

Planning Protocol

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1. Introduction

- 1.1 This Protocol has been prepared to guide Members and Officers in the discharge of the Council's statutory planning functions. It has been produced in accordance with the Planning Advisory Service publication 'Probity in Planning' – December 2019.
- 1.2 Members' role in the planning process is to make decisions openly, impartially, with sound judgement and for justifiable planning reasons. When planning applications are reported to Committee, the report will contain an Officer recommendation as to whether planning permission should be granted or refused. Members are entitled to bring their own judgement to bear on planning applications and to make a decision contrary to an Officer recommendation, but it is important that such decisions are taken on sound planning grounds which will withstand scrutiny at a possible appeal (if planning permission is refused) or if the decision is referred to the Local Government Ombudsman.
- 1.3 Members should bear in mind their overriding duty is to the whole community, not just to the people in their Ward and, taking account of the need to make decisions impartially, they should not favour, or appear to favour any persons, business or locality irrespective of other considerations.
- 1.4 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.
- 1.5 Central Government has legislated that decisions on planning applications must be taken in committee meetings that are open to the public and Members should always bear in mind that their statements during Planning Committee debates can lead to formal complaints to the Council and sometimes be referred to the Local Government Ombudsman.

2. When this Protocol applies

- 2.1 This Protocol applies to all Member involvement in Planning functions (i.e. whether or not they are Members of the Planning Committee), including not only consideration and determination of applications for planning permission but also planning enforcement action and the formulation and adoption of planning policies.

If you have any queries or concerns about the application of this protocol to your own circumstances, you should seek advice early from the Monitoring Officer or Deputy Monitoring Officer and preferably well before any meeting takes place.

3. Relationship to the Members' Code of Conduct

- 3.1 The Council has adopted a Members Code of Conduct ('Code') which reflects the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- 3.2 This Protocol is intended to supplement the Code where Members are involved in the planning process.

- 3.3 The rules set out in the Code must be applied first and must always be complied with.
- 3.4 Where a Member does not abide by the Code and/or this Protocol when involved in the planning process, it may put the Council at risk of challenge on the legality of any decision made or at risk of a finding of maladministration.
- 3.5 A breach of this Protocol may, in some circumstances, constitute a breach of the Members' Code of Conduct. A complaint would be made to the Council's Monitoring Officer who, in consultation with the Independent Person will determine whether or not there are reasonable grounds for believing there has been such a breach and, if so, whether the complaint warrants reference to the Council's own Standards Committee.

Members should apply common sense in the interpretation of this Protocol.

4. Conduct of Councillors and Officers

- 4.1 The PAS publication 'Probity in Planning' 2019 states: "*Councillors and officers have different but complementary roles within this system, and effective communication and a positive working relationship between officers and councillors is essential to delivering a good planning service.*" Both serve the public, but Members are responsible to the electorate, whilst Officers are responsible to the Council as a whole. Officers advise Members and the Council and carry out the Council's work. They are employed by the Council, not by individual Members and therefore formal instructions can only be given to Officers through a decision of the Council or its Committees. A successful relationship between Members and Officers will be based upon mutual trust, understanding and respect of each other's position. The Council has a protocol giving guidance on relationships between Officers and Members.
- 4.2 Planning Officers who are licentiate, associate and chartered town planners are subject to the Royal Town Planning Institute (RTPI) Code of Professional Conduct, breaches of which may be subject to disciplinary action by the Institute. In addition, the Council has a Code of Conduct for employees. Members should recognise and respect that Officers involved in the processing and determination of planning matters must act in accordance with their professional codes of conduct. As a result, Planning Officers' views and opinions 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. Members should bear in mind that in assessing planning applications and formulating their recommendations, Officers will have particular regard to the Council's adopted planning policies.
- 4.3 Members should not put pressure on Officers to put forward a particular recommendation. (This does not prevent Members from asking questions or submitting views, which may be incorporated into any Committee report, neither does it prevent Members from 'testing' Officer opinions and the basis of those opinions).
- 4.4 Members should be aware that Planning Officers handling appeals or public inquiries have a duty first and foremost to the tribunal hearing those appeals or public inquiries. Officers have to attest as such in their statements of evidence. This does not mean they cannot represent the Council stating the Council's case. However, they must not include anything in evidence which they do not believe in or can substantiate based on their professional experience.

- 4.5 Members can express a view on behalf of their constituents to a Planning Officer about the matters to be given weight in the determination of a planning application that has been refused by the Council so that these views can be expressed in the Council's Statement of Case or evidence. Planning Officers have a professional duty to decline to include such views in the Council's evidence if they disagree with such views. In the alternative, Members can use their own (or encourage their residents to use theirs) right to make representation to the Planning Inspectorate about planning matters to be taken into account in the determination of an appeal.
- 4.6 Serving Members who act as agents for people pursuing planning matters within the Council should not be members of the Planning Committee.
- 4.7 A successful relationship between Members 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.
- 4.8 Members have a right to expect a prompt reply to any matters they wish to raise with Planning Officers whether this is in respect to planning applications, enforcement or the draft Local Plan. All Officers dealing with planning applications, trees and hedgerows and enforcement are provided by the Council with a mobile phone to ensure they can communicate effectively and efficiently with Members of the Council, applicants, agents and the public. A list of these mobile phone numbers will be circulated to Members and updated as necessary. The expectation is that Officers with a mobile phone will be available to answer that phone throughout their working day.

5. Role of the Committee Chair

- 5.1 The role of the Committee Chair is to lead and manage the Planning Committee and in particular:
- to determine the order in which questions may be addressed from the Committee Members following Officer presentations;
 - ensuring that the public speaking procedure in section 18 is followed;
 - managing the Committee debate about applications, including the order in which Councillors who wish to address the Committee may speak;
 - determining when the debate has come to a close and votes should be cast in the order in which the motions were first completed (i.e. where the motion has been moved and seconded by Members of the Planning Committee)
 - ensuring that debate and decisions made are suitably focused on relevant planning considerations.

6. Role of Members

6.1 Members sitting on the Planning Committee should:

- make planning decisions on applications presented to the Committee openly, impartially, with sound judgement and for sound planning reasons;
- consider only development plan policies and material planning considerations (including the National Planning Policy Framework or NPPF) in determining applications
- exercise their responsibilities with regard to the interests of the District as a whole rather than with regard to their particular Ward's interest and issues;
- come to meetings with an open mind;
- not allow anyone (except Officers, other Committee Members and public speakers when they are addressing the Committee) to communicate with them during the meeting (orally or in writing) as this may give the appearance of bias. For the same reason, it is best to avoid such contact immediately before the meeting starts;
- consider the advice that planning, legal or other Officers give the Committee in respect of the recommendation or any proposed amendment to it. Members need to consider "significant" planning considerations in the determination of a planning application having regard to what the Planning Officer's report states is a significant consideration and be prepared to justify their view if different before the Committee;
- comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires the Local Planning Authority to make decisions in accordance with the development plan unless there are good planning reasons to come to a different decision based on material planning considerations;
- have regard to material planning considerations which can be but are not limited to:
 - Overlooking/loss of privacy
 - Loss of light or overshadowing
 - Right to peaceful enjoyment of property
 - Government policy
 - Previous planning decisions (including appeal decisions)
 - Economic benefits of a proposed development nationally or for the local area
 - Community benefits
- come to their decision only after due consideration of all of the information available to them, including the local information that Members are uniquely placed to access, but always remembering to take decisions on planning grounds alone. If Members feel there is insufficient time to digest new information or that there is insufficient information before them, they should seek an adjournment to address these concerns;
- not vote on a proposal unless they have been present to hear the entire debate, including the Officer update and any public speaking;

- make sure that if they are proposing, seconding or supporting a decision contrary to the Officer's recommendation or the development plan, they clearly identify and understand the planning reasons leading to this conclusion and that they take into account any advice planning, legal or other Officers give them (they should seek such advice before the Committee meeting including resolutions contrary to the Officer's recommendation, reasons for refusal or draft planning conditions). Their reasons must be given prior to the vote and be recorded. Be aware that they may have to justify the resulting decision by giving evidence in the event of challenge;
- avoid requests for Officers to speed up or delay the determination or assessment of particular applications for their own personal or political convenience or following lobbying by applicants, agents/advisers, local residents or other interested parties;
- not allow anyone (except Officers and other Committee Members) to communicate with them during any site visit (orally or in writing).

6.2 Issues such as loss of view, or negative effect on the value of properties are not material considerations. There is no set list defining material considerations and it is a matter for Members to decide upon in the context of determining a particular planning application having regard to a Planning Officers advice on the matter

7 Role of Planning Officers

7.1 The role of Planning Officers at Committee is:

- to use professional judgement when recommending decisions on applications and other planning matters;
- to provide professional advice to the Committee on planning applications and other matters at any point in the meeting.

8. Discussions with constituents

8.1 It is important that Members should be able to receive the views of their constituents. Accordingly, Members may discuss planning matters with any of their Ward constituents, including those constituents who have made or intend to make an application for planning permission. For the protection of Members it would be prudent for a Member having any such discussion to make a written note of the meeting. If a Member considers that it would be appropriate to have an Officer present when they meet with a constituent, they should contact the Chief Planning Officer to agree the arrangements. If a Member is requested to meet with a constituent to discuss a planning matter, they should make clear that no third party (such as a developer who is not a constituent or a planning agent) can be present. If the constituent advises that they wish a third party to be involved, the Member should advise their constituent that they should use the Pre-Application process. If in the event a constituent does attend the meeting with a third party, the meeting should not proceed further.

8.2 In any discussions with constituents, Members may indicate their view in relation to the matter but should not commit themselves to voting or determining the matter in a particular way.

- 8.3 In any discussions concerning planning applications (i.e with constituents) Members should be careful not to convey the impression or to represent that they are doing anything other than expressing their personal views. Notably, Members should be careful to avoid giving the impression that they have authority to speak on behalf of the Council.
- 8.4 Members should inform the Monitoring Officer if they feel they have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality) whether from a constituent or a third party.

9. Discussions with non-constituents

- 9.1 Members should not have individual discussions with persons (including developers and their planning agent or other representative) who are not constituents of the Ward which they represent save:-
- (a) with constituents of the Ward in which the Member resides;
 - (b) with other Members; or
 - (c) with Officers.
- 9.2 Where a formal meeting would be useful in clarifying the issues, this should be part of a structured arrangement organised and attended by Officers. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the Council 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 or by an Officer under delegated powers.
- 9.3 Members should remember that the formal meeting set out in Para 9.2 is not part of the formal process of debate and determination of any subsequent application, as this will be carried out by the Committee or by an Officer under delegated powers.

10. Frequency of Planning Committee meetings

- 10.1 The Planning Committee will normally meet at least once every calendar month. Additional meetings will be at the discretion of the Chair of the Committee. No meeting will take place in the month of August. Meetings will conclude no later than 11.00pm unless otherwise agreed by Committee Members. Any items on the agenda that have not been considered at that time will be adjourned for consideration at a reconvened meeting.

11. Quorum for the Planning Committee

- 11.1 The quorum for the Planning Committee is defined within Standing Orders. Should the Committee be inquorate, planning applications cannot be determined and should therefore be withdrawn from the agenda and returned to the next Planning Committee meeting.

- 11.2 Where the Planning Committee becomes inquorate, not due to Committee Members being absent but due to Committee Members declaring an interest, the planning application concerned should be deferred to the next Planning Committee meeting to allow each Member to seek advice as to whether their interest of concern is in fact an interest which would prevent them considering and voting upon the planning application. In the event that a Member or Members, on receipt of advice, are comfortable that there is no interest to prevent them considering and voting upon the application, the reasoning for such a position should be so recorded in the minutes of the next Planning Committee meeting.
- 11.3 In the event of Planning Committee still being inquorate, due to Members declaring an interest, the Committee is deemed to not be able to determine the application, which is then referred to the Chief Planning Officer for a delegated decision.
- 11.4 The Chief Planning Officer will normally attend all Planning Committee meetings, in addition to Planning Officers presenting application reports and recommendations and can choose to introduce a deferral of an application to a subsequent committee, or an additional or alternative recommendation to that proposed by other Planning Officers present, if he deems it expedient to do so and sets out those reasons to the Committee.

12. Substitutions

- 12.1 A political group may vary its representation on the Planning Committee by the temporary substitution of a previously nominated Member in accordance with the deadlines prescribed by the relevant Standing Order. Such temporary substitutes must have received relevant training. The group must give notice in writing to the Planning Committee Clerk as soon as possible. The substitute Member must be a member of the same group at the Planning Committee that he/she is replacing. The arrangement which can be for a particular meeting (not part of a meeting) or for a period of time must be set out in the notice.
- 12.2 Where the meeting is adjourned the substitute arrangement will remain in place when the meeting is re-convened.
- 12.3 A Member substituting shall have the same rights as other Members of the Committee, including the right to vote.
- 12.4 At the end of the period stated in the notice, the substitute Member shall cease to be a Member of the Committee and the original Member will resume his/her representation on the Committee. A notice which has been duly served may be withdrawn at any time prior to the start of the meeting and the arrangements in place before the notice was served shall apply.
- 12.5 The Planning Committee Clerk shall inform the Committee of any such arrangements which are in place for that meeting. Where the arrangement is for a period of time he/she will notify the Committee at subsequent meetings including any reconvened meeting following an adjournment.
- 12.6 The Planning Committee Clerk will ensure that any substitute Member receives a copy of the Agenda for the meeting as soon as practicable after service of the notice. The substitute Member should ensure that they have read all relevant reports prior to the meeting.

- 12.7 Any substitute Member who has not previously received training in being a Member of the Planning Committee should contact the Chief Planning Officer to arrange such training prior to attending a Planning Committee meeting.

13. Referring applications to the Planning Committee

- 13.1 All Councillors will receive copies of the weekly list of planning applications validated and proceeding to determination for detailing the reference number, proposal, location, decision, number of objections, and a hyperlink to connect to the relevant part of the Planning Portal to enable Planning Committee Members to view more details about the application.
- 13.2 If a Councillor wishes an application to go before the Planning Committee (to be 'called-in') rather than be determined through Officer delegation, they should make this request in writing (including by email) to the Planning Officer and copy in the Chief Planning Officer as soon as possible, The planning grounds on which the call-in is based should be stated as fully as possible.
- 13.3 The Planning Officer and/or Chief Planning Officer shall then mark the record of that application as "Referral to Committee".
- 13.4 "Call-ins" are of two types:
- i) when a Member would want to have Planning Committee consider the application in the event of an Officer recommendation of refusal because of their awareness of a material consideration that indicates planning permission should be granted; or
 - ii) when a Member would want to have Planning Committee consider the application in the event of an officer recommendation of permission because of their awareness of a material consideration that indicates planning permission should be refused.

In either case, if Members consider there may be circumstances in which an alternative Officer delegated decision may be acceptable (eg amendments to a scheme of development imposition of planning conditions), they should still make a "call-in" in writing but indicate to the Chief Planning Officer that they may be minded to change their view subject to further discussion once Officers had come to an initial opinion.

- 13.5 Councillors must have reasonable and material planning ground(s) upon which to make the request to reverse an Officer's indicated recommendation. All Call-ins will be reviewed. Should the Chief Planning Officer find the planning grounds to be insufficient for the reversal of an Officer's recommendation then the Chief Planning Officer will immediately consult with the Chair, Vice Chair and delegated Planning Officer before presenting in writing to, and subsequently discussing with, the member concerned their reason(s) to withdraw their Call-In. The decision for a Call-in rests with the Member but no reasonable and sound request for withdrawal shall be refused.
- 13.6 The agenda for the next appropriate meeting will be amended as soon as possible to reflect those applications that have been 'called-in'. The Planning Officer will also inform the Member of the date of the Committee when the application will be heard. The Member making the call-in request will be invited to;

- i) discuss the wording of an alternative resolution for permission/refusal with the Case Officer/another Senior Planning Officer to be forwarded to Democratic Services to ensure the smooth running of Planning Committee proceedings; and
 - ii) discuss the wording of an alternative set of planning conditions/ reasons for refusal with the Case Officer/another Senior Planning Officer to ensure these meet the test of reasonableness and to be forwarded to Democratic Services to ensure the smooth running of Planning Committee proceedings.
- 13.7 The Chief Planning Officer has absolute discretion to refer any otherwise delegated application to the Planning Committee for determination, for example, when such an application raises issues considered to be of District wide importance.
- 13.8 Members of the public and other third parties **cannot** request that an application be referred to the Planning Committee.
- 13.9 The number and nature of delegated applications referred to the Planning Committee will be reviewed on a regular basis.

14 Applications for Consideration at Planning Committee

- 14.1 The following matters are reserved to the Planning Committee:
- Where the proposal is significant development which has caused substantial local interest and objection.
 - Where the officer recommendation is for approval contrary to policy in the Development Plan, Neighbourhood Plans, DPD or other adopted guidance to an application that is subject to representations that object to the grant of planning permission.
 - Where the application is recommended for approval or refusal, contrary to the reasons for referral submitted by a Member, providing the reasons for referral submitted by a Member are based on sound planning reasons.
 - Any application for development in which the Council has a significant interest in the proposal or the application relates to Council owned land
 - Any application for development submitted by a Member of the senior leadership team or an officer employed within Development Management and Planning Policy or an elected member of the Council or an application submitted within 12 months of their leaving the Council submitted by or on behalf of a Member of the senior leadership team or an officer employed within Development Management and Planning Policy or an elected member of the Council.
 - Any application for development which as a consequence of the scale of objection or for any other reason the Chief Planning Officer deems it to be appropriate or expedient for the matter to be referred to the Committee;

Applications that are time sensitive, for example Prior Approvals are not usually heard at Committee.

15. Pre-Application discussions and pre-application notifications

- 15.1 The National Planning Policy Framework recognises the value of and encourages Pre-Application discussions between Local Planning Authorities and developers. The NPPF notes that the more issues that can be resolved at pre-application stage, the greater the benefits, and exhorts Local Planning Authorities to encourage developers to take up any pre-application services offered. The appropriate involvement of Members in the Pre-Application process in accordance with the provisions set out below should enhance its value. As a general principle, Members should, where appropriate, seek to encourage promoters of development schemes to engage in the Pre-Application process.
- 15.2 Promoters of development schemes wishing to engage Members in Pre-Application discussions will be advised that:-
- (a) for major applications, a presentation to Ward Members and Planning Committee Members (but not excluding any other Council Member wishing to attend) is preferred in the interest of transparency for which an additional pre-application advice fee (to that payable for officer time) will be payable;
 - (b) if they wish to secure more limited Member input into the Pre-Application discussions they can request that the Ward members attend a meeting with a Planning Officer present. The decision as to whether or not a Ward Member attends such a meeting rests with the Member. An additional pre-application advice fee (to that payable for Officer time) will be payable;
 - (c) although (subject to the Environmental Information Regulations Act and any other relevant legislation) the Council will respect the confidentiality of information which the scheme promoter makes clear is disclosed in confidence, all Council Members will have access to Council files on Pre-Application discussions.
- 15.3 The Planning Department will include new requests for Pre-Application discussions on the weekly list of Planning applications circulated to Members.
- 15.4 If a Member wishes to express their views on a matter which is the subject of Pre-Application discussions, they may set out those views in writing sent to the relevant Planning Officer who will place a copy of the communication from the Member on the Pre-Application file. Members should be aware that such comments may in due course become publicly available. Any such views will not fetter the professional judgement and views of the Planning Officer dealing with the pre-application advice.
- 15.5 Members should not disclose any confidential information or documents held on Pre-Application files other than to another Member or to an officer of the Council.
- 15.6 Officers should always use their best endeavours to make both serving Members of Planning Committee and relevant local ward Members aware of any impending or submitted major planning applications or controversial applications.
- 15.7 Officers should always encourage intending applicants to discuss their proposals with Parish Councils before an application is submitted.

16. **Agenda and reports**

- 16.1 Officer reports to Committee must be comprehensive and should include the substance of any objections and other responses received to the consultation. Relevant information should include a clear assessment of the development proposals against relevant development plan policies (including Neighbourhood Plans, Supplementary Planning Guidance, relevant parts of the National Planning Policy Framework (NPPF) and other government planning policy guidance) and must include consideration of all material planning considerations, including any local finance considerations (excluding consideration of CIL payments to the Council).
- 16.2 Members may seek clarification from Planning Officers if they do not consider the published Committee papers fulfils the requirements of paragraph 16.1 above sufficiently to undertake their role at the Planning Committee.
- 16.3 Planning application reports will always include an Officer recommendation for approval or refusal, with a reasoned justification.
- 16.4 Reports should contain succinct and clear technical appraisals (including internal and external expert technical guidance which clearly justify the recommendation. If Members wish to clarify such technical guidance at Planning Committee, they should notify the Chief Planning Officer/ case officer in advance so that the appropriate technical expert can be asked to attend.
- 16.5 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.
- 16.6 Planning Committee agendas must be published on the Council's website a minimum of 5 clear working days prior to the Committee meeting.
- 16.7 An update note may also be provided to Members by Officers on the day of the Planning Committee detailing any relevant information including minor changes, variation to conditions or representations received after the publication of the agenda, which will be considered and responded to by Officers in the note. Democratic Services shall circulate the update note electronically and provide paper copies for Members and the public at the meeting. The update note is a public document and will subsequently be uploaded to the Council's website with the agenda pack and minutes.
- 16.8 At Planning Committee, a Planning Officer will present the report and the contents of any update note and will table any relevant consultation responses and representations received after the update note has been published. Public speaking will then take place as set out below.
- 16.9 Following the speakers, the Chair will invite any queries from Members to Officers. In some circumstances it may be appropriate for further responses to be sought from speakers.

- 16.10 The Chair will then facilitate discussion of the application. Members are advised not to duplicate questions to Officers and the Chair may seek to conclude the debate if it is clear that all relevant points have been made (and e.g. to avoid repetition).
- 16.11 Whilst the order of consideration of items at Planning Committee is ultimately a matter for the Chair, planning applications will normally be heard first, followed by other items.

17. Decision making

17.1 Declaration of Interests

- 17.1.1 The Council's Monitoring Officer has provided all Councillors with detailed guidance on the Member Code of Conduct and in particular, declaration of interests. This is regularly updated. Members of the Planning Committee must ensure they are familiar with the Code. The requirements must be followed scrupulously, and Members should review their situation regularly. It is the personal responsibility of individual Members to ensure they comply with the Code of Conduct and make all appropriate declarations at Planning Committee meetings. Members should take advice early, from the Monitoring Officer or the Deputy Monitoring Officer, and preferably well before any meeting takes place, if they are in any doubt as to their position.
- 17.1.2 The Member Code of Conduct sets out detailed requirements for the registration and disclosure of disclosable pecuniary interests. Members should not participate in any decision and should leave the meeting where they have a disclosable pecuniary interest unless they have first obtained a dispensation. In addition, unless they have obtained a dispensation, they should:-
- NOT participate or give the appearance of trying to participate in the making of any decision on the matter by the Council
 - NOT get involved in the processing of the application
 - NOT use their position to discuss the proposal with Officers or Members when other members of the public would not have the opportunity to do so or in any other way seek or accept any preferential treatment or give the appearance of so doing.
- 17.1.3 The Member Code of Conduct requires Members to consider whether they have a non-registrable interest or personal interest in any item. Such an interest will arise where the matter may reasonably be regarded as affecting the wellbeing or financial standing of the Member concerned, a member of their family or a person with whom they have a close association to a greater extent than many of the constituents of the ward affected by the application at Planning Committee. Such an interest will also arise where it would be a disclosable pecuniary interest but relates to a member of their family or to a close associate rather than to the Member themselves or to their spouse or partner.
- 17.1.4 In the event that a Member considers that they have a non-registrable pecuniary interest or personal interest in any matter they should disclose the existence and nature of the interest as requested by the Chair during the course of the meeting but, in any case, no later than the hearing of the specific item to which an interest relates.

- 17.1.5 A Member who has a personal interest in a planning application must also consider whether that interest also constitutes a prejudicial interest. The test of this is whether it would be reasonable for a member of the public with knowledge of all the relevant facts to consider that the nature of the Member's interest was likely to affect their judgement of the public interest - i.e. affect or influence their voting intentions.
- 17.1.6 If a Member only has a personal interest to declare, which they do not consider to be prejudicial, they are entitled to remain in the meeting and speak and vote.
- 17.1.7 If a Member decides that their personal interest is a prejudicial interest, they must declare that fact in the usual way. They should leave the meeting for the discussion regarding that item unless exercising their public speaking rights, after which they should then leave the meeting for the remainder of the consideration of the item.
- 17.1.8 A Member with a disclosable pecuniary interest should, subject to any dispensation, leave the meeting for the discussion regarding that item and not participate in the matter. If there is any doubt, further advice for Members is available in advance of the meeting from Legal Services.
- 17.1.9 The obligation to disclose the existence and nature of an interest applies to **all Councillors attending the Planning Committee meeting, whether sitting as a Member of the Planning Committee or as a Councillor addressing the Planning Committee or sitting in the public gallery**. The responsibility rests with individual Councillors to ensure they indicate to the Chair that they have an interest to declare.
- 17.1.10 Members should carefully consider whether they have a disclosable interest if they have participated in a Parish Council meeting or a County Council committee with respect to a particular planning application.

17.2 **Predisposition, predetermination or bias**

- 17.2.1 To preserve the integrity of Planning Committee decisions, it is vital that Members do not make up their minds before they have all relevant materials and arguments before them at the Committee meeting. Members must retain an open mind at the time the decision is made and not make up their minds or appear to have made up their minds, until they have heard the Officer's presentation and evidence at the Planning Committee when the matter is considered. This is particularly important if a Member is contacted by an external interest or lobby group. If a Member has made up their mind prior to the meeting and is not able to reconsider their previously held view, they will not be able to participate in the determination of the matter because if they did take part in the discussion or vote it would put the Council at risk in a number of ways. Firstly, it would probably, in the view of the Local Government Ombudsman, constitute maladministration. Secondly, the Council could be at risk of legal proceedings on a number of possible grounds, e.g.
- that there was a danger of bias on the part of the Member; and/or
 - predetermination; and/or
 - failure to take into account all of the factors which would enable the proposal to be considered on its merits

- 17.2.2 Members are entitled to feel predisposed towards a particular decision but must still be able to consider and weigh relevant factors before reaching their final decision. Predetermination arises when Members' minds are closed, or reasonably perceived to be closed, to the consideration and evaluation of the relevant factors. This risks making the whole decision vulnerable to legal challenge. Section 25 of the Localism Act 2011 provides that a Member 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. For example, a Member who states "*wind farms are blots on the landscape and I will oppose each and every wind farm application that comes before committee*" has a closed mind. A Member who states "*many people find wind farms ugly and noisy and I will need a lot of persuading that any more wind farms should be allowed in our area*" does not have a closed mind although they are predisposed towards opposing such applications.
- 17.2.3 Where a Member may have campaigned for or against a proposal, they need to be careful to consider and ensure it is apparent that they have considered all relevant considerations and made their decision in accordance with their statutory duty. Members must be prepared to change their view right up to the point of making the decision. Members can listen to applicants and objectors, and indicate their view, but must not be biased in their consideration of the issues. Members can support or oppose an application and represent the views of their constituents in their role as a Ward Councillor. To do so as a Planning Committee Member MIGHT compromise their role on the Committee and Members are advised to seek advice from the Monitoring Officer or Deputy Monitoring Officer.
- 17.2.4 The fact that Members may have campaigned against a proposal will not be taken as proof that they are not open-minded. However, a Member who has expressed particularly extreme views, it will be more difficult in practice to be able to get away from the impression that they would approach the decision with a closed mind.
- 17.2.5 Pre-determination does not arise where Members have not expressed a concluded view on a planning application but consider they are still approaching the determination of that application with an open mind.
- 17.2.6 Members on the Planning Committee who also serve on bodies (such as Parish or County Councils) that are consulted about planning applications need to think carefully about their participation in that consultation process to avoid the impression that they have already made their minds up before the matter arrives at the Planning Committee. Members will be familiar with the fact that, when they receive the consultation on a particular matter, they only receive the proposal and not the full Officer report. It is at the point when the Officer report is submitted to Members that all material considerations are before them. A firm decision before that point is as stated above therefore premature in terms of planning law. This does not prevent a Member from listening to a debate at a Parish or County Council, so long as the Member does not take part in the debate or express a view during the debate or openly afterwards..

17.2.7 Where a Parish Council or County Council has a Planning Committee, District Planning Committee Members should avoid joining that Committee. Councillors may also well consider whether it would be preferable to leave the room or simply listen to debate in the Parish or County Council but express no view during the debate or openly afterwards until the matter comes before the District Planning Committee. Members should be aware of, and have regard to, guidance issued from time to time by the Planning Advisory Service in relation to this issue.

17.3 Moving the Motion

17.3.1 A motion to resolve the application shall follow substantive debate (proportional to the application). The Chair can move the motion as deemed appropriate or it may come from any member of the Planning Committee.

17.3.2 The Planning Committee has a duty to consider all applications placed before them. There are 3 options available in relation to the decision:

- Resolve as per Officer recommendation
- Alternative motion differing from officer recommendation
- Deferral of decision

17.4 Resolution as per Officer recommendation

17.4.1 In this instance a mover would move the motion and speak to it, this should then be seconded and the seconder would speak to it (or reserve the right to speak). There should then follow the option, if the Chair deems it necessary, for further short debate, which may result in amendments, with the mover having a right to reply before being put to the vote. The Chair may invite Officer comments if further clarifications are required.

17.5 Resolution as per Officer recommendation with amendments

17.5.1 Where the motion under debate is to grant planning permission, a Member may propose an amendment to vary or delete a proposed condition or to add an additional condition. Where the motion under debate is to refuse planning permission, a Member may propose an amendment to vary or delete a ground of refusal or to add an additional ground of refusal. Any Member proposing an amendment will be required to give planning based reasons for the amendment which will be recorded in the minutes of the meeting. 'Negativising' amendments i.e. that propose the direct reverse of the motion under consideration, are not in accordance with the rules of debate.

17.6 Refusal of Planning Permission against Officer advice

17.6.1 Where the Planning Committee is minded to refuse planning permission against Officer advice, the Planning Committee is required to give adequate and intelligible reasons on good planning grounds for refusing to grant planning permission and these ground(s) of refusal must be in the minds of Members of the Planning Committee at the point of refusal. This must be clearly articulated by Members for the purposes of the minutes. The precise wording of a reason for refusal, as it would appear on the decision notice, can be delegated to the Planning Officer as part of the resolution in order to expedite the decision. Members should be mindful that the Council is at risk of having costs awarded against it, if, subsequently on

appeal, it is unable to justify each ground of refusal and is found to have acted unreasonably.

- 17.6.2 A motion to refuse permission against officer advice can be put forward by any Member of Planning Committee who should then speak to that motion. This should then be seconded and the seconder should speak to this (or reserve the right to speak). A debate can then follow. The Chair may invite Officer comments if further clarifications are required.
- 17.6.3 Planning Officer(s) and/or Legal Adviser(s) will have the opportunity to explain the implications of the Planning Committee's proposal to determine the application contrary to the Officer recommendation prior to Members voting on the proposal.
- 17.6.4 Consideration will need to be given by the Members of the Planning Committee as to whether the decision and the reasons provided for such decision are adequate and capable of being defended at an appeal with the potential for award of costs against the Council or defended if challenged through a judicial review. Members are strongly advised that in these circumstances they seek the advice of the Chief Planning Officer and/or Legal Officer before moving on to a vote.
- 17.6.5 The reasons for any decision which are made contrary to the Planning Officers' recommendation must be fully, formally and expressly recorded in the minutes and a copy placed on file. Committee Members are required to give reasons for a decision when such decision is contrary to the Planning Officers' recommendation. These reasons are likely to be adduced as evidence in the event of an appeal, in a judicial review or other legal proceedings and will be reviewed by such bodies. Therefore, time and care is required to provide robust reasons as appropriate for particular decisions and their context.
- 17.6.6 Given the potential pitfalls relating to "unreasonable" planning decisions set out above, and not wanting to fetter Members' discretion to pursue a particular course of action, it is strongly recommended that any Member pursuing a decision contrary to the Planning Officers' recommendation discusses the matter at the earliest opportunity with the Chief Planning Officer and/or Legal Officer and takes careful account of any guidance they receive.

17.7 Grant of Planning Permission against Officer advice

- 17.7.1 Where the Planning Committee is minded to grant planning permission against Officer advice, the Planning Committee is required to give adequate and intelligible reasons for granting planning permission, as well as considering what conditions should be imposed and the reasons for those conditions. In addition, where the grant of permission would constitute a departure from a policy or policies in the Development Plan, Members will need to identify clear and substantial material considerations that justify departing from the Development Plan. Such reasons will be recorded in the minutes.
- 17.7.2 A motion to grant permission against Officer advice can be put forward by any Member of the Planning Committee who should then speak to that motion. This should then be seconded and the seconder should speak to this (or reserve the right to speak). A debate can then follow. The Chair may invite Officer comments if further clarifications are required.

17.8 Deferral

- 17.8.1 Members should only seek deferral of an application where it is absolutely necessary in order to make a defensible decision. Otherwise, applications should be determined without delay. Deferral will, by its nature, lead to delay and, potentially, a risk of appeal against non-determination. In the absence of clear reasons for deferral, which have a clearly identified concluding point for the decision, it is considered that this risk would increase. Appeals against non-determination remove the decision-making responsibilities from the Council and give them to the Planning Inspectorate, who will act independently of the Council. For the purposes of that process it would still be the case that Members would need to provide a view to be taken into account in the appeal process.
- 17.8.2 Examples of potential sound reasons for deferral are where material considerations not covered in the Planning Officer report are raised in public speaking, or in questions from Committee Members, or if Members consider Officers have not fully taken account of policy considerations or material considerations, or for a necessary site visit so that Members can consider aspects of a development for themselves.
- 17.8.3 A motion to defer an application can be put forward by any Member of the Planning Committee who should then speak to that motion. This should then be seconded and the seconder should speak to this (or reserve the right to speak). A debate can then follow. The Chair may invite Officer comments if further clarifications are required.

17.9 Voting

- 17.9.1 At the conclusion of the consideration of the motion the Chair will call for a vote. Voting on any motion will be signified by verbally by Members turning on the microphone and stating their vote. In the event of an equality of votes the Chair may exercise a casting or second vote. No record shall be made at the time of voting of the votes of individual Members for the minutes. Immediately after a vote has been taken, by affirmation or a show of hands, a Member may request that his or her vote is recorded in the minutes of the meeting.
- 17.9.2 Members must be present for the entire item, including the Officer's introduction and update; otherwise **they cannot** take part in the debate or vote on that item. This also applies to those applications deferred from a previous meeting, i.e. if a Member was absent from the previous meeting at which an application was debated, but no decision reached and subsequently deferred, that Member cannot take part in the debate or vote on that application at the next meeting.

18. Public Speaking on planning applications

- 18.1 The Council operates a system of limited public speaking at Planning Committee, to allow Members to hear representations from several interested parties before the application is considered. Representations are limited to 3 minutes per speaker with 3 speakers allowed one in favour (e.g. an applicant, agent or supporter); one objector; and the Parish Council. They are taken in the order of objectors and then applicant and/or supporters. No individual will be allowed to speak in more than one capacity and as set out above; Members of the Committee should not assume one of these roles.

- 18.2 Each speaker must pre-register with Democratic Services no later than 16.30 on the day before the Planning Committee, with registration opening on the publication of the agenda. Details of how to register to speak will be provided to the applicant and third parties who have made representations on the proposal on the publication of the agenda. Speakers are registered on a 'first come first served' basis, that is to say the first speakers to register will be successful. Ward and Parish councillors are expected to adhere to the identified timeframes, and any exceptional circumstances that mean that this has not been possible may be considered by the Chair.
- 18.3 There shall be no transfer of time between registered individuals, or to others not registered, except in exceptional circumstances and with the prior approval of the Chair.
- 18.4 Speakers should arrive for the Planning Committee no later than 15 minutes before the start of the Committee. A speaker arriving after the start of the meeting will not be recorded as present and may not be eligible to speak. Changes to the order of the agenda may be made at the Planning Committee and at the discretion of the Chair.
- 18.5 Exceptionally, the Chair may decide during the meeting to increase the time available, for example if an application straddles a parish boundary or if a large number of people wish to speak. In such cases the time will be increased equally for each of the groups.
- 18.6 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.

19. Public attendance

- 19.1 The Planning Committee is open for the general public to attend as observers without pre-registering. Public speaking will only be permitted to those pre-registered. The Planning Committee is a formal meeting; any anti-social behaviour may result in the adjournment of the meeting until the situation is rectified. For health and safety reasons the capacity of the venue may be limited, and members of the public asked to wait in another room for a particular application to be heard. Where number limitations are exceeded it may be necessary to refuse entry. This is likely to occur only in very exceptional circumstances.

20. Circulation of additional plans, photos or information at Planning Committee

- 20.1 Requests for the circulation of additional information or photographs directly to the Planning Committee before or during the meeting by the applicant, public or other interest parties will not normally be permitted. The opportunity is provided to all interested parties to submit any comments and additional information to the Planning Team through the publicity processes associated with the application well in advance of the Planning Committee. These representations are placed in the public domain and are summarised and responded to in the report to the Planning Committee. Circulation of additional information during the meeting does not allow sufficient opportunity for its proper consideration and would reduce the transparency of the process.

20.2 Exceptions to this may be made in special circumstances and will be at the discretion of the Chair.

21. Chair's Pre-meet briefing (Call-over)

21.1 After the publication of the agenda but before the start of the Planning Committee, the Chair will hold a pre-meeting, normally attended only by the Chair, Vice Chair and Officers (Planning/ Legal and Democratic Services), so that Officers can inform the Chair and Vice Chair of any additional matters since publication of the agenda that do not appear in the reports.

21.2 Such pre-meetings enable notification of concerns or amendments to any application and enable the Chair and Vice Chair to consider if such amendments constitute a material change, or whether a verbal report from the Officers to the Committee is acceptable.

22. Lobbying of and by Members

22.1 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. 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"*.

22.2 Lobbying can, however, lead to the impartiality and integrity of a Member being called into question, unless care and common sense is exercised by all the parties involved.

22.3 When being lobbied, Councillors and Members of the Planning Committee in particular, should take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments.

22.4 In such circumstances, Members should consider restricting themselves to giving advice about the process and what can and cannot be taken into account.

22.5 Members can raise issues which have been raised by their constituents with Officers.

22.6 If a Member does express an opinion to objectors or supporters, it is good practice to make it clear that they will only be in a position to make a final decision after having heard all the relevant arguments and having taken into account all relevant material and planning considerations at Planning Committee.

22.7 If any Member, whether or not a Planning Committee member, speaks on behalf of a lobby group at the Planning Committee, they should withdraw from the meeting once the opportunity to make representations has been completed in order to counter any suggestions that Members of the Committee may have been influenced by their continuing presence.

- 22.8 In no circumstances should planning decisions 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.
- 22.9 Members should in general avoid organising support for or against a planning application and should not lobby other Councillors.
- 22.10 Members 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 Officer's impartiality or professional integrity.
- 22.11 Members should pass any lobbying correspondence received by them to the Chief Planning Officer at the earliest opportunity and should declare that they have been lobbied about a particular agenda item at the start of the relevant Planning Committee meeting.
- 22.12 Members should not accept gifts or hospitality from any person involved in or affected by a planning proposal.
- 22.13 Members should inform the Monitoring Officer where they feel that they 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.

23. Review of Decisions

- 23.1 It is good practice for Members to visit a sample of implemented planning permissions to assess the quality of the decisions and the development. This should improve the quality and consistency of decision making, strengthen public confidence in the planning system, and can help with reviews of planning policy.
- 23.2 Reviews should include visits to a range of developments such as major and minor schemes; 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.
- 23.3 The outcome of selected appeals against the decisions of the Council will be reported regularly to the Planning Committee when these raise issues of wider importance, particularly interpretation of matters of policy. The outcome of appeals against enforcement cases, and legal proceedings, will also be reported regularly so that the Planning Committee can review the Council's own decision-making processes whether at officer or Member level.
- 23.4 All appeals that result in an award of costs against the Council will be reported to Planning Committee to draw lessons to avoid such awards of costs in the future.

24. Complaints

- 24.1 Complaints relating to planning matters will be dealt with in accordance with the Council's complaints procedures.

- 24.2 So that complaints may be fully investigated and as general good practice, record keeping should be complete and accurate. Every planning application file should contain an accurate account of events. It should be possible for someone not involved in that application to understand what account was taken of any representations received and how these were dealt with and why, what the decision was and why and how it had been reached. This applies to decisions taken by Planning Committee and under delegated powers, and enforcement and development plan matters.
- 24.3 What is most important is to ensure that complaints that become vexatious or are based on other unreasonable grounds are dealt with from the outset giving a full reasoned explanation of a decision taken and why that decision was reasonable.
- 24.4 There may be occasions when Members will want to complain about the conduct or lack of action on the part of a Planning Officer either on their own behalf or that of a constituent. Complaints could arise with respect to Officers in Development Management, Enforcement or Planning Policy. From the Council's perspective, such complaints must be treated impartially and transparently to retain confidence in the standard of the Council's planning service.
- 24.5 Any complaint about a Planning Officer (excluding the Chief Planning Officer) should for the time being be addressed to the Chief Planning Officer who will initiate an investigation into the complaint and respond with findings and what action, if any, has been taken against the Officer.
- 24.6 Any complaint about the Chief Planning Officer should for the time being be addressed to the Chief Executive who will initiate an investigation into the complaint and respond with findings and what action, if any, has been taken against the officer.
- 24.7 In submitting complaints, Members should include as much information as possible about the basis of the complaint. In the interests of natural justice, such information will need to be disclosed to the planning officer being complained about. What is important is that such information is based on fact about how an officer has conducted himself or herself. Complaints cannot be based on conjecture about what a Planning Officer may have thought or done. Planning decisions are always based on a balancing of development plan policy and material considerations and this is a planning officer's prerogative in making delegated decisions. What also has to be recognised is that all Planning Officers' decision are checked and signed-off by another Planning Officer before being issued, so providing independent scrutiny of each and every delegated decision.
- 24.8 Complaints about Officer delegated decisions should not rely on generalities. Instead, such complaints should detail any procedural, planning policy or material consideration, Any complaint should be raised as soon as possible and if applicable, following the issuing of a planning decision to ensure the timely consideration of the complaint against all relevant facts.

24.9 The timescale for determination of complaints are set out below: -

- The receipt of a complaint will be acknowledged within 3 working days, this will include a due date for a fuller response.
- The complaint will be investigated and a more detailed response will be sent to the complainant within 20 working days. Occasionally it may not be possible to conclude an investigation and respond within 20 working days. In these circumstances the investigating manager will inform the complainant of the reasons for the delay and the expected response date.

25. Appeals against planning decisions

25.1 Where an appeal arises against a decision to refuse an application, Officers will normally represent the views of the Council at the appeal and other proceedings, together with the Council's technical advisors.

25.2 Where Planning Officers may be 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 made aware of this before the final vote is taken. In such cases, the Committee shall, on the advice of the Chief Planning Officer, agree to the appointment of planning or other technical, consultants or different planning officers (in finely balanced cases), than those who made the original recommendation to represent the Council at appeal.

25.3 Councillors can have an important role to play in appeals and may, within set deadlines, make written representations to the Planning 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, exceptionally, representing the Council's case.

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

25.5 Where a Member wishes to support the Council, or an appellant, on any appeal against a Council decision on any planning matter, that Member shall as a matter of courtesy give written notice of his or her intention to the Monitoring Officer; Chief Planning Officer and the appellant. Where the appeal is to be dealt with by written representations this written notice shall be given at, or as soon thereafter, as the appeal is lodged. Where the appeal is to be dealt with by a hearing this written notice shall be given at, or as soon thereafter, the appeal is lodged and accepted as a hearing. Where the appeal is to be dealt with by public inquiry, this written notice shall be given at, or as soon thereafter, the public inquiry procedure is accepted.

25.6 In deciding whether to make representations on an appeal Members should consider very carefully beforehand whether there could be any allegation that they are in breach of this Protocol or any other provisions in the Member Code of Conduct.

26 Local Development Plan

- 26.1 The principles set out in this Protocol apply equally to decisions on the Local Development Plan. Whilst it is expected that Members will be fully involved in community engagement and discussions, Members should avoid putting themselves in a position of predetermination.
- 26.2 Preparation of the Local Development Plan differs from the consideration of individual planning applications in that it both relates to the consideration of individual sites and to how sites relate to the needs of the wider area. It is important that even where Members or Officers have a prejudicial interest in relation to a site that they are able to contribute to the work and discussion concerning a wider area. However, whenever the discussion or preparatory work focuses on the comparison of individual sites or could otherwise be seen as impacting on or in some other way relevant to their site, they must exclude themselves from the work and decision making.

27 Training for Councillors

- 27.1 The Council considers that Members of the Planning Committee should undertake training. This opportunity will be offered to all Councillors. No Member appointed to the Planning Committee can sit at a Planning Committee meeting without having undertaken annual training in planning procedures before-hand.
- 27.2 The subject matter for training will cover planning procedures, the development plan and material planning considerations, probity and other subject determined from time to time by Officers in consultation with Members.
- 27.3 Other training will be available in the form of additional sessions, short presentations to the Committee, and the circulation of briefing notes and appeal decisions.

28. Planning applications submitted by sitting or previous Councillors, Parish Councils and Officers

- 28.1 Planning applications submitted by, or on behalf of Councillors, or Officers employed by the Council, or by, or on behalf of a spouse, partner, parent, child or sibling of a Councillor or Officer of the Council, where known, shall be decided by the Planning Committee and not under delegated powers by a Planning Officer. This will also apply where that person is acting as an agent for another party.
- 28.2 The affected Councillor(s) must declare an interest, and nature of the interest/relationship. The Member shall have the right to address the Committee as the applicant in accordance with the Council's rules on public speaking. Immediately after addressing the Committee, the Member shall leave the Chamber unless he/she has been granted dispensation from the Monitoring Officer and Chief Planning Officer.
- 28.3 Officers **must not** play any part in the processing of an application and any recommendation made to the Planning Committee where they have, or can be perceived to have, a conflict of an interest. Such interests would include financial or professional interests and the interests of family and friends.

28.4 The same provisions as in paras 28.1 and 28.2 above shall apply to any Councillor who has within the preceding 12 months stood down from the Council or any previous Officer who has left the Council in the preceding 12 months.

28.5 Where a Parish or County Council submits a planning application, any Members who have had input, been part of any consultations or have been supportive of the application in their role of a Parish or County Councillor and are also Members of the Planning Committee should declare their interest and withdraw from the District Planning Council meeting. Those Members, can re-join the meeting after the decision has been made by the Committee and can take part in any remaining agenda items.

29. Planning applications submitted by the Council

29.1 It is essential that the Council treat applications for its own development (or a development involving the Council and another party) in a similar manner to all other applications, and that is seen to be the case.

29.2 All such proposals will be subject to the same administration processes, including consultation, as private applications. Determination shall similarly take into account planning policy, and any other material planning consideration(s).

29.3 In order to ensure transparency and openness in dealing with such applications, Council applications (except for discharge of conditions) that involve land owned by the Council and/or where the Council has a financial interest will not be dealt with under delegated powers but will be determined by the Planning Committee.

30. Recording of proceedings of Planning Committee meeting

30.1 All Planning Committee meetings shall be webcast by the Council.

30.2 Recordings of each meeting will be made by the Council, with the exception of items discussed in "Part 2" i.e. "confidential items". These recordings will be posted on the Council's webpages after the meeting.

31. Gifts or Hospitality

31.1 Members shall not accept gifts or hospitality from developers or from any person involved in or affected by a planning proposal, including pre-application proposals. A gift or hospitality might be considered to influence a Member's judgement and it is important that there can be no justifiable grounds for suggesting a decision either has been, or appears to have been, influenced or biased in any way. The Member Code, of Conduct in any event, requires that a Councillor must within 28 days of receiving any gift or hospitality over the value of £50, provide written notification to the Monitoring Officer of the existence and nature of that gift or hospitality. A gift over £50 will constitute a personal interest and be registerable as such. All details will go on the register of gifts and hospitality, which is open to public inspection and will remain on the register for 3 years. Members must consider whether any gift or hospitality over the value of £50 constitutes a prejudicial interest.

32. Ward Councillors addressing the Planning Committee

- 32.1 If a Ward Councillor wishes to address the Planning Committee about a matter in their ward being considered at the Planning Committee, they should advise the Chair (or Vice Chair in his/her absence) and the Committee Clerk prior to the meeting itself and will be entitled to speak after the objector and applicant have addressed the Planning Committee. Ward Councillors should comply with the procedure for declaration of interests if they speak at a Planning Committee meeting in the same way as Members of the Committee. Where the Ward Councillor has a prejudicial interest, they may only address the Planning Committee if they are the applicant or lead objector and must withdraw from the room (or virtual meeting where appropriate) once they have made their representations.

33. Submission of Documentation

- 33.1 Documents must be submitted **at least three clear working days** before the Planning Committee meeting. For example, if the Planning Committee was held on a Wednesday, documents should be received by the Council by 3pm on the previous Friday. Any late documents should not be circulated to the Planning Committee as all parties may not have time to react to the submissions, and members of the Planning Committee may not be able to give proper consideration to the matter. Officers may not be able to provide considered advice on any material considerations arising. This must be made clear to those who intend to speak. Members of the Planning Committee should not read emails or correspondence received after the deadline for submission of documents. The acceptance of circulated material could imply a willingness to take the necessary time to investigate any issues raised and lead to the need to defer the application or risk a complaint about the way the material has been considered. This care needs to be taken to avoid the perception of external influence or bias.

34. Recess

- 34.1 When the Planning Committee meeting lasts longer than 2 hours a minimum 15 minute recess shall be taken at 2-3 hourly intervals.

35. Minutes

- 35.1 Minutes of all Planning Committee meetings will be published on the Council's website. The minutes will not be verbatim and will focus on recording decisions and associated reasons.

36. Site Visit Procedure

- 36.1 The Chief Planning Officer (or his appointed representative) will oversee the conduct of site visits. The site meeting will start promptly at the time notified to Members and Planning Officers. At the request of the Planning Committee Chair/Vice Chair, the Chief Planning Officer (or his appointed representative) may be invited to describe the proposal to Members. Whilst Planning Committee Members will be expected to be familiar with the Planning Officer's report, plans/drawings may be used where necessary.

- 36.2 The Chief Planning Officer (or his appointed representative) may indicate matters of fact in relation to the proposal and surrounding land which Members can take account of. Members may ask the Chief Planning Officer (or his appointed representative) for factual clarification on any planning matter relating to the proposal or surrounding land, such as distances to adjoining properties or the location of proposed car parking.
- 36.3 At no time during the site visit should Members debate the merits of the planning application. To do so outside of the Planning Committee meeting might imply that Members had made their mind up. If Members want clarification or additional information on any matter of fact during the site visit they should ask for this through the Chief Planning Officer (or his appointed representative). The Chief Planning Officer (or his appointed representative) will then seek that information through the applicant (or his appointed representative) to avoid any opportunity for lobbying Members.
- 36.4 In order to assist Members to retain their objectivity, they should keep together in one group with the Chief Planning Officer (or his appointed representative) and should avoid breaking away into smaller groups. Once a site visit is concluded, Members should leave the site promptly. The Chief Planning Office will suggest a convenient location to reconvene so that Members may ask any questions and request further action or advice before the next Planning Committee
- 36.5 The Chief Planning Officer will keep a record of Members' attendance at the site visit and will pass this information to Democratic Services. The Chief Planning Officer will also prepare a written report on the site visit together with answers to any questions and request for further action before the next Planning Committee. This report will be presented at the next meeting of the Planning Committee scheduled to discuss the particular application.
- 36.6 If a Member finds it necessary to visit a site alone (perhaps because it was not possible to attend the site visit), he or she shall view it from public vantage points only, seek to avoid discussion with interested parties, and, if discussions occur, make it clear that a decision will be taken when it has been discussed by the Committee after the visit.
- 36.7 Following the site visit the application will be discussed at the Planning Committee.

37 Planning Enforcement

- 37.1 The Council has a team of planning enforcement officers tasked with following up complaints of breaches of planning control (alleged unauthorised development and breaches of planning conditions relating to permissions). There is a separate team of trees and hedgerow officers tasked with following up complaints relating to contraventions of Tree Preservation or Hedgerow Orders. These two separate enforcement functions are referred to here collectively as "planning enforcement".

- 37.2 The decision whether or not to pursue planning enforcement action is discretionary and based on considerations of expediency (the severity of any breach) and what actual planning harm is occurring. That decision is generally delegated to the Principal Planning Enforcement Officer or the Senior Tree Officer. Any final decision to serve an enforcement notice, stop notice, seek an injunction or pursue a prosecution for failure to comply with any notice or injunction has to be agreed by the Chief Planning Officer as there are significant resource implications (both staffing and financial).
- 37.3 While officers must share information with Members on active enforcement investigations, information on complainants cannot be shared in the same way. The Council is under a duty not to disclose the identity of complainants and not to do anything that may result in their identity being disclosed. Disclosure is maladministration and can result in action against the Council by the Ombudsman.
- 37.4 Members may disclose the generality of action being taken by Enforcement Officers with respect to active enforcement complaints with their constituents. However, it may hinder successful action against breaches of planning control if too much information is disclosed. The Chief Planning Officer or other senior officers will always be available to discuss what could or could not be disclosed with Members.
- 37.5 In the event that a Member disagrees with an officer recommendation to take no action with respect to a particular enforcement matter, the Member should as soon as possible, contact the Chief Planning Officer requesting that such a recommendation be reviewed and setting out their reasons for that review.

38. The Local Government Ombudsman

- 38.1 Although the Local Government Ombudsman will not investigate the merits of a particular planning decision they may agree to investigate a planning complaint in relation to the way in which a decision was taken. If it is found injustice has been caused by maladministration in the light of statutory or established Council procedures they will recommend redress, which may take the form of compensation.

39. Appeals to the Secretary of State

- 39.1 An applicant who has been refused planning permission has a right of appeal to the Secretary of State. If an appeal is successful and it is shown that the Council's conduct in dealing with the matter was unreasonable the appellant's costs may be awarded against the Council. Examples of "unreasonable behaviour" are failing to follow the Council's policies; no evidence of significant harm; and giving too much weight to local opposition to proposals.

40. Judicial Review

- 40.1 If objectors are convinced that the Council in determining to grant an application did not observe their statutory duties to carry out all necessary procedures, did not base their decision on the development plan and or did not take into account all relevant representations they may apply for Judicial Review of the decision which might result in the decision being suspended and subsequently quashed. In such circumstances it would be normal for the costs of the applicant to be awarded against the Council.

41. Powers of the Secretary of State

- 41.1 The Secretary of State possesses a range of powers which could be exercised where the Council appears to make inconsistent decisions or decisions which are seriously in conflict with national and Development Plan Policies. This could involve the greater use of the power to call in applications whereby an application will be determined by the Secretary of State following a Public Inquiry. Where permission has already been granted by the Council, powers exist to revoke or modify permissions or to require discontinuance of a land use which if exercised would give rise to a liability to compensate on the part of the Council.

42. Review

- 42.1 This Protocol will be kept under annual review in order to update changes in law and practice, and to have regard to experience and lessons learned from individual situations.

Appendix 1

STANDARDS FOR RESPONSE

1. The Council's Customer Services reception is open throughout normal office hours. Customer Services (CS) Officers are trained in dealing with general basic planning enquiries. Where CS Officers are not able to deal with a query, they will refer to the Duty Planning Officer.
2. **The Role of the Duty Officer**
 - 2.1 The Duty Officer is intended to help you by:
 - explaining the Council's planning policies
 - giving general advice on permitted development rights
 - explain which type of application is necessary for a proposal.
 - 2.2 The Duty Officer **will not** be available to:
 - give any form of pre-application advice
 - discuss the technical merits (principle, design, submitted reports, consultee responses, neighbour comments) of any applications, refusals or appeals
 - consider minor amendments to planning permissions
 - discuss enforcement enquiries
 - grant immunity from enforcement
 - carry out searches; such as whether Permitted Development Rights exist for properties, planning history of sites
 - 2.3 The service costs £180 for half an hour meeting by telephone or Microsoft Teams. If you require a follow up summary note, we will charge an additional fee of £70.
 - 2.4 Any advice given by the Duty Officer either orally or in writing, in the course of their duties does not indicate a formal decision of, nor binding on, the Local Planning Authority. Any views or opinions expressed are given in good faith and to the best of their ability and is based on the information and evidence made available to them at the time. The opinions are therefore without prejudice to the formal consideration of any planning application.
3. **Processing planning applications**
 - 3.1 Planning Officers are required to:
 - Keep the statutory register of applications maintained on our Planning Portal website up to date with information placed in the register within five working days.
 - Acknowledge in writing the receipt of all applications within 3 working days.
 - Advise in writing if an application is incomplete or invalid within 10 working days.

- Allow at least 21 days for anyone to make representations on an application in which they have an interest and consider late representations up and till the point that a report is prepared. If significant changes are made to the application, neighbours will be contacted again and given a further 14 days to comment.
- Acknowledge any written representations made on proposals within 3 working days, and subsequently advise those who have made such representations of the eventual decision within 10 working days of it being issued.
- Place copies of valid applications in the statutory register within 3 working days of it being validated.
- Ensure that sites of planning proposals are visited by the Planning Officer within 2 weeks of the receipt of the valid application.
- Determine at least 80% of all planning applications within 8 weeks.
- Forward decision notices on determined applications within 3 working days.
- Notify applicants in writing where it is not possible to give a decision within 8 weeks of receipt and notify the outcome to those making representations.
- Issue decision letters on matters required to discharge planning conditions within two months. Compliance with conditions may require approval prior to commencement of work or during or at completion. The purification of conditions is becoming increasingly complex often requiring consultation with other parties. Failure to comply with conditions can result in a breach of planning control and can have serious consequences.
- Advise the applicant to submit a new planning application when amendments are proposed that significantly alter the proposed development.
- Advise the applicant of appeal rights if the Council does not determine the application within statutory or agreed timescales, refuses the application, or imposes conditions on any permission granted.
- Act proactively to reduce the likelihood of breaches occurring.
- Approach and address alleged breaches of control with an open mind.
- Acknowledge all complaints within 3 working days.
- Inspect alleged breaches of control within 15 working days.
- Notify complainants of the decision to authorise formal enforcement action or that there is no breach within 10 working days

3.2 Letters of representation will be made available on the Council's website and will be summarised in any report and taken into account when a decision is made.

- 3.3 Planning Officers will give consideration to all comments received. However, in respect of applications that are considered by Committee, comments received after the Committee report has been prepared will not be included as part of the report. Such comments will be reported as a supplementary report or orally to the Committee by Officers if they raise new matters not already addressed in the Officer's report. Individuals should be aware that comments received in respect of a planning application and most other planning matters will be in the public domain.
- 3.4 Voicemail facilities are available for applicants, third parties, members of the public to leave messages for Officers. Such messages will be responded to no later than the end of the next working day. Where Officers are expected to be absent from the office, the voicemail message will be amended accordingly.
- 3.5 Telephone messages will not be "recorded in writing" and entered upon a planning application file. The reason for this is because it is important that the person making the telephone call should have their views truly represented and, quite often, the omission of one word can make quite a difference. The Council cannot accept responsibility for any omissions and errors and therefore all people who make contact by telephone will be advised that they should confirm their views by letter, e-mail or via the Council's web site.
- 3.6 E-mail communications will be dealt with on the same basis as paper letters as stated above. 'Out of office' messages will be kept updated.