

# PROTOCOL ON PLANNING MATTERS IN HART DISTRICT COUNCIL

OCTOBER 2010

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### Introduction

**This Protocol is based on the Model Members' Planning Code of Good Practice issued by the Association of Councils, Secretaries and Solicitors, and guidance given by the Local Government Association in its guidance note "Probity in Planning: the role of Councillors and officers." (May 2009), and Positive Engagement a Guide for Planning Councillors updated version (2009) – LGA and Communities and Local Government (CLG)**

**The aim of this Protocol:** 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.

**The key purpose of Planning:** To control development in the public interest - this means a matter of “common-good”. The presumption in statute is that planning permission will always be granted unless it can be shown that the development would cause a demonstrable planning harm to a matter of public interest

**Your role as a Member of the Planning Committee:** To make planning decisions openly, impartially, with sound judgement, and for justifiable reasons.

**When the Protocol applies:** This protocol applies to **ALL** members on all occasions 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.

If you have any doubts about the application of this protocol to your own circumstances you should seek advice from the Monitoring Officer **BEFORE** any meeting takes place.

## **I RELATIONSHIP TO MEMBERS' CODE OF CONDUCT**

- 1.1 **Do** apply the rules in the Members' Code of Conduct first, which must always be complied with as they apply on a statutory basis.
- 1.2 **Do** then apply the rules in this Planning Protocol, which seek to explain and supplement the Members' Code of Conduct. If you do not abide by this Protocol, you may put:
  - 1.2.1 The Council at risk of proceedings on the legality or maladministration of the related decision; and
  - 1.2.2 Yourself at risk of a complaint being made to the Standards Committee for breach of the Code of Conduct.

## **2 GUIDANCE FOR ALL MEMBERS**

- 2.1 This section provides guidance for all Members including those who are members of Planning Committee or Cabinet.
- 2.2 Members will want to engage actively and positively with planning decisions.
- 2.3 Councillors **can** involve themselves in discussions with developers, their constituents and others about planning matters. However, difficulties can be avoided if you follow these useful general principles: **All members Should:**
  - 2.3.1 always involve officers and structure discussions with developers
  - 2.3.2 inform officers about any approaches made to you and seek advice

- 2.3.3 familiarise yourself with the Code of Conduct and follow it when you are representing the council
- 2.3.4 keep your register of interests up to date
- 2.3.5 be aware of what predisposition, predetermination and bias mean in your role – refer to the Standards Board Occasional Paper on Predetermination, Predisposition and Bias if unsure
- 2.3.6 be prepared to hold discussions with an applicant and officers before a planning application is made, not just after it has been submitted
- 2.3.7 preface any discussion with disclaimers; keep a note of meetings and calls; and make clear at the outset that discussions are not binding
- 2.3.8 be aware of what personal and prejudicial interests are – refer to the Standards Board’s website if you are unsure
- 2.3.9 recognise the distinction between giving advice and engaging in negotiation and when this is appropriate in your role
- 2.3.10 stick to policies included in adopted plans, but also pay heed to any other considerations relevant to planning
- 2.3.11 recognise that you can lobby and campaign but that this may remove you from the decision making process
- 2.3.12 feed in both your own and your local community’s concerns and issues
- 2.3.13 be aware that you can engage in discussions but you must have and be seen to have an open mind at the point of decision making

## 2.4 Members **Must Not**:

- 2.4.1 use your position improperly for personal gain or to advantage your friends or close associates
- 2.4.2 meet developers alone or put yourself in a position where you appear to favour a person, company or group – even a ‘friendly’ private discussion with a developer could cause others to mistrust your impartiality
- 2.4.3 attend meetings or be involved in decision-making where you have a prejudicial interest under the Code of Conduct – except when speaking when the general public are also allowed to do so
- 2.4.4 accept gifts or hospitality
- 2.4.5 prejudge or be seen to prejudge an issue if you want to be a decision maker on

a proposal

- 2.4.6 seek to influence officers or put pressure on them to support a particular course of action in relation to a planning application
- 2.4.7 compromise the impartiality of people who work for the Council
- 2.4.8 invent local guides on probity in planning which are incompatible with current guidance – look for commonly held and common sense parallels in other authorities or the principles set out in national guidance

## **2.5 All Members: Declaration of Personal and Prejudicial Interests:**

- 2.5.1 All members must disclose the existence and nature of their interest at any relevant meeting, including informal meetings or discussions with officers and other Members. Members should disclose the interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter. An interest can either be personal or personal and prejudicial. The 2007 national code defines personal and prejudicial interest and cites the test to determine whether a personal interest is also prejudicial as one “which a member of the public would regard as so significant that it is likely to prejudice your judgement of the public interest”.

## **2.6 Where your interest is personal and prejudicial**

- 2.6.1 **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by Planning Committee.
- 2.6.2 **Don't** try to represent ward views, get a fellow Councillors or another Ward member to do so instead.
- 2.6.3 **Don't** get involved in the assessment of the application by the case officer.
- 2.6.4 **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 Councillor.
- 2.6.5 You are **not** prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate officer, in person or in writing. However, you must be careful not to use or appear to use 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.
- 2.6.6 Under the Code of Conduct a member with a prejudicial interest may, with the agreement of the Committee, attend a meeting (including a meeting of the overview and scrutiny committee or of a sub-committee of such a committee) 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, whether under a statutory right or otherwise. You must thereafter leave the room whilst the meeting considers it. You may not remain to observe the meeting's consideration of it from the public gallery. This is to avoid any perception that your presence may influence or seek to influence the other members of the Committee.

2.6.7 **Do** notify the Monitoring Officer in writing of your own or any relative's application and note that:

2.6.7.1 You should send the notification to the Monitoring Officer as soon as the application is submitted;

2.6.7.2 The application will always be reported to the Committee as a main item and not dealt with by officers under delegated powers; and

2.6.7.3 You may employ an agent to act on your behalf on the application in dealing with officers and any public speaking at Committee.

2.6.8 Where a Member is in any doubt about whether they have an interest they are advised always to seek advice of the Monitoring Officer before the meeting.

## 2.7 Attendance at Hearings and Public Inquiries

2.7.1 If a Councillor intends to make representations to the Planning Inspectorate on any appeal either in writing or in person at any hearing or public inquiry, they should advise the Head of Head of Planning Services 7 days in advance and indicate whether these representations will be in support of the Council's case.

## 3 ADDITIONAL GUIDANCE FOR WARD MEMBERS WHO ARE NOT MEMBERS OF PLANNING COMMITTEE OR THE CABINET

Paragraphs 2.5.1 to 2.6.8 above apply equally to all members.

3.1 Members, in their roles as ward councillors will often be approached by members of local communities, developers, or landowners seeking either their support or their opposition to proposals - this is a key role for members who are not on the decision-making bodies. Ward members **can** take part in planning discussions and make representations on planning matters or otherwise act as advocates for their communities by:

3.1.1 Joining or leading local campaigns;

3.1.2 Speaking, with the respective Chairman's permission, at the relevant committee in support or against a proposal, policy or enforcement action;

3.1.3 Acting as advocate for their community on a particular issue.

3.2 To promote transparency and following best practice Members **should**:

3.2.1 When speaking or making representations at the appropriate decision making

committee or Cabinet make it clear their role in any local campaign or supporting any particular position;

- 3.2.2 Make it clear when acting as an advocate or making representations on planning matters that they are not part of the decision making process; and
- 3.2.3 Only carry out any lobbying of their decision making colleagues in favour of a particular planning decision in an open and transparent way

#### **4 ADDITIONAL GUIDANCE FOR MEMBERS OF PLANNING COMMITTEE**

##### **4.1 Planning Committee Members: Declaration of Personal and Prejudicial Interests**

Paragraphs 2.5.1 to 2.6.8 above apply equally to all members.

##### **4.2 Avoidance of bias or predetermination or fettering your discretion**

- 4.2.1 Members have a legal duty to avoid bias or appearance of bias. Members also need to ensure they do not do anything which indicates they have made their mind up on an application or policy matter before it comes before the committee e.g. by stating in advance how they will vote. This is defined in law as fettering your discretion
- 4.2.2 **Bias** has been defined as a tendency towards one side because of an irrelevant factor such as a close relationship; **predetermination** is considered to be having a closed mind in a case. On the other hand a *predisposition* in a particular case means holding a provisional view, which, however strongly held, is capable of being changed by a relevant argument or factor. Predisposition will not invalidate a subsequent decision, but care must be taken to avoid predetermining or appearing to have predetermined an application which is grounds for invalidation.
- 4.2.3 **Don't** fetter your discretion. and therefore your ability to participate in planning decision making at the Committee meeting, by making up your mind, or appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the Planning Committee and of your hearing the officer's presentation and evidence and arguments on both sides.
- 4.2.4 **Fettering your discretion** in this way and then taking part in the decision will put 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 or a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- 4.2.5 **Do** consider yourself able to take part in the discussion of a proposal when

acting as part of a consultee body (such as a parish or town council), provided:

- 4.2.5.1 the proposal does not substantially affect the well being or financial standing of the consultee body;
  - 4.2.5.2 you make it clear to the consultee body that your views are expressed on the limited information before you only;
  - 4.2.5.3 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 or ward as and when it comes before Committee and you hear all of the relevant information;
  - 4.2.5.4 you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee; and
  - 4.2.5.5 you disclose the personal interest regarding your membership or role when the Committee comes to consider the proposal.
- 4.2.6 **Don't** speak and vote on a proposal where you have fettered your discretion. You do not have to withdraw, but you may prefer to do so for the sake of appearances.
- 4.2.7 **Do** explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged the matter elsewhere, so that this may be recorded in the minutes.
- 4.2.8 You **may** exercise your separate speaking rights as a Ward member where you have represented your views or those of local electors and fettered your discretion, but do not have a personal and prejudicial interest. Where you do:
- 4.2.8.1 advise the Chairman that you wish to speak in this capacity before commencement of the item;
  - 4.2.8.2 remove yourself from the member seating area for the duration of that item and ensure that this action is recorded. Leave the room whilst the meeting considers it. Do not remain to observe the meeting's consideration of it from the public gallery.
  - 4.2.8.3 It may, however, be advisable if a ward member who is not a member of Planning Committee represented the views of the local electors so that you can participate in the meeting without having fettered your discretion.

### **4.3 Planning Committee Members: Development of Council Owned Land**

- 4.3.1 The planning legislation specifically allows local planning authorities to determine applications on Council-owned land. There is therefore, no automatic requirement for Members, even of Planning Committee, to declare an interest when taking planning decisions merely because the land is owned by the Council.
- 4.3.2 However where you are so committed to a particular development which is

likely to be as a result of your Cabinet responsibility and you may be seen as the chief advocate on behalf of the authority for the development you will be perceived by the public as being no longer able to act impartially or to determine the proposal purely on its planning merits. In such circumstances you can address the Committee but should not vote on the relevant applications. You do not have to withdraw but may prefer to do so for the sake of appearances.

#### **4.4 Licensing Committee Members who are also Members of Planning Committee**

4.4.1 When an application for development is to be considered by Planning Committee and the application site was the subject of an earlier licensing decision in which you participated you should declare this as a personal interest, but you may remain and participate in the discussion and vote.

#### **4.5 Contact with Applicants, Developers and Objectors**

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

4.5.2 **Don't** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should ask the Head of Planning Services to organise it. The officer(s) will then be able to 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.

4.5.3 In all circumstance you **Must**:

4.5.3.1 follow the rules on lobbying;

4.5.3.2 make notes when contacted; and

4.5.3.3 report to the Monitoring Officer any significant contact with the applicant and other parties (including other Members and objectors), explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

#### **4.6 Attendance at Presentations or Exhibitions by Applicants or Developers**

4.6.1 Members of Planning Committee may attend presentations or exhibitions organised by an applicant or objector and can ask relevant questions for the purposes of clarifying your understanding of the proposals. Members should adhere to the following:

4.6.1.1 **Do** remember that the presentation is not part of the formal

process of debate and determination of any subsequent application; this will be carried out by the Planning Committee.

- 4.6.1.2 **Do** avoid expressing an opinion on the merits of the proposal which could indicate you have made up your mind without hearing all the arguments.

## 4.7 Lobbying of Councillors

People will want to lobby their local Councillors. This is a normal part of the democratic process.

- 4.7.1 **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it would prejudice your impartiality and therefore your ability to participate in the Committee's decision making process to express any firm intention to vote one way or another.
- 4.7.2 **Do** remember that your overriding duty is to the whole community, and not just to the people in the ward and, taking account of the need to make decisions impartially and for justifiable planning reasons that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- 4.7.3 **Don't** accept gifts or hospitality from anyone involved in or affected by a planning proposal.
- 4.7.4 **Do** copy or pass on any relevant lobbying correspondence you receive to the Head of Planning Services at the earliest opportunity.
- 4.7.5 **Don't** rely on private correspondence. Always copy or pass on any relevant lobbying correspondence you receive to the Head of Planning Services at the earliest opportunity so that it can be made public and placed on the file.
- 4.7.6 **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).
- 4.7.7 **Do** note that, unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this Protocol through:
- 4.7.8.1 listening or receiving viewpoints from residents or other interested parties;
  - 4.7.8.2 making comments to residents, interested parties, other Members 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;
  - 4.7.8.3 seeking information through appropriate channels; or
  - 4.7.8.4 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. It would, however, be advisable to leave representing ward interests to ward members who are not members of Planning Committee.

#### **4.8 Lobbying by Councillors**

- 4.8.1 **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and are likely to have a personal prejudicial interest.
- 4.8.2 **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as Campaign for the Preservation of Rural England, The Ramblers Association or a local civic society, but you should disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal.
- 4.8.3 **Don't** excessively lobby or put pressure on 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.
- 4.8.4 **Don't** 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 Members should vote on a planning issue.

#### **4.9 Site Visits**

##### **4.9.1 Site Visits by Planning Committee**

Site visits should only be called where the expected benefit is substantial.

##### **4.9.2 Don't** seek a site visit unless you feel it is strictly necessary because:

- 4.9.2.1 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
- 4.9.2.2 There is a good reason why the comments of the applicant and objectors cannot be expressed adequately in writing or by verbal presentation at the Committee meeting.

##### **4.9.3 Don't** call for a site visit simply to appease some one or another body or a consultee.

#### 4.9.4 Site Visits by individual members of Planning Committee

- 4.9.4.1 Many members may already be familiar with sites that are the subject of applications but not necessarily in all cases. It is normal and proper for members, in these circumstances, to visit a site themselves before the Committee meeting. Where individual members of the Committee wish to undertake their own site inspection prior to the Committee meeting, these should be conducted unannounced and from a public vantage point. Members of the Committee should not arrange to meet applicants, agents, or third parties for the purpose of a site inspection.
- 4.9.4.2 If a Committee member is approached on site by any applicant, agent, objector, or other third party interest they should seek to avoid discussion of the application and should ensure they do not give any indication of their views or the likely decision of the Committee. Where it is not practical to avoid some discussion the member should note that it took place and pass the information to the Head of Planning Services so that it can be recorded at Committee.

#### 4.10 Conduct at Meetings

- 4.10.1 **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. You should avoid communicating privately with applicants and objectors either immediately before or during the Committee meeting.
- 4.10.2 **Avoid** speaking to other members whilst the applicant or objectors are making representations to Planning Committee as this may give the impression you are not taking into consideration their views.
- 4.10.3 **Be** aware of public perception. You should appear to be paying attention to the discussion at all times.
- 4.10.4 **Do** ensure that you comply with the Council's procedures in respect of public speaking. Do not seek to change on an 'ad hoc' basis the agreed procedures for public speaking.

#### 4.11 Membership of other Bodies

- 4.11.1 A Member who is a member of another body such as a Parish Council or Hampshire County Council that may have been consulted on a planning matter or particular application will have a personal interest which **must** be disclosed at the beginning of the meeting. This does not necessarily mean however, that you have a prejudicial interest. In carrying out their role and duties with the other authority the Member should ensure that they do not fetter their discretion to deal with any planning matter or application at Planning Committee

in a fair, unbiased and open minded way.

- 4.11.2 Councillors who also serve on Parish Councils may need to clarify their separate roles in each Council regarding District planning policies, and take advice at an early stage if they anticipate a potential conflict of interest. The public and other interested parties should be clear at all times when the Councillors are acting as a Parish Councillor and when they are acting in their role as a District Councillor.
- 4.11.3 Where you serve as an appointed or nominated representative of the Council on an outside body, such as on the Board of a Registered Social landlord for example it is inevitable that conflicts (actual or potential) will arise, from time to time, between the duties you owe to the outside body, and the duties you owe to the Council. Conflicting interests should be declared on every occasion. If you are appointed to an outside body, you will have a personal interest in that body. Provided that you do not have a prejudicial interest, you only need to declare your interest if and when you speak on the matter at a Council meeting. You will have a prejudicial interest in a matter relating to the outside body, if you are in a position of control or management on the outside body and the interest falls into one of the following two categories:
  - 4.11.3.1 the matter affects the financial position of the outside body e.g. an application for grant funding to the outside body; or
  - 4.11.3.2 the matter relates to an approval, consent, licence, permission or registration that affects the outside body e.g. application by the outside body for planning permission
- 4.11.5 A member who is a member of a lobby or campaign group should carefully consider whether they can participate in a planning application where the group has campaigned for or against a particular proposal.
- 4.11.7 A member should consider the nature of their involvement with the group; the publicly expressed views of the lobby or campaigning group; what has been or done in relation to the particular group and consider whether a member of the public with all the facts would reasonably think the interest is significant, that your decision on the matter would be prejudiced by it. If the answer is “yes” then you must declare a personal and prejudicial interest and leave the room.

## 4.12 Decision Making

- 4.13.1 **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your reasons are recorded and repeated in the report to the Committee.
- 4.13.2 **Do** come to meetings with an open mind and demonstrate your willingness to listen.
- 4.13.3 **Do** comply with section 38(6) of the Planning and Compulsory Purchase Act

2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.

- 4.13.4 **Do** come to your decision only after due consideration of all the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you then you should request a deferral but don't use the lack of information as a basis for moving refusal.
- 4.13.5 **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.
- 4.13.6 **Do** have recorded the reasons during the meeting for Planning Committee's decision to defer any proposal.
- 4.13.7 **Don't** ask any proposals to be deferred unless there are sound planning reasons – a failure of a consultee to respond in time is not a sound planning reason. Remember, costs can now be awarded against the District Council in the event of a planning appeal against the failure to determine a planning application within time.
- 4.13.8 **Do** make sure that in discussing, and determining a planning application or other planning matter, you confine yourself to the planning merits of the case. Do not raise non-planning considerations even if only in passing.
- 4.13.9 **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 or decision. You should always be aware of the consequences of any decision before it is made. Detailed reasons must be given including policy references. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge so be prepare to attend and support Officers at any public inquiry or hearing.
- 4.13.10 **Always** bear in mind that if planning permission is to be refused it is solely for the Council to demonstrate why. Where technical evidence, such as transport or highway statements, are submitted, planning permission should not be refused simply because one does not like, agree or is satisfied with the technical evidence/advice. This does not seek to prevent proper scrutiny and testing of the evidence but in every instance, all refusals of planning permission must be underpinned by substantiated evidence.

#### **4.13 Review of planning decisions**

- 4.13.1 From time to time arrangements will be made for Councillors to visit a sample of implemented planning permissions, so that a regular review of the quality of

planning decisions can be undertaken. The outcome of this review will be considered by the Planning Committee Working Party and may lead to identification of possible amendments to existing policies or practice.

## **5 ADDITIONAL GUIDANCE FOR CABINET MEMBERS**

Cabinet members may be approached by parties, members of local communities, developers, landowners seeking both their support and their opposition to planning matters as are those serving on Planning Committee. In these circumstances the same opportunities and constraints apply as to members generally but the level of potential scrutiny is likely to be higher

### **5.1 Cabinet Members: Declaration of Personal and Prejudicial Interests**

Paragraphs 2.5.1 to 2.6.8 apply equally to all members.

### **5.2 Cabinet Members – Avoidance of Bias and Predetermination**

Cabinet members are referred to the guidance on bias, predetermination and predisposition in paragraph 4.1 above which applies to all members as appropriate.

5.2.1 For clarity: Support for an overall policy stance or objectives, as distinct from a specific application of that policy approach in any decisions would be regarded as legitimate predisposition, rather than a predetermination which would render a member's involvement in decision making unsafe.

### **5.3 Cabinet Members – Attendance at presentations/exhibitions and site visits**

5.3.1 The formulation of policy and the development of site briefs may benefit from early engagement by members. Officers may prepare a committee report or briefing note, or arrange a presentation or meeting in order to identify or debate key issues. This provides the opportunity for cabinet members to raise questions of their own or seek further information regarding a proposed policy.

5.3.2 Information presented and comments made at such briefings/meetings will have regard to the stage of negotiations and their sensitivity and possible links to other large scale schemes or planning activities which raise the same issues.

### **5.4 Cabinet Members: Planning and property functions: Development of Council-owned land**

5.4.1 The planning legislation specifically allows local planning authorities to determine applications on council owned land so there is no automatic requirement for members of the cabinet to declare an interest when making planning decisions e.g. on planning briefs, merely because the land is owned by the council.

5.4.2 When a former council site is being considered by Cabinet (e.g. for inclusion in

the LDF or for a planning brief) and a cabinet member was also member of the cabinet when a decision was taken on the disposal of the land he/she should declare this as a personal interest by the member concerned **may** remain and take a full part in any decision taken.

## **5.5 Cabinet Members who are also Planning Committee members**

5.5.1 When a proposal is under consideration at a Planning Committee meeting and a committee member was also a member of the Cabinet making a decision (e.g. a planning brief) this should be disclosed as a personal interest but the member concerned may remain and take a full part in any decision taken. However, where a member is identified with a development, for example as the lead proponent of a council led Development, then the member should declare his involvement, may address the committee but should take **no** further part in the discussion and should **not** vote.

5.5.2 Where a cabinet member was part of the cabinet meeting which determined the planning brief affecting land where a planning application is now to be determined the member **can** take a full part in the committee discussions as the planning brief is council policy.

## **6 ROLE OF OFFICERS**

6.1 **Don't** put pressure on officers to put forward a particular recommendation (this does not prevent you from asking questions).

6.2 **Do** recognise and respect that officers 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 Committee or its Members.

## **7 TRAINING**

7.1 **Don't** participate in decision making a meeting of the Planning Committee if you have not undertaken the annual Induction to Planning /Refresher training organised for all members at the beginning of each municipal year by the Head of Planning.

7.2 **Do** endeavour to 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 Plans beyond the minimum referred to above, in paragraph 7.1 above, and thus assist you in carrying out your role properly and effectively.

**Powers granted by the Council to the Head of Planning Services to deal with Planning Matters (March 2010)**

1. To determine or decline to determine all applications made, deemed to be made or referred to the Council under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990 and any statutory instruments made under those Acts, together with applications for certificates of Appropriate Alternative Development, together with determinations that it is not expedient to take enforcement action except an application where
  - 1a a. within four weeks of its registration by the Council, or  
b. within five working days of being notified that it is intended to grant permission where:
    - i). the parish/town council (within the 21 day parish/town council notification period) has raised material planning objection<sup>1,2</sup> that cannot be overcome by reasonable amendment to the application or by the imposition of planning conditions; or
    - ii). more than 3 letters of objection from independent sources<sup>3</sup> have been received (within the 21 day published notification period) each raising substantive material planning objections<sup>1,2</sup> that cannot be overcome by reasonable amendment to the application or by the imposition of planning conditionsany one of the local Ward Councillor (or in the absence of a local Ward Councillor another previously nominated District Councillor) requests in writing to the Head of Planning Services, giving relevant substantive material planning reasons, that the application be determined by the Planning Committee and the referral is agreed by the Chairman of the Committee
  - 1b The Head of Planning Services considers that the application/notice/order should be considered by Committee
  - 1c The approval of the application would represent a material departure from the policies of the statutory development plan
  - 1d The proposal involves the District Council as applicant or land owner or as

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<sup>1</sup> To be material the objection must be related to the development and use of land in the public interest and must fairly and reasonably relate to the application concerned.

<sup>2</sup> In the case of applications for the approval of reserved matters following the grant of outline planning permission representations from third parties will not be treated as objections when they raise issues that are, in the opinion of the Head of Planning Services, not material to the determination of such applications in accordance with the relevant statutory provisions.

<sup>3</sup> To be independent each letter must be written so that it is unique to the objector. Letters based upon a common template or proforma shall not be treated as individual letters. Letters which state that the author objects but do not give reasons will not be counted. Signatures on petitions will not be counted as individual objections.

interested party

- I e Submitted by (including acting as an agent) or on behalf of a District Councillor (or his/her spouse or partner or immediate family) or where a District Councillor lives in the adjoining property, a property opposite the application site or a property either side
- I f The applicant or agent is an officer who is a Member of the Council's Management Team, a Service Unit Head, or a member of staff within Planning Services or any member of staff within the Authority who could be seen as having a direct input to, and therefore influence on, application decisions
- I g Where an officer who is a Member of the Council's Management Team, a Service Unit Head, or a member of staff within Planning Services or any member of staff within the Authority who could be seen as having a direct input to, and therefore influence on, application decisions, lives in the adjoining property, a property opposite the application site or a property either side

**General Principles of operation within the delegated scheme**

- A The role of Planning Committee is to determine major or more complex applications that raise issues of more than immediate local importance. The intention is to allow councillors to focus on applications needing additional scrutiny where added member value in balancing conflicting pressures is important. This does not necessarily preclude consideration by the Committee of minor or other applications provided that they raise issues of more than local importance.
- B Planning applications should normally only be referred to the Planning Committee where a matter of fundamental principle or precedent is identified which shall be taken to involve the interpretation of a matter of policy which could undermine the purpose and objectives of the Local Plan or Local Development Framework, and where the Local Ward Member can demonstrate that the proposal would have such a prejudicial impact or effect on the area or District or its residents as to warrant determination by Planning Committee.
- C Referral to the Planning Committee should not be used as a means to arbitrate between competing interest groups or to put off making difficult decisions.
- D Referral to Planning Committee should also not be used as a means to change the outcome of any decision on a planning application.

**Process**

- 1. All members are notified by email of individual applications within their wards.
- 2. Members are encouraged to view the plans on-line via the internet. Members are also encouraged to contact the Case Officer if there are any queries or if they want to discuss issues of principle or detail.
- 3. Officers are encouraged to contact members where they feel that the matter may be contentious and this should be done as soon in the process as possible.
- 4. Where an application is required to be referred to a local Ward Member(s) the Ward Member(s) will be sent a copy of the report.
- 5. A 5 working day turnaround for responses will be strictly applied.
- 6. If the Ward Member(s) disagrees with the Officer's recommendation to grant planning permission, they should advise the Case Officer in writing clearly stated material planning issues that give them concern. In seeking to have the application referred to Planning Committee the Ward Member(s) must demonstrate that the proposal would have such a prejudicial impact or effect on the area or District or its residents as to warrant determination by Planning Committee. This should be done as soon in the process as possible but must be within the 5 working day turnaround.

7. The Case Officer will then send the report to the Chairman of the Planning Committee with a risk assessment if necessary. Should the Chairman of the Planning Committee agree with the Case Officer rather than the Ward Member(s) then the Chairman should seek to notify the Ward Member(s) to explain his reasons prior to making any final decision as whether the application should be decided under delegated powers and not referred to the Planning Committee for decision.
8. Householder or Other applications will not normally be presented to a committee as they raise issues of only local impact. It is expected that members will work through any issues arising from the proposal with the Case Officer managing that process and with the involvement of applicant or agents as appropriate.
9. If in any instances a Ward Member(s) wishes any application to be considered by the Planning Committee, they should advise the Case Officer in writing with clearly stated planning issues that give them concern. The Ward Member must also demonstrate that the proposal would have such a prejudicial impact or effect on the area or District or its residents as to warrant determination by Planning Committee. This should be done as soon in the process as possible and in any event must be done within 28 days of first being notified of the receipt of the planning application.
10. Where the request by a Ward Member for an application to be considered by the Planning Committee is agreed by the Chairman of the Planning Committee, the reason given by the Ward Member should be included in the report.
11. If a scheme is capable of minor revision to overcome the members concerns (such as the addition of a condition or reasonable amendment to the development) the Case Officer will seek to achieve such revisions with the applicant, provided it can be achieved within the deadline for decision.
12. Where Members have spoken to the Officers they must exercise care not to go on public record with their views of a planning application, as this may mean that they are excluded from the process later on.
13. Members must not enter into any negotiations or discussions relating to planning applications with applicants or agents unless accompanied by an officer and the discussions are minuted.
14. Parish councils have an enhanced role in the process of determining planning application under the Council's adopted scheme of delegation. The process nevertheless allows the determination of the application to be contrary to the views of parish councils without the applications being automatically referred to the Planning Committee. Parish councils will be encouraged to "qualify" their comments and thus the basis on which an objection is raised can be made clear. Parish council comments are important as they are based on a wealth and depth of local knowledge, which can benefit the consideration of the application. Nonetheless the parishes, whilst important parties to the process, are one of a wide range of consultees and their comments should not be given additional weight purely because they are made by a parish council. Therefore, simply because a parish council has raised objections to a development will not in itself

be sufficient grounds to refer a planning application to Planning Committee. The substance of any comments rather than its source is the more important issue.

15. Applications will not normally be referred to Planning Committee simply to allow an objector/applicant an opportunity to air their views in a public forum except where a matter of fundamental principle or precedent is identified which shall be taken to involve the interpretation of a matter of policy which could undermine the purpose and objectives of the Local Plan or Local Development Framework, and where the Local Ward Member(s) can demonstrate that the proposal would have such a prejudicial impact or effect on the area or District or its residents as to warrant determination by Planning Committee..
16. Where a decision is made that is contrary to the view of the parish council the Case Officer will write to the parish council and explain the reasons for taking a contrary view. A copy of the Case Officer's report may be sufficient in these circumstances.

Material and Non Material Planning Considerations

- A. The planning presumption is that planning permission will always be granted unless the development would give rise to a material harm to a matter of public planning interest.
- B. Material considerations must be genuine planning considerations, i.e. they must be related to the development and use of land in the public interest. They must also fairly and reasonably relate to the application concerned. The Courts are the arbiters of what constitutes a material consideration. All the fundamental factors involved in land-use planning are included, such as:
- the number,
  - size,
  - layout,
  - siting,
  - design,
  - external appearance of buildings
  - the proposed means of access,
  - landscaping,
  - impact on the neighbourhood, and
  - the availability or lack of infrastructure (provided that there is substantive evidence to support such a claim).
- C. Matters that should **not** be taken into account include:
- loss of property value
  - land and boundary disputes
  - the impact of construction work
  - need for development (save in certain defined circumstances)
  - ownership of land or rights of way
  - change to previous scheme – each application must be determined on its own particular merits
  - that the work or change in use may have been carried out in advance without planning permission – the essential test is not that the works have been carried out but whether those works in themselves have caused a planning harm to a matter of public interest
  - loss of view
  - matters covered by leases or covenants
  - property maintenance issues
  - the identity or personal characteristics of the applicant
  - competition between firms and uses
  - moral objections to development such as amusement arcades or betting shops
  - the weight of public opposition or support – it is not the number of public representation made that is relevant but rather the material planning issues raised that is important
  - personal preferences – applications have to be determined on the basis as submitted by the applicant. Changes should only be made where there are overriding material planning objections
  - matters that are dealt with by other legislation, such as the Building Regulations

(e.g. structural safety, fire risks, means of escape in the event of fire etc). - The fact that a development may conflict with other legislation is not a reason to refuse planning permission or defer a decision. It is the applicant's responsibility to ensure compliance with all relevant legislation

- D. Government statements of planning policy are material considerations that must be taken into account in deciding planning applications. These statements cannot make irrelevant any matter that is a material consideration in a particular case. Nevertheless, where such statements indicate the weight that should be given to relevant considerations, decision-makers must have proper regard to them.
- E. In those cases where the development plan is not relevant, for example because there are no relevant policies, the planning application should be determined on its merits in the light of all the material considerations.

**Determining Planning Applications**

- A. Planning applications will normally be dealt with within **8 weeks** (13 weeks for major applications).
- B. Additional information will only be sought where it is strictly necessary for the determination process.
- C. Applications will normally be determined as submitted. The Council will not normally support a process of continuing amendments to an application which delays the decision-making process beyond the statutory time period. Applications will not be deferred unless the Council is satisfied that there is an overriding planning purpose. Applications will normally be determined as soon as possible unless they are withdrawn, or amended with by prior agreement.
- D. If the application is unacceptable but minor adjustments could overcome the concerns, the planning officer may explain this to the applicant. Where the amendments are very minor, the applicant will be given a reasonable time to submit revised proposals. If, at the end of that period, amendments have not be received that application will be decided on the proposals as originally submitted.
- E. If more substantial amendments are necessary, particularly if they are likely to require further consultation, the applicant may be invited to withdraw the application and submit a revised scheme. The Council will not however, support the submission of late amendments that seek to substantially alter the nature of the application in circumstances where, to accept those amendments, would delay the determination of an application. In those circumstances, no amendments will be accepted.
- F. Unsatisfactory applications will be refused without discussion where:
  - (i) The proposal is unacceptable in principle; or
  - (ii) A completely new design would be needed to overcome objections; or
  - (iii) Clear pre-application advice has been given, but the applicant has not followed that advice; or
  - (iv) No pre-application advice has been sought; or
  - (v) The development does not comply with Local Plan or other published standards.

**Decisions contrary to Officer Recommendations and subsequent Appeals**

1. In determining planning applications, the Planning Committee is entitled to decide the weight to be attached to the various planning criteria that are relevant to the application. This may lead to a decision contrary to the recommendation of the officers.
2. In these circumstances, it is essential that the reasons for the decision are clear in the minds of the Committee members. It is often possible for the Committee to be clear about the reasons for refusal and to set these out in detail when the application is first considered. Sometimes it may be necessary to defer an application for a further report to enable detailed reasons to be framed and considered. In terms of decisions to grant permission contrary to office advice, the Committee may be happy for these to be left with the Officers or in some cases for subsequent agreement with the Chairman or Vice-Chairman of the Planning Committee.
3. Where the Planning Committee wish to refuse an application contrary to an Officer recommendation the reasons for refusal should be clearly stated and a detailed minute of the decision should be made.
4. Where the Planning Committee wish to grant planning permission contrary to an Officer recommendation a detailed minute of the Committee's reasons will be made. Committee should indicate whether there are any specific conditions that it wishes to see imposed.
5. The drafting of appropriate conditions, including any specifically identified by Committee, will normally be delegated to the Head of Planning Services, unless the Committee indicate otherwise.
6. Where Members wish to add extra planning conditions or delete recommended conditions, a detailed minute of the reasons for the Committee's action should be made.
7. In the cases of decisions made contrary to Officer recommendation, the Officer attending the meeting should first be given the opportunity to explain the implications of the decision before any final decision is made.

**Appeals against decisions contrary to the Officer's Recommendations**

1. Where an appeal to the Secretary of State is subsequently lodged against a decision made contrary to the Officer's recommendation, Planning Officers (and other Officers as appropriate) will normally act as professional witness to present the Council's case at public inquiries and local hearings unless the Head of Planning Services considers that this would prejudice the outcome.
2. In those circumstances the Head of Planning Services may ask Members to conduct the appeal. The Planning Committee will therefore need to be prepared to identify a Councillor(s) to support the case at a public inquiry or local hearing. This would normally be the Councillors who proposed and seconded the reasons for refusal. This is clearly of

considerable importance in stressing to a planning inspector the strength of Members' views and the reasoning behind them. The Head of Planning Services and his team will do all that can be done to help Members prepare a case.

**Officer Reports to Committee**

The courts and Ombudsman advice have determined officer reports on planning applications must have regard to the following points:

- reports should be accurate and cover, amongst other things, the substance of any objections and the views of those consulted;
- relevant information should include a clear exposition of the development plan; site or related history; and any other material considerations;
- reports should have a written recommendation of action. Oral reporting (except to update a report) should be avoided and carefully minuted when it does occur;
- reports should contain technical appraisals which clearly justify a recommendation;
- 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. It is particularly important to do so, not only as a matter of good practice, but because failure may constitute maladministration, 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 s38A of the Planning and Compensation Act 2004.