- 9.2 Ward Members will be notified that a planning application has been submitted relating to an address within their Ward. Although the majority of planning applications are determined by Planning Officers under the Scheme of Delegation, Members will be given the opportunity to request that an application is referred to the Planning Committee, but they must give clear planning reasons for the request.
- 9.3 If requesting that a planning application be referred to Committee, Members must notify the Development Control Manager either by using the standard pro forma or by e-mail to planning@boston.gov.uk, by telephone or in person giving clear planning reasons for the request. There is an expectation that where a Member makes such a request, they should attend to address the meeting. Officers will confirm the receipt of the request and indicate the likely target committee date.
- 9.4 Members may be approached by residents, objectors and the applicant about an application in their ward. You must pass on any correspondence or representations received to the Development Control Manager or the Monitoring Officer. At the Planning Committee Members may pass on verbally another person's/organisation's views but must make it clear to the Committee that the comments are a third party opinion and not commit themselves to a view on the application.

10. No Political Decisions on Planning Applications

- 10.1 Decisions on planning applications must not be taken in political group meetings prior to a Planning Committee meeting. The view of the Ombudsman is that "use of political whips at group meetings amounts to maladministration." Such a procedure can also give rise to legal challenge by way of judicial review through the Courts.

- 10.2 Each Councillor should independently consider the application without any undue influence.

11. Pre-application Discussions

- 11.1 Discussions between a potential applicant and the council (officers or Members), prior to the submission of an application can be of considerable benefit to both parties and is encouraged. However, it would be easy for such discussions to become, or to be seen, particularly by objectors, to become, part of a lobbying process on the part of the applicant.
- 11.2 In order to avoid such perceptions, pre-application discussions will take place within the following guidelines. (Although the term 'pre-application' has been used, the same considerations should apply to any discussions which take place before a decision is taken).
- 11.3 It should always be made clear at the outset that the discussions will not bind the Council to making a particular decision and that any views expressed are personal and provisional. By the very nature of such meetings not all relevant information may be at hand, nor will formal consultations with interested parties have taken place.
- 11.4 Advice should be consistent and based upon the development plan and other material considerations. There should be no significant difference of interpretation of planning policies amongst planning officers. In addition, all officers taking part in such discussions shall make clear what the decision-making route may be and that they are not the decision-maker.
- 11.5 Ideally a written note should be made of important meetings if possible. At least one officer should attend any such meeting involving a Member and a follow-up letter is advisable at least when documentary material has been left with the council. A note should also be taken of telephone discussions if possible. (The decision as to whether to register everyday contacts between councillors and interested parties will depend on circumstances).
- 11.6 In the case of advice given by planning officers it should always be made clear that any views which they express are subject to review at a more senior level and the final recommendation lies with the Development Control Manager or the officer properly exercising a delegation.
- 11.7 Wherever possible meetings should be held at the Council's offices during normal office hours. Meetings on site may sometimes be helpful, but regard should be had to the guidance on lobbying and hospitality.

12. Officer Reports to Committee

- 12.1 All decisions that are to be made by the Planning Committee will be based upon written reports by Officers supplemented, where necessary, by a brief oral presentation which may include a site plan, an aerial photograph of the site, photographs of the site, key application plans and drawings and other relevant material that the Officer considers will assist the Planning Committee in

consideration of the proposal. Planning reports by officers will be accurate and include a clear exposition of the development plan, site or related history, the substance of any objections and the views of those consulted.

- 12.2 In most cases, reports will have a written recommendation to either refuse the planning permission, with reasons, or to approve planning permission with conditions. Oral reporting will be limited to updating or clarification and to answer questions and will be carefully minuted when it does occur. Recent changes to the appeals process mean that the documents which the council can use to defend its decision on certain development types are confined to the officer report and the Committee minute only. It is important therefore that the minute records the debate and the precise reasons for the decision.
- 12.3 Reports will contain technical appraisals which clearly justify a recommendation.
- 12.4 If the report's recommendation is contrary to the provisions of the development plan, the other material considerations which justify the departure from the development plan will be clearly stated.

13. Responses to Public Consultation

- 13.1 Written or e-mail representations on planning applications should normally be received by the latest of the dates given on neighbour letters/press or site notices, which ever are employed to publicise an application. This is so that there is a 'cut-off' date after which a delegated decision may be issued when the statutory time period for publicity has passed.
- 13.2 Any further written or e-mail representations to be reported to Committee must have been received within the Development Control Team before the end of the working day prior to the day of the Planning Committee meeting.
- 13.3 However, the Development Control Manager will have discretion to consider and report to Committee any submissions received after that time should they contain any material planning considerations or planning issues which have not been raised in other responses to the Officer Report on the application.

14. Planning Committee Meetings

- 14.1 The Committee meeting is the arena where members of the public will witness decisions being taken. Conduct by Councillors or Officers which may be seen by the public to be inappropriate could quickly bring into question how a decision has been taken. It is therefore important that the procedures followed are transparent, easy to understand, fair to all parties and seen to be so.

- 14.2 Before the meeting, Committee Members should read the officer's reports and shall reserve judgement on how they will vote on an application or other matter until they have heard the views of others at the meeting. If others have no views to express at the meeting it shall be resolved that each Member supports the officer's recommendation in the report and the application shall be determined in accordance with it.
- 14.3 In addressing the Committee, the non Committee Member must make it clear to all present in the room that he/she is not a Member of the Planning Committee which will determine the application. Substitute Members of the Committee may address the Committee, as a non-committee Member, if they are not acting as a substitute for that particular meeting. The Member may address the Committee once, but may not then speak further or raise questions except, that if a Planning Committee Member wishes to clarify something that the non Member has said, this may take place immediately following the non Member's address and the non Member may reply.
- 14.4 It is appreciated that some non Members may wish to take part in further subsequent discussion, seek further clarification or make additional addresses to the Committee. This is not permitted because a third party, such as an applicant or objector, could feel aggrieved if a Member not on the Committee (and thus not bound by the protocols against predetermination), and possibly had been publicly supporting or campaigning against the proposal, could cross question officers or join in debate as though they /she were a Committee member. This could be viewed as unfairly influencing Members and bringing undue influence to bear.
- 14.5 All Members present at the meeting shall be invited to, and must declare if they have expressed a particular opinion for or against an application, before the debate on that application starts, or as soon as any interest becomes known to them.
- 14.6 The order for consideration of all planning applications will be:-
- Planning Officer oral and visual presentation;
 - Any public speaker(s) who wish to speak against the proposal (total of 5 minutes to be shared if more than one registered speaker);
 - Any public speaker(s) who wishes to speak in favour of the proposal (total of 5 minutes to be shared if more than one registered speaker);
 - The applicant/agent for the application (total of 5 minutes to be shared if more than one registered speaker)
 - Any eligible Parish Councillor who wishes to speak for or against the proposal (total of 5 minutes);
 - Any eligible Ward Councillor(s) who wish to speak for or against the proposal;
 - Questions to the Planning Officer by the Committee Members;
 - Planning Committee Members debate the proposal;
 - Planning Committee Members move and debate any alternative motions to the recommendation. The Democratic Services Officer clarifies the wording of the alternative motion and the Chairman put these to the vote as appropriate;
 - Chairman of the Planning Committee puts the original recommendation to the vote, if necessary;

- Chairman of the Planning Committee puts the substantive motion to the vote which will be the formal decision of the Planning Committee on the proposal.
- 14.7 Where propositions are made which are contrary to officer recommendations, the proposer shall clearly state the reasons why they are making such a proposal before a vote is taken. Similarly, if an application is determined contrary to the officers' written recommendation, precise reasons for refusal should be explained to and agreed by the Committee or, in the case of an approval, the nature of any conditions to be imposed on any grant should be identified. The reasons for decisions contrary to officer recommendations shall be fully set out in the minutes of the meeting.
- 14.8 All Members should be present at the outset of the consideration of an item on the agenda that relates to a planning application and remain in the committee room until a decision on the application has been made. Any member who is not present for the full duration of the consideration of a planning application is advised not to vote or take part in the discussions
- 14.9 In the event that a planning application is being considered that has been deferred from an earlier meeting, planning officers should ensure that the report updates the information from the earlier meeting, as some members may not have attended the meeting when the application was first considered.

15. Public Speaking Scheme

- 15.1 Once the Planning Committee agenda and accompanying papers are made available to the public five working days prior to the Planning Committee meeting, all persons who have made representations on an item bound for Committee will be notified of the date of the meeting and arrangements for public speaking. Anyone who wishes to speak must notify the Democratic Services Officer.
- 15.2 Completed request to speak forms must be received by the Democratic Services Officer by no later than 12 noon on the working day before the day of the meeting.
- 15.3 Registered speakers will be invited to make their representations to the Planning Committee in the following order:-
- Objector(s)
 - Supporter(s)
 - Applicant/Agent
 - Parish Councillor
 - Ward Member
- 15.4 Objector(s) wishing to speak will be allocated five minutes to make their representation. If more than one person requests to speak as an objector the allocated time may be shared between those speakers or used solely by the first person who registers to speak.
- 15.5 Should more than one person request to speak as an objector, the contact details of the first registered person will be provided to subsequent speakers, who will be responsible for contacting the first registered speaker. The subsequent speaker

can request that the speaking time be shared with them or ask the registered speaker to incorporate their comments within their address to the Committee. If the first registered speaker declines to share the speaking time, only they will be permitted to speak.

- 15.6 Supporter(s) wishing to speak will be allocated five minutes to make their representation. If more than one person requests to speak as a supporter the allocated time may be shared between those speakers or used solely by the first person who registers to speak.
- 15.7 Should more than one person request to speak as a supporter, the contact details of the first registered person will be provided to subsequent speakers, who will be responsible for contacting the first registered speaker. The subsequent speaker can request that the speaking time be shared with them or ask the registered speaker to incorporate their comments within their address to the Committee. If the first registered speaker declines to share the speaking time, only they will be permitted to speak.
- 15.8 The applicant / agent will automatically be given the allocation of five minutes speaking time. Should the applicant and agent wish to speak it is their responsibility to divide the allocated five minutes of speaking time between them.
- 15.7 A Parish Councillor may address the Planning Committee in respect of any application within their Parish that is on the agenda. They will be allocated five minutes in which to make their representation.
- 15.8 A Ward Councillor may address the Committee without time limit, but must in advance of the meeting register with the Democratic Services Officer their intent to speak if they wish to take advantage of it.
- 15.9 Under the public speaking scheme, all comments must be restricted to the application being considered and to matters to do with planning, planning policy, or listed building and conservation area issues upon which the decision will be made.
- 15.10 Speakers should not interrupt other speakers or interrupt the Planning Committee debate.
- 15.11 Speakers are advised not to make slanderous statements or any other racial motivated, discriminatory, inflammatory, offensive or abusive remarks.
- 15.12 The Chairman has the right and duty to stop anyone speaking in such a manner and will, if necessary, suspend the meeting if there is any activity or behaviour which, in their opinion, is disrupting the proper consideration of a planning application and/or the conduct of the business of the Planning Committee.
- 15.13 Once a speaker has addressed the Committee, they must return to their seat in the public gallery. Open discussion between committee members and members of the public is not permitted. However, Members of the Committee may question the content of the speaker's representation. Should this situation arise the question will be directed through the Chairman.

- 15.14 Supporting documentation / photographic evidence may be submitted by public speakers for circulation to Members of the Planning Committee. Any such documentation must be received by the Democratic Services Officer by 12 noon two clear working days before the day of the meeting (e.g. if the meeting is held on a Tuesday the documentation must be received by 12 noon on Thursday of the previous week).
- 15.15 All supporting documents must be provided in hard copy format with sufficient copies for all Members of the Planning Committee and Officers. Additional documentation may not be circulated at the meeting of the Planning Committee.
- 15.16 In circumstances where an application would be subject to referral to the Secretary of State if the Committee was minded to Approve it, the Chairman of the Planning Committee will have discretion to amend the time allocation for each category of speaker, subject to the time allocated for objectors and supporters being of equal length.

16. The Development Plan

- 16.1 The law requires that where the development plan is relevant, decisions must be taken in accordance with the plan unless material considerations indicate otherwise (s.38(6) Planning and Compulsory Purchase Act 2004).
- 16.2 All applications must be assessed in accordance with Section 38(6) of the Planning and Compensation Act 2004 and Section 70 of the Town and Country Planning Act 1990 as amended by Section 143 of the Localism Act 2011.

17. Decisions Contrary to the Development Plan and/or Officer Recommendation

- 17.1 Guidance and Directions from the Secretary of State for Communities and Local Government require that certain types of application, which he has defined which may not be in accordance with the Development Plan, are statutorily advertised as such. Representations received in response to the advertisement would then be considered when the application is ultimately determined.
- 17.2 If it is then intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and how, where relevant, these considerations justify overriding the development plan. The application may then have to be referred to the Secretary of State for Communities and Local Government, if the Council wish to approve it, depending upon the type and scale of the development proposed.
- 17.3 If the officers' report recommends approval of such an application, the justification for this will be included in full in that report and the recommendation would be framed in terms of the Committee being 'Minded to Approve' the application and authority be given for it to be referred to the Secretary of State, if such referral applies. These types of application which the Council wish to refuse do not need to be referred to the Minister.
- 17.4 If the Planning Committee makes a decision contrary to the officers' recommendation (whether for approval or refusal), a detailed minute of the Committee's reasons will be made and a copy placed on the application file

together with a note of the general nature of any conditions to be imposed. The officer should also be given an opportunity to explain the implications of the contrary decision. The courts have expressed the view that such reasons should be clear and convincing. The personal circumstances of an applicant will rarely provide such grounds. A notable exception is where planning policy allows for this, for example, the provision of a dwelling for an agricultural worker

- 17.5 If it is the professional opinion of the officers that the reasons given for a refusal are not capable of being satisfactorily supported by the officers in view of their genuinely held opinions, Members should accept the need to employ consultants and/or appear themselves at any appeal hearing or Inquiry in order to promote the case if subsequently challenged.
- 17.6 Whilst the Council makes extensive use of standard wordings for conditions, in those cases where Councillors may wish to add or amend conditions, an officer will be asked to draft any such conditions at the conclusion of debate, if it is reasonable to do so, before the Committee is asked to agree to them. In any event, the general nature of the amended condition/s or new condition/s to be imposed will be minuted and delegated authority will be given to the Development Control Manager to draft the condition/s together with the addition of any other conditions which, in the opinion of the Development Control Manager become necessary as a result of ongoing negotiations or changes to a proposal.

18. Committee Site Visits

- 18.1 Any lack of consistency in the Council's approach to agreeing and holding Committee site visits could leave the Council open to the accusation that such visits are, at best arbitrary and unfair and, at worst a covert lobbying device.
- 18.2 Formal site visits can cause delay and additional costs and should only be used in the circumstances as set out in paragraph 17.4 below. The officer's report and presentation to the Committee and the response to Member questions should contain sufficient information on the planning issues for the Committee to reach a decision based on land use planning grounds.
- 18.3 Formal site visits may be requested by the ward councillor in advance of the Planning Committee meeting at which the application is to be considered. It is acknowledged that this is a proper part of the representative role of the member, and should normally be acceded to, subject to the agreement of the Chairman of the Planning Committee and provided also that the site meeting is necessary in accordance with paragraph 17.4. A record of the reasons why a site visit is called will be made as part of the minutes of the meeting.
- 18.4 A formal site visit is only likely to be necessary if:
- the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers.
 - the proposal is particularly contentious.
- 18.5 Individual Members should only make unaccompanied informal site visits where the site is being viewed from a public vantage point.

- 18.6 If a formal Committee site inspection is to take place, the planning officer will inform the applicant accordingly and obtain confirmation that access to the site is available. In some instances it will be possible to view the site from the highway, in which case the applicant will not be contacted.
- 18.7 The Chairman or the Vice Chairman of the Planning Committee, a Planning Officer and Democratic Services Officer shall all be present at a site before an inspection meeting commences.
- 18.8 The site inspection is part of the decision-making process and must be treated as a continuation of the Committee meeting. Although site inspections are not arranged in relation to all planning applications, where there is a site inspection, Members should not take part in the debate or vote on a planning application at a committee meeting unless they have attended the site inspection that forms part of that meeting. The formal site inspection should take place at a time to be agreed.
- 18.9 The Chairman or, in his/her absence, the Vice-Chairman should take control of the proceedings, formally open the inspection and ask the planning officer to “present” the site. Questions should be addressed to the planning officer through the Chairman and the inspection should not be allowed to become a free for all where questions are addressed to any other party.
- 18.10 Any necessity to seek clarification on matters such as a site boundary should be raised with the planning officer who will seek clarification from the site owner/applicant/objector if necessary. Whether the site owner is applicant, or not, neither he nor any objector should be invited to speak and should not be allowed to address Committee Members as this opportunity will be available at the Planning Committee meeting
- 18.11 A Democratic Services Officer or other appropriate officer will be present at all site inspections to advise on procedure and take notes. When all questions have been responded to and any new issues understood, the Chairman will formally close the site inspection.
- 18.12 A record of any relevant issues raised and questions answered will be made by the Democratic Services Officer and a copy placed on the planning file
- 18.13 Where ward members, members of the public, applicants, objectors, parish councillors etc do attend a site inspection, they should be politely, but firmly requested to refrain from speaking. If this is not practicable, the Chairman should abandon the site inspection. Any letters of notification of the site visit to, for example, the applicant, should emphasise that they will not be permitted to take part.
- 18.14 During the site inspection, Members should refrain from entering into conversation with any other person on the site or breaking away from the main group into smaller groups or discussions. They should at all times consider that they are in a formal situation until the Chairman closes the site inspection.

- 18.15 An acceptable alternative to a site inspection may be a visual recording of the site. This can be in general or in relation to a specific matter on which the Committee has sought clarification in advance.

19. Regular Review of Decisions

- 19.1 The report of the Audit Commission *Building in Quality and the 2002 update, Development Control and Planning* recommended that Councillors should revisit a sample of implemented planning permissions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, thereby strengthening public confidence in the planning system, and can help with reviews of planning policy.
- 19.2 Such reviews will be undertaken at least bi-annually. They will include examples from a broad range of categories such as major and minor development; permitted departures; upheld appeals; listed building works and enforcement cases. Briefing notes will be prepared on each case. The Planning Committee will subsequently formally consider the review and decide whether it gives rise to the need to reconsider any policies or practices. The review will normally be undertaken by an accompanied coach tour of the Borough.
- 19.3 The Development Control Manager will periodically report to the Planning Committee on the results of planning appeals and any issues arising there from.

20. Complaints and Record Keeping

- 20.1 The adoption of the advice in this guidance should greatly reduce the occasions on which complaints are justified. It should also provide less reason for people to complain in the first place.
- 20.2 So that complaints may be fully investigated and, in any case, as a matter of general good practice, record keeping should be complete and accurate. Omissions and inaccuracies can in themselves cause a complaint or undermine the Council's case.
- 20.3 The guiding rule will be that every planning application file will contain an accurate account of events throughout its life. It should be possible for someone not involved in that application to understand what the decision was, and why and how it has been reached.
- 20.4 Although all delegated application decisions are reported to the Planning Committee for notification purposes and to receive questions, particular care will be taken with applications determined under delegated powers, in terms of process and decision documentation and recording. These principles will apply equally to enforcement and development plan matters. As a matter of standard practice, the delegated officer report will be made available for public inspection the Council's website.

21. Training

- 21.1 A Member may not sit at a Planning Committee meeting without first having received appropriate mandatory training which may consist of the following:-

- an overview of the key role of planning in the Borough;
- the role of Members in the planning process;
- workshops on new Council or Central Government policy and legislation;
- other planning issues that either Members' request or Officers recommend;
- annual site visit

21.2 Members will be expected to make themselves available to attend training sessions in order to keep up to date on the latest planning and development issues.