

Planning and Licensing Committee

Code of Best Practice

(incorporating Public Speaking Protocol)

Introduction

- 1.1 This Code of Best Practice is designed to set out how the Council deals with those matters which come within the remit of the Planning and Licensing Committee. It sets out the role of the Committee, how Committee operates and the respective responsibilities of Councillors and officers.
- 1.2 This Code generally applies to both the Planning and Licensing Committee and the Rights of Way Committee and will be reviewed by both Committees on a regular basis. While each Committee's Code has bespoke amendments where necessary for each Committee, it is intended that each Committee's Code (and the corresponding Public Speaking Protocol) will remain essentially 'in step' with that of the other Committee.
- 1.3 This Code should be read in conjunction with the County Council's Constitution (incorporating the Codes of Conduct for Councillors and Officers, the Code on Councillor and Officer Relationships and the Council's Procedure Rules for meetings). This Code was last revised on ##### taking into account the Localism Act 2011, changes to the Council's Codes and Rules, and taking into account "Openness and Transparency on Personal Interests" (Department for Communities and Local Government, 2012). This Code has also been prepared taking into account a variety of published material, particularly the "Third Report of the Committee on Standards in Public Life: Local Government in England and Wales" (the Nolan Report, 1997), and "Probity in Planning for Councillors and officers" (Local Government Association & Planning Advisory Service, 2013).
- 1.4 The Council is committed to the highest standards of ethical behaviour and probity by its Councillors. As such, this Code applies to members of the Committee at all times in relation to the planning process and includes both decision-making meetings of the Committee as well as less formal occasions, such as meetings with the public, officers, or consultative meetings.
- 1.5 If Councillors do not abide by this Code of Best Practice, they *may* put the Council at risk of proceedings on the legality or administration of a decision; and may put themselves at risk of complaint. Following the Code should reduce the risk of successful challenge to the legality of decisions and of complaints.

- 1.6 Part 4(A) of the County Council's Constitution sets out the current terms of reference of the Committee which has responsibility for the regulatory powers of the County Council relating to development management, as well as dealing with some of the Council's licensing and registration functions. The work of the Committee revolves mainly around determining planning applications concerned with mineral extraction and processing, waste disposal and waste management (County Matters) and also applications on behalf of the County Council itself (County Council Development). More general development proposals are determined by the relevant District / Borough Council. The preparation, approval and adoption of Development Plans is the responsibility of Environment and Sustainability Committee and Full Council. Providing observations on behalf of the County Council in its capacity as County Planning Authority, on plans and proposals within other authorities is also within the remit of Environment and Sustainability Committee. Full Council and Policy Committee are responsible for determining policy in relation to the Committee's functions.
- 1.7 The exercise of these functions can be very contentious so it is important that decision-making in these areas is seen to be open and impartial, consisting of sound judgments made for justifiable reasons.
- 1.8 This Code covers the following areas:
2. The Work of the Committee
 3. Committee Administrative Procedures
 4. Taking the Decision
 5. Decisions against Officer Advice
 6. Appeals, Challenges & Complaints
 7. The Role of Committee Members
 8. Acting as the Local Member
 9. Dual Membership of Local Authorities
 10. Predetermination and Predisposition
 11. Contact with the Media
 12. Lobbying
 13. Councillors' Interests
 14. Councillor Conduct – Disclosure and Hospitality
 15. Discussions with Applicants
 16. The Role of Councillors not on Committee
 17. The Role of Officers
 18. Public Speaking Arrangements
 19. Site Inspections
 20. Councillor Training
 21. Annual Inspection
 22. Review of this Code of Best Practice

The Work of the Committee

- 2.1 The relevant legislation is complex and supplemented by Government Circulars, guidance, case law and advice issued by the Planning Inspectorate.

Good decision-making relies upon ensuring that Councillors and officers act in a way which is both within the legal framework, and is clearly seen to be fair, open and impartial.

- 2.2 A brief overview of each of the types of work with which the Committee is concerned can be found below. The Statement of Community Involvement sets out the County Council's approach to public consultation in the determination of planning applications and involvement in the preparation of Minerals and Waste plans. Following a review, including a period of consultation, Policy Committee approved (on 17th April 2013) the adoption of the **Statement of Community Involvement – Review**. This replaces the original Statement of Community Involvement as County Council policy.
- 2.2.1 The County Council also has a monitoring and enforcement role, and this Code of Best Practice applies equally to that role, although a separate Monitoring and Enforcement Policy and Protocol is in operation, adopted in February, 2009 (a copy of which can be found at: <http://www.nottinghamshire.gov.uk/thecouncil/democracy/planning/monitoringandenforcement/>).
- 2.3 All of the functions of the Committee are set out in Part 4 of the Constitution with many of the functions delegated to officers as operational decisions. The exercise of the Committee's functions will operate as set out below.
- 2.3.1 A full report will be taken to Committee where the application:
- (a) relates to development involving a site area greater than 15 hectares or extraction/input in excess of 30,000 tonnes per annum or new development with a floor space in excess of 10,000sqm;
 - (b) involves a departure from the Development Plan;
 - (c) is accompanied by an Environmental Impact Assessment;
 - (d) has financial implications for the County, such as those which have an accompanying Planning obligation (also known as a Section 106 Agreement)
 - (e) where the Chairman of the Committee requests that an officer not exercise their delegated power in any particular case (in which case a report will be brought to the next available meeting of the Committee for consideration);
 - (f) has received objections from the District or Parish Council or local Member;
 - (g) has been referred to the Committee by a local Member;
 - (h) is recommended for refusal (unless the refusal is on the grounds of insufficient information);
 - (i) is submitted by Policy, Planning and Corporate Services;
 - (j) raises issues of regional or national importance;
 - (k) involves the determination of new conditions for minerals sites;
 - (l) involves the making and serving of orders for revocation, etc where compensation is likely to become payable; and

- (m) has received significant* objections, within the statutory consultation period or other such period as agreed with the County Planning Authority, from consultees or neighbouring occupiers.

* *for clarification, 'significant' objections must:*

- i) raise a material planning consideration;*
- ii) be irresolvable by amendment to the scheme or imposition of planning conditions; and,*
- iii) involve more than three objections from separate properties.*

- 2.3.2 The report to Committee will include all relevant material including the officer's recommendation(s). Additionally, Committee members will need to take into account any relevant comments made by supporters of, or objectors to, any application, should that application be the subject of public speaking at committee (as set out in paragraph 18 below). Councillors need to be aware that planning applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan will set out a series of policies, against which each proposal is tested. The Development Plan comprises planning policy documents prepared by both the County Council (with regards to minerals and waste) and the District / Borough Councils (all other planning matters). The report will give a brief summary of the issues raised by the proposal in respect of these policies, but the full policy and its accompanying text will not necessarily be set out in the report. All individual policies can be viewed online or made available upon request.
- 2.3.3 It is impossible to give a precise list of what is or is not "a material consideration", and such matters are often influenced by case law. The starting point is always the Development Plan, and all relevant policies will be examined in relation to the application before Committee. There would need to be very compelling reasons why a development should not go ahead if it was consistent with those relevant policies in the Development Plan.
- 2.3.4 Not every planning application or related matter will come before the Committee as the majority of planning applications and all operational decisions within the remit of the Planning and Licensing Committee are also delegated to the relevant Corporate Director, enabling the system to deal with straightforward applications as expeditiously as possible. The Scheme of Delegation to Officers is set out in Part 4(B) of the Constitution. Committee will receive regular updates on these operational decisions.
- 2.3.5 Any Councillor may request that an item be considered at Planning and Licensing Committee rather than by officers. Such a request shall be made to the Chairman of the Committee, who, if in agreement with that request, will notify the Group Manager (Planning). The matter will then be brought to the next practicable meeting, giving those who have made valid representations the opportunity to speak under the arrangements for public speaking.

- 2.3.6 Reports coming forward for a decision will recommend either approval or refusal. It would be unusual for an 'open recommendation' to be put forward, where the views of Committee are sought without guidance from officers.
- 2.3.7 Recommendations for approval will normally mean a series of conditions need to be imposed, and these will be set out in an appendix to the report. Occasionally, the Committee will be asked to give officers authority to conclude the exact wording. The report will explain the reasoning for the decision, and, where refusal is being put forward, this will always be accompanied by planning-related reasons.
- 2.3.8 Periodical progress reports on operational matters and on matters following a decision of the Committee will be reported to Committee regularly.

Departures from the Development Plan

- 2.3.9 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:
"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".
- 2.3.10 Where an application is considered to be a departure from the Development Plan and requires referral to the Secretary of State (even if there are no objections) this will be brought before the Planning and Licensing Committee, so that the Council's formal views can be made known to the Government. If the recommendation is to support the proposal, Committee will be asked to authorise the relevant officer to approve the application, should it not be "called in" for determination by the Secretary of State.

Applications accompanied by an Environmental Impact Assessment

- 2.3.11 Those applications accompanied by an Environmental Impact Assessment will always be reported to Committee. Special consideration must be given to such applications, so each issue addressed in the Environmental Impact Assessment will be highlighted in the report.

Applications accompanied by / requiring a Planning Obligation

- 2.3.12 A Planning Obligation, either in the form of a unilateral undertaking or a legal agreement (usually under Section 106 of the Town and Country Planning Act 1990), is a way of securing some additional benefit or means of control which cannot be dealt with through the permission itself or by conditions imposed. Because of their complexity and legal implications they will generally be brought before Committee. Normally the main provisions will be set out in an appendix to the report. In such cases, Committee will be asked to resolve their support for the application, with authority being given to officers to issue

the decision notice, once the Agreement or unilateral undertaking is signed and sealed.

Committee Administrative Procedures

- 3.1 Very late representations cannot properly be considered. Any material information received after the written report has been published but more than 24 hours before the start of the Committee meeting will be presented orally by officers. Information received within 24 hours of the start of the meeting will only be presented if it is brief and can be readily conveyed to the Committee. If highly significant **relevant** new information comes to light within the above timescale, the Chairman may, after consultation with the appropriate officer, defer the item to a later meeting.
- 3.2 Generally, those items where public speaking is involved will be dealt with first and the order of the agenda may be altered to facilitate this.
- 3.3 Officers will introduce each report, noting any relevant late information that is not in the papers. This will be followed by any permitted public speaking on that item, followed by any officer clarification; after which the matter is open to debate by Committee members.
- 3.4. Officer Recommendations will be moved and seconded for discussion before they can be debated. This is a procedural requirement to enable debate and does not imply that the mover or seconder of any such Recommendation has formed a particular opinion.
- 3.5. Having debated the item, the Chairman will ask Councillors to vote in the normal way. The decision taken will be minuted, and the draft Minutes will normally be presented to the next available meeting for approval as a true record.

Taking the Decision

- 4.1 Matters deliberated by the Committee should be determined in an open and fair manner, in which Councillors taking the decision will take account of all the evidence presented to them before arriving at a decision. It is important for Councillors to demonstrate that they have not committed themselves one way or another before hearing all the arguments.
- 4.2 It is essential to bear in mind that complaints and challenges can be made not just about the decision itself, but also about the way a decision has been reached.

Decisions against Officer Advice

- 5.1 Councillors may be minded to make a decision contrary to the recommendation in the Committee report. In those circumstances, it is essential that steps are taken to ensure that decisions are legally sound and robust enough to withstand legal challenge.
- 5.2 It may sometimes be prudent for the meeting to be adjourned for a short time for Councillors to receive legal or other advice before they make a decision contrary to the recommendation. At the discretion of the Committee Chairman, the public may be excluded from the meeting room while this takes place.
- 5.3 Should the recommendation be to refuse an application, and Councillors are minded to approve the application, that approval will need to be accompanied by relevant conditions. If officers have prepared the case on the basis of a refusal, such conditions will not be available for the Committee meeting. In such circumstances, Committee may wish to defer the final decision on the matter to receive additional specific information, or may resolve to approve the application, authorising officers to implement the decision subject to officers preparing such conditions as officers consider appropriate, so as to control the development and ensure adequate protection of the environment and local people. This can be done solely by officers, or, should Committee so resolve, in agreement with the Chairman, and Vice-Chairman.
- 5.5 Where the officer recommendation is to approve an application, and Councillors decide to refuse it, reasons for refusal must be given. It will be for Councillors to specify what their planning reasons are and these need to be translated into the Decision Notice. Again, such wording will not have been prepared in advance, and so it is recommended that the minutes reflect in general terms the reasons for refusal, and that after the meeting officers finalise the detailed reasons which will appear on the Decision Notice. If necessary this can be agreed with the Chairman and Vice-Chairman before the Notice is issued.

Appeals, Challenges & Complaints

- 6.1 Confirmation that the decision has been issued in accordance with the Committee resolution can be reported back at the earliest opportunity. If the application is a departure from the Development Plan, and has been advertised as such, any decision to approve rather than refuse may require the application to be referred to central Government before any permission can be issued.
- 6.2 Any decision to refuse a County Matter planning application is challengeable on appeal, so reasons for refusal must be clear and robust and based on solid planning or policy criteria.

- 6.3 Any decision that is made is also open to challenge through the courts, although any such challenge would have to be on a point of law ('Judicial Review'). The Council can be liable for the costs of proceedings if the Council is found to have acted unreasonably. Unreasonable behaviour might be a failure to follow various procedural or legal steps, or to either fail to take into account relevant policy statements or to give them inappropriate weight. This might, for example, be the case where an application has been refused for reasons that are not related to policy, but for other reasons.
- 6.4 This is not to say that any decision against officer advice will always be open to challenge. In making decisions, Councillors can come to whatever decision they feel is appropriate provided that their decision is based solely on sound planning considerations.

Probity in Planning – The Role of Councillors in dealing with Planning Applications, Declarations of Interest, Lobbying, and Relationships with Officers

The Role of Committee Members

- 7.1 Members of the Committee, in making decisions on items reported to them, must:
- Act fairly and openly
 - Approach each item with an open mind and on its own merits
 - Carefully consider the grounds for a decision
 - Carefully weigh up all the material considerations
 - Ensure that reasons for decisions are clearly stated.
- 7.2 Committee members also have a role on behalf of their electoral division to represent local views, but Councillors must make it clear when they are acting in that 'local Member' role. The decision-making role and its impartiality must not be prejudiced by any such action.

Acting as the Local Member¹

- 8.1 Committee Members need to recognise that they can only wear one hat at a time, be that as a member of the Committee or as the local elected representative, as follows:
- 8.2 If a member of the Committee wishes to take part in decision making regarding a matter in their electoral division, they can advise those members of the public who seek their support that they have been appointed to the

¹ 'local Member': a County Councillor whose electoral division is affected by the item under consideration

Committee for the purposes of determining matters as a member of the County Council, and not solely to voice the concerns of their electorate. Councillors on the Committee can, of course, advise those members of the public to put their views in writing and send those to the relevant case officer.

- 8.3 Alternatively, if a Councillor wishes to put the concerns of their electorate forward as the local elected representative, they may do so, but may choose not to take part in the decision making process. Councillors may wish to make it clear at the beginning of the meeting that they will be acting in their role on behalf of their electoral division, representing local views.

Dual Membership of Local Authorities

- 9.1 Councillors may be elected to both the County Council and to a District / Borough Council, and indeed may be members of the regulatory planning committee for both authorities. Councillors may also serve on a Parish Council. Councillors can, therefore 'wear more than one hat', but they may only wear one hat at a time!
- 9.2 Matters to be decided by the County Council may well be discussed in other forums such as at a district / borough / parish council, even though it is the County Council's Committee which is the decision making authority. There is no reason why such 'dual membership' Councillors should not be a party to the decision at County level, or involved in the debate leading up to the decision, provided that they retain an open mind when considering the application at County level.
- 9.3 It is the individual Councillor's responsibility to consider whether their involvement with a particular matter, or their past conduct leading up to the decision making stage is such that it could give rise to a public perception that the Councillor might not have an open mind. **If in any doubt, early advice should be sought as far in advance of the meeting as possible.** A useful test to determine whether a position or view could be considered to be biased is to think about whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias: not only must Councillors attend committee with an open mind, but must be aware of the need to demonstrate this when coming to their individual decision in committee.

Predetermination and Predisposition

- 10.1 It is almost inevitable that Councillors, whether lobbied or not, may form some kind of prior view about the merits of a particular proposal. Committee members may be *predisposed* towards a view one way or the other, but the law draws a clear distinction between a Councillor having expressed an intention to vote in a particular way before the meeting ('predetermination') and merely having a predisposition to an initial view. Where the Councillor demonstrates that they will listen to all the material considerations presented

at the Committee before deciding on how to exercise their vote, this is acceptable. 'Predetermination', however, is not acceptable and would leave the decision open to challenge.

- 10.2 If a Committee member does express their views for a particular outcome prior to the meeting, by campaigning for or lending support to a particular cause, or by speaking for or against it in another forum, they must be very clear that in order to take part in decision making at County level they must have regard only to those considerations which are material to the County Council's decision-making role, and must have an open mind. Ultimately, the decision as to whether to vote or partake in the debate has to be made by the individual Councillor concerned. There may be some situations where involvement in a campaign is so strong that the Councillor should consider whether it would be preferable to speak openly at the meeting in favour of, or against the proposal (perhaps as the local Member) rather than taking part as a member of the Committee.
- 10.3 Bearing in mind the advice that Councillors should come to Committee "with an open mind", it is plain that it would be contrary to that principle if Councillors acting as a particular political affiliation had met in advance to decide how to vote. Political Whips / Business Managers must, therefore, not be used to influence the outcome of a matter before the Rights of Way and Planning & Licensing Committees.

Contact with the Media

- 11.1 Committee members may be approached by the media for a comment about a particular proposal. The general advice as to predetermination and predisposition above holds for such approaches.

Lobbying

- 12.1 Once a proposal is in the public domain, interested parties may seek to persuade Committee members, to either approve or refuse an application. Lobbying is a normal and perfectly proper part of the political process. As stated in the Nolan Report, "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 elected representatives, the councillors themselves". However, unless care and common sense is exercised by all parties, lobbying can lead to the impartiality and integrity of a Committee member being called into question.
- 12.2 If approached about a particular matter, Committee members must take great care to avoid giving the impression that they have already made up their mind before they have been informed of all the relevant information in the committee report, in written or oral information given to them after the committee papers have been published (including clarification and arguments raised in debate during the relevant Committee meeting). Committee

members should restrict themselves to giving factual advice about procedure, and should try to avoid expressing any opinion on the merits of a proposal. They should advise those members of the public who seek to lobby or persuade them to put their views in writing and send those to the relevant case officer.

- 12.3 In the event that applicants or other interested parties wish to discuss matters with Councillors at any stage, meetings may involve those Councillors acting in their role as the local elected representative. Where a Councillor is a Committee member great care should be taken to avoid compromising their position before they have received all the relevant information, evidence and arguments about a matter.
- 12.4 Therefore, where Committee members do choose to meet relevant parties, or are approached by them directly, either in writing or verbally, they should:
- Not express an opinion which could be taken as firm support or opposition to a proposal
 - Not organise support or opposition for a proposal or lobby other Councillors
 - Inform lobbyists or objectors of the importance of their views being submitted in writing to the Council
 - Advise the Committee Chairman or the Monitoring Officer if any party appears to be trying to apply undue or unreasonable pressure on them or other County Councillors.
- 12.5 Where Committee members have held discussions or meetings with applicants or interested parties, this should be declared at the relevant Committee meeting.
- 12.6 It is for Committee members to decide whether they have been lobbied. A general discussion about a particular matter, during which the relative merits or disadvantages of a particular proposal are **not** raised, would not constitute lobbying. However, if the merits or otherwise of a scheme are raised with a Councillor, then this could be declared as lobbying. Lobbying may also include any approaches from Councillors who are not members of the Committee.
- 12.7 At the start of each committee meeting, Committee members are asked to declare whether they have been lobbied about any item on the Agenda, and this will then be recorded in the Minutes of the meeting.
- 12.8 In some circumstances, developers may request an opportunity for a special presentation before a planning application is submitted. This would raise the issue of fairness as, at that stage, it is possible that local residents may not be aware of the proposal. It is recommended that if a special presentation is requested by the applicant before an application has been made, it should only be held if the proposal has been made known to local residents. Such a presentation will be for the purposes of information only and Councillors must not debate the merits or otherwise of the proposal(s) at that stage or express

an opinion, but must reserve comment until the appropriate committee meeting at which the decision is to be made.

Councillors' Interests

- 13.1 Councillors must not use their powers improperly to secure either a personal advantage or an advantage for some other person. This could be relevant to committee matters in a number of ways, such as through personal business interests, or by using their position to discuss an item which may affect their property personally when other members of the public would not have the opportunity to do so. Likewise, Councillors must not use their position to seek preferential treatment for friends or relatives, or for any business or organisation with which they are connected. Should a Councillor have an interest in respect of an item brought before Committee, they must abide by the provisions of the Code of Conduct for Councillors and co-opted Members and the Council's Procedure Rules for meetings.
- 13.2 Each Councillor is personally responsible for deciding whether s/he has an interest that should be declared, although initial advice should be sought **in advance** from the Monitoring Officer, or from the relevant Legal or Democratic Services Officers. **Councillors are reminded that the meeting should not be delayed while a Councillor is advised.**

Councillor Conduct – Disclosure and Hospitality

- 14.1 The Council's Code of Conduct for Councillors sets out the standards that are required from Councillors, which financial interests they need to formally register, which interests they need to declare in meetings and how this will affect their participation in meetings. Whilst there is no specific reference to hospitality, thought should be given to the public's perception of Councillors' actions in relation to any particular matter if some form of hospitality is accepted.

Discussions with Applicants

- 15.1 Planning applications, particularly if involving complex proposals, may take some months to pass through the planning system. Indeed, there is often much pre-application activity before the actual submission is formally lodged with the Authority. Dialogue and meetings with applicants at various stages is essential, but will normally only involve officers, and occasionally the local Councillor(s). Recent guidance recognises the role of Councillors as champions of their local communities, and as such there may be greater involvement of Councillors in pre-application discussions in the future. All discussions should take place within clear guidelines as set out in **Appendix C**. For major applications, pre-application discussion is formalised through the Environmental Impact Assessment Regulations 2011, which require the Authority to comment on the scope of an Environmental Assessment, or make

a judgement as to whether such an Assessment is required. Councillors will not normally be involved in such discussions due to their technical nature.

- 15.2 Members of the Committee may wish to ensure that they are accompanied by the case officer if they are to meet with applicants / interested parties.
- 15.3 Where meetings take place at a preliminary stage it must be made clear that:
- Only officers' initial and provisional views can be given, based upon the provisions of the legislation;
 - No decisions can be made which would bind or otherwise compromise the final decision of the Council.
- 15.4 Notes of the discussions at all meetings will be taken and will be placed on the case file. Any follow-up correspondence will also be placed on the file. Should Committee members be approached directly by applicants (or potential applicants) they should, in all cases, alert the relevant case officer who, can arrange a meeting if appropriate (with the relevant case officer(s) present so that a formal written note of the discussion can be made.
- 15.5 Case files will be available for public inspection subject to the provisions of access to information legislation such as the Data Protection Act 1998, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

The Role of Councillors not on Committee

- 16.1 The role of Councillors as locally elected representatives is an important part of the process. Subject to the Councillors' Code of Conduct, local Members will be given the opportunity in respect of matters falling within the remit of the Committee to fulfil that role within their electoral division by:
- Responding in writing to officers on the merits of a matter;
 - Attending any Committee site meetings for matters within their electoral division; and
 - Making representations to the Committee.
- 16.2 Councillors can expect officers to give them all due help and assistance in answering questions relating to matters falling within the remit of the Committee, though they should not give instructions to officers, nor should they place pressure on officers in order to secure a particular outcome to a matter.

The Role of Officers

- 17.1 In respect of matters to be determined by the Committee, Officers will:
- Provide professional and impartial advice

- Ensure that all information necessary for a decision to be made is given, including the views of those consulted and the substance of any objections
- Set the matter in the context of any other considerations
- Provide a clear and accurate written analysis of the issues
- Be responsible for carrying out the decisions of the Committee

17.2 Whereas Officers must comply with the Council's own Code of Conduct for Officers, they are also guided by their own professional Codes of Conduct. Most of the planning officers will be chartered members of the Royal Town Planning Institute (RTPI). Under the terms of the RTPI's Code of Professional Conduct, members of the RTPI must, amongst other things, act with complete competence, honesty and integrity, and fearlessly and impartially exercise their independent professional judgement to the best of their skills and understanding. Members of the RTPI must not make or subscribe to any statements or reports which are contrary to their own *bona fide* professional opinions and shall not knowingly enter into any contract or agreement which requires them to do so. Furthermore, members of the RTPI working in local government must take all reasonable steps to ensure that all town planning matters in the Council are conducted in accordance with that code, whoever undertakes the work.

Public Speaking Arrangements

18.1 The Council considers that there are benefits in allowing public speaking in appropriate matters at Planning and Licensing Committee meetings. This gives an opportunity for applicants and objectors, and other interested parties, such as parish councils, to make presentations to the Committee. The current Protocol is set out in **Appendix A** to this Code.

18.2 In order that both Councillors and those who wish to speak gain the most benefit from allowing public speaking at Committee, there has to be a clear and well publicised system, easily understood by all who wish to partake of this service. Information on the public speaking arrangements is available to all those who make representations. Details of how the system operates are set out in **Appendix A** to this Code. Equal opportunity will be given to objectors and supporters of a proposal. For an application from the County Council itself this could be a Chief Officer from the relevant department or their representative.

Site Inspections

19.1 All sites are inspected by officers as part of their preparations and investigations, and meetings involving officers, applicants and consultees may be held on site as part of the consultation and negotiation process prior to the matter coming before the Committee for a decision.

19.2 If it may be helpful for Committee members to have a site visit, the procedure is laid out in **Appendix B**.

Councillor Training

- 20.1 Planning and Licensing Committee will deal with a wide range of complex legislative issues, and Committee members need to understand what issues they should or should not consider, before coming to a decision.
- 20.2 **Committee members must undergo training sessions before they can speak and vote on the Committee.** Sessions will cover the relevant legislation, and what factors Committee members may or must consider when making decisions.
- 20.3 Occasionally information reports will be brought to Committee advising of new legislation, policy guidance, and best practice or procedural matters and presentations may be made on particular aspects of general interest. Site inspections for training purposes may also be arranged.
- 20.4 General information is also available on the Council's website, including information about the progress of various planning applications in the system.

Annual Inspection

- 21.1 Committee members may wish to visit sites to view the consequences of the decisions being made, or to see where improvements have been successfully implemented.
- 21.2 If requested by Committee, an annual tour will be arranged to view certain key sites. These will either reflect decisions taken previously by Committee, or give an opportunity for Committee members to see some particular aspect of the Committee's work in practice.
- 21.3 The arrangements for such an event will be agreed with the Chairman and reported to Committee in advance together with a request to seek any necessary approvals in relation to expenditure etc.

Review of the Code of Best Practice

- 22.1 This Code of Best Practice will be reviewed periodically, and a report brought to Committee to advise of any suggested changes, and to report on the operation of particular arrangements, such as those for public speaking or site visits.

PROTOCOL FOR PUBLIC SPEAKING AT PLANNING AND LICENSING COMMITTEE

Introduction

This Public Speaking Protocol operates in respect of both the Planning and Licensing Committee and the Rights of Way Committee and will be reviewed by both Committees on a regular basis. The protocol is published on the Council's website and updated as necessary. While each Committee's Public Speaking Protocol has bespoke amendments where necessary for each Committee, it is intended that each Committee's Protocol will remain essentially 'in step' with that of the other Committee.

What happens if there is a dispute?

In the event of any dispute regarding the procedures or this protocol, the Committee Chairman's decision shall be final.

Part A – General public speaking arrangements

Who may speak?

- A1.1 Speakers may be either in favour of the proposal, or in opposition to it, and a maximum of three speakers will be entitled to speak in opposition to a proposal, and three in support.
- A1.2 Anyone who has made a valid written submission in connection with an item to be discussed at Committee (including by e-mail) will receive an acknowledgement giving an opportunity to register an interest in speaking at the relevant committee meeting, and an invitation to apply for a slot will subsequently be sent to persons who have registered such an interest when notifying them of the date of the relevant meeting. Please note that any written submission **must** have been received by the time the papers for the meeting are prepared – being no later than ten clear working days in advance of the meeting.
- A1.3 Public speaking is only allowed where the matter is being referred to Committee for a decision, (eg. to grant or refuse permission). No public speaking is allowed in respect of other reports.

How a request to speak must be made

- A2.1 Anyone who has made a valid written submission and wishes to speak at a particular Committee must, having received their invitation to register under A1.2 above, first register their wish to speak with the relevant officer. Such registration must take place no later than two clear working days before Committee – for example if Committee were to meet on a Tuesday, the registration to speak must be with the relevant officer by 4:00pm on the preceding Thursday.
- A2.2 Currently, such registration may be made on the official form supplied by the County Council, by telephone or by e-mail. Details of how to register a request are also posted on the Council's web site:
<http://www.nottinghamshire.gov.uk/home/environment/planningmatters/guidancespeak.htm>
- A2.3 Anyone wishing to speak will be chosen strictly on a "first come, first served" basis (see paragraph A2.1 above) so early registration is encouraged. Those registering to speak will be asked to supply contact details in case they need to be advised of any changes to arrangements.
- A2.4 Where a group of representatives wish to speak, they should nominate a spokesperson to address the Committee on their behalf and that person should register their wish to speak as soon as possible.

How does the scheme operate on the day?

- A3.1 Should a speaker not be able to attend in person, or is unable to speak for themselves for whatever reason, they can nominate, in writing, someone to speak on their behalf.
- A3.2 If a registered speaker does not attend the meeting, Committee will continue to consider the matter on the basis of any written submission made by that person.
- A3.3 Although it is not necessary for local residents to employ specialists or lawyers to speak on their behalf, they are permitted to do so. Similarly other groups may choose to employ someone to speak on their behalf if they so wish.
- A3.4 Those persons who are confirmed as speakers must make themselves known to the relevant officer at the relevant building's Reception 30 minutes before the start of the Committee, so that they can be given instructions on procedure. Prior to the start of the meeting, all public speakers should hand to the relevant officer a written summary or transcript of the points they will be making, solely to assist in the production of the Committee Minutes. These summaries **will not** be circulated to members of the Committee at the meeting.

- A3.5 Those allowed to speak may not make additional written submissions to the Committee, nor will they be allowed to hand out any further documentation such as photographs or plans either before or during the meeting. **All** information or representations should have been made to the Council sufficiently in advance. The use of overhead projectors, slide projectors or PowerPoint displays by public speakers is not allowed.
- A3.6 In accordance with the Council's Procedure Rules, other than any official recording carried out by approved Council staff, the use of cameras, tape recorders or any other types of recording equipment shall only be permitted where sufficient notice has been given to, and prior permission given by, the Chairman. Where permission has been given, the Chairman will notify the Committee at the start of the meeting and in the event of objection by Committee Members, a vote will be taken.

What happens in the meeting?

- A4.1 The Chairman will introduce the item, and ask the relevant Officer to present the item, who will highlight any key points and add any further information relevant to the report.
- A4.2 Each speaker listed under A4.3 below, whether speaking as an individual or on behalf of a group, will have a maximum of **three minutes**. Before speakers begin their address to Committee, they will be asked to say who they are, where they live and who they represent.
- A4.3 The Chairman will invite public speakers to address the Committee in this order:
- a) Those speakers who have been properly registered to speak in opposition to the matter under debate (up to a maximum of 3 speakers);
 - b) Those speakers who have been properly registered to speak in favour of the matter, including applicants and/or their agents (up to a maximum of 3 speakers);
 - c) A representative from directly affected or adjoining Parish Councils;
 - d) A representative from directly affected or adjoining District / Borough Councils;
 - e) A representative from a County or Unitary authority which adjoins the area within which the item under discussion is located;
 - f) The Member of Parliament for the constituency within which the item under discussion is located.

If a 'local Member' (i.e. the County Councillor whose electoral division is affected by the item under consideration) wishes to speak on the matter under debate, they will, with the consent of the Committee Chairman, be given an opportunity to speak at this point. (Subject to A6.3 below)

- A4.4 If a speaker from a Parish, Borough, District, or other County Council or Unitary authority is speaking on their own behalf as a private individual or on behalf of a group of local residents and is not speaking as a formal representative of an authority mentioned above, they should register to speak in the normal way as a private individual (A4.3 a) and A4.3 b) above) having first made a valid written submission.
- A4.5 Members of the Committee may request the speaker to clarify any particular point, although it is emphasised that Councillors must not enter into debate with the speakers on the merits or otherwise of the proposals at that point of the proceedings

How long may speakers take?

- A5.1 Each speaker, whether speaking as an individual or as part of a group (or deputation), will have a maximum of three minutes.
- A5.2 Speakers will be advised when the final minute of their allotted time has been reached, so that they may conclude their presentation ensuring all relevant points are made to Committee. They will be asked to end their speech once the three minute period has been completed.

County Councillors

- A6.1 Where the local Member (i.e. the County Councillor in whose electoral division the item under consideration is located) is not on the Committee but considers that the item may have a relevant impact on their Division, they may address Committee in line with the Council's Procedure Rules which allow Councillors to speak with the consent of the Committee.
- A6.2 Where the local Member is a member of the Committee, but wishes to speak on behalf of their electoral division, they may do so, and the procedures for this are set out in the Committee's current Code of Practice. The local Member may choose to leave the meeting room at the conclusion of the public speaking. Similarly, they may consider that it would not be appropriate to take part in the decision-making process for that item.
- A6.3 Where the local Member speaks as the local Member representing local views they will be permitted, with the consent of the Chairman, to speak for a maximum of 20 minutes. Councillors should advise the Chairman or Democratic Services Officer well in advance of the meeting of their wish to speak as the local Member.

What can and cannot be said

- A7.1 Speakers must address only issues relevant to the matter in hand and its determination by the Committee.
- A7.2 For planning matters, this will include the effects of the proposal on the environment and impact on them as local residents. Speakers must not refer to non-material issues such as property rights, any covenants relating to land, competition, moral or personal issues, loss of view or property value.
- A7.3 Speakers are not allowed to ask questions of Councillors, officers or other speakers.
- A7.4 If any speaker behaves inappropriately or in any way behaves so as to disrupt or delay the work of Committee, the Chairman has discretion to curtail the speaking opportunity and may ask one or more speakers to leave the room, or, in extreme circumstances may adjourn the meeting for any period considered necessary.

What happens next?

- A8.1 Following the public speaking and speeches by non-Committee members, the Chairman may ask the relevant officer to comment on any other matters of fact arising from what has been said. At the sole discretion of the Chairman, the relevant officer may, where the Chairman considers it would be helpful, ask the relevant officer to comment / clarify following individual speakers rather than at the conclusion of the public speaking.
- A8.2 Members of the Committee will then debate the matter, and will reach a decision without any further public involvement.
- A8.3 Speakers may remain in the room, but are not allowed to join in with the debate, unless specifically requested by the Chairman to clarify a matter that has arisen during debate, and which cannot be dealt with by officers.
- A8.4 Once the decision is made, speakers may remain in the room but usually choose to leave before the next item on the agenda.
- A8.5 In any event, the Committee's decision will be published on the County Council's website and anyone who has made a valid written representation will be notified of the decision where they have previously so requested.

What happens if the matter is deferred or postponed?

- A9.1 Should the matter be deferred for a site visit or for any other reason following debate at the meeting, no further opportunity for public speaking will be

allowed unless a period of six months or more has elapsed since such deferral.

- A9.2 Only in exceptional circumstances will additional public speaking outside of the above arrangements be allowed, and that shall only be with the agreement of the Chairman. This may be when new evidence or information has come to light, or where substantial changes have been made to a proposal, which renders it significantly different from what had been previously considered. The test will be whether further public speaking will assist members of Committee to come to a more well-informed decision.
- A9.3 Should the item have been deferred before the public speaking period had commenced (or had been withdrawn from the agenda entirely, i.e. 'postponed'), those registered to speak will be notified of the date when the Committee will consider the matter and given the same opportunity to speak at the later meeting.

Part B - Special Presentations for major planning applications

- B1 In exceptional circumstances, and with the approval of Committee or at the discretion of the Chairman, a 'special presentation' may be given to Committee members. This may be where the matter is of such a complex technical or legal nature and where there are significant policy implications, or where the nature of public interest is so high as to warrant such an approach.
- B2 Normally a request for a special presentation will come from a group or organisation either in support of, or in opposition to, a particular proposal. Where approval is given for a special presentation, the group or organisation who has requested such an opportunity will be notified in writing that their request has been granted, and opportunity will be given for other organisations and groups to give a presentation within an equal time frame.
- B3 The scheduling of the presentation will be decided by Committee or by the Chairman but it would normally be at the same meeting at which the planning application to which it relates is to be determined, as an additional part of the normal public speaking arrangements. The local Member(s) in whose area the proposal is situated will be invited to attend for the presentation.
- B4 No more than three organisations or groups in opposition to the proposal will be allowed to give a special presentation to Committee, and no more than three organisations or groups in favour of the proposal will be allowed to give a special presentation. Anyone wishing to speak will be chosen strictly on a "first come, first served" basis so early registration is encouraged. Those registering to speak will be asked to supply contact details in case they need to be advised of any changes to arrangements.
- B5 The maximum time allowed for each presentation shall be ten minutes.

- B6 The content of each presentation must be related to the application, and must only contain material pertinent to the consideration of the planning merits of the proposal.
- B7 A written transcript of the presentation must be given to the relevant officer at least three clear working days before the date of the special presentation.
- B8 Any handouts or photographic material that is intended to be distributed to Councillors must also be given to the relevant officer at least three working days before the presentation. A minimum of 15 copies of each document must be provided.
- B9 Should it be intended to use a computer based presentation with PowerPoint or similar systems, a copy of that presentation must be given to the relevant officer at least three working days before the date of the presentation. The presentation may be on either CD or memory-stick. Responsibility for the proper working of the CD or memory stick rests with the person giving the presentation and in the event of any technical problems which prevents the presentation using electronic media then no delay to the Committee meeting or special presentation shall be permitted. In these circumstances the person giving the presentation will rely on printed hand-out material and any verbal presentation.
- B10 Unless these instructions are complied with, the Committee Chairman reserves the right to refuse the use of such support material, and to direct that the presentation continues without their use so as not to delay consideration of the matter.
- B11 Once the public speaking has been opened, those giving special presentations will be called forward in the order of objectors first, with supporters to follow.
- B12 The presentation may be given by more than one speaker. Speakers will be advised when there is only one minute remaining so that they may conclude their presentation. When the maximum ten minutes have elapsed, speakers will be required to end the presentation irrespective of whether the speaker has reached the end of the presentation.
- B13 Through the Chairman, Committee members may ask speakers for clarification on any point raised during a presentation but there shall be no debate on the merits or otherwise of the proposal at that point in proceedings.
- B14 At the completion of the special presentations, the normal public speaking arrangements will resume as set out in paragraphs A4.2 and A4.3 above.
- B15 Officers may be requested to clarify or comment on any points raised in the presentation or normal public speaking session, and thereafter the Committee will continue to debate the item in the normal way.

SITE INSPECTIONS

Informal Site Inspections

1. Individual Councillors can visit a site themselves in advance of the Committee meeting, though Committee members wishing to inspect sites on their own should seek advice from officers. If the site cannot be seen from existing public highway or other public land and involves going on to private land, Councillors should first contact the relevant case officer who can liaise with the applicant or landowner.
2. Ideally, Councillors should always be accompanied by the case officer, even on informal site inspections. If Councillors wish to visit a County Council property (e.g. school, elderly persons' home, library etc.) they should always report first to its reception.
3. Any information obtained from a site inspection should be reported back to Committee by the Councillor involved so other Councillors have the same information. Any discussions or lobbying that may occur during a site inspection should be reported in accordance with the procedures described earlier in this Code.

Formal Site Inspections

4. Formal site inspections will be held only when they provide a material benefit, for example, to understand local conditions and the physical characteristics of the site.
5. Where Committee members consider that there is substantial benefit to be gained from a site inspection, a formal site inspection can be proposed by Committee members at a committee meeting in advance of the relevant application coming before the Committee for a decision. The reasons for the request must be clear and minuted and whether a formal site inspection will be undertaken will be at the sole discretion of the Chairman. The need for site inspections should be considered by Committee members when reviewing the Committee's Work Programme. Similarly, where officers consider it appropriate, a short factual report will be brought to an earlier committee recommending a site inspection.
6. Once the decision to undertake a site inspection has been confirmed, Democratic Services will liaise with the relevant officers, Chairman, Vice-Chairman and political groups' Business Managers to make arrangements. Transport arrangements will depend on the circumstances.
7. All members of the Committee will normally attend formal site inspections, together with the appropriate local Member. If the proposal may have a

significant impact on adjoining areas, the invitation will be extended to Councillors representing adjoining electoral divisions.

8. Appropriate officer/s of the Council will accompany the Committee to advise Committee members as to the proposal and to point out salient features and highlight key issues. Councillors are advised to wear stout footwear and be prepared for adverse weather conditions, though relevant Personal Protective Equipment (PPE) will be provided where it is necessary for the site.
9. The purpose of a formal site inspection is fact finding and no discussion of the merits of the matter should take place. Councillors are advised not to enter into discussion with anyone other than officers or other Committee members, except for the purposes of clarification from site operators. Site managers or applicants and their agents may be present on site. They will be advised by letter that they should not lobby Councillors, but are able to accompany the party for health and safety reasons and to answer any factual questions put to them. During site visits Committee members should not make any comments that could give the impression that they had predetermined the application. Decisions on matters must only be made within the formal committee meeting when Committee Members have all the necessary information before them.
10. As the decision for a formal site inspection will have been made at an open Committee, it is possible that the visiting party may be met with 'protest groups' or a number of supporters or objectors. Lobbying of Councillors during site inspections will not be allowed as the opportunity for making representations is as part of the consultation process and as part of any public speaking during the relevant Committee meeting.
11. There may be occasions on site visits when questions raised by Committee members cannot be satisfactorily answered or require further investigation. In this event officers will pursue these matters and report back to the Committee meeting.

Following the Site Visit

12. Wherever possible, details of the site visit will be included in any subsequent report to Committee.

APPENDIX C

GUIDANCE ON INVOLVEMENT OF COUNCILLORS IN PRE-APPLICATION DISCUSSIONS

Discussions between a potential applicant and the Council prior to the submission of an application will be of benefit to both parties and is actively encouraged in line with Central Government guidance set out in the National Planning Policy Framework. Generally such meetings will be held between officers and the potential applicant, often with their agent or representative. Given the role of Members as 'champions' of their local community, it can be appropriate for Members to be engaged in the process of pre-application discussions, particularly those related to more major and contentious developments.

It is possible, however, that such discussions could be seen by objectors as part of a lobbying process by the potential applicant and some councils have feared involving councillors in pre-application discussions concerned that Councillors would be accused of predetermination when the proposal is subsequently reported to committee.

The Localism Act 2011, however, clarifies that it is proper for Councillors to play an active role in pre-application discussions, bringing their local knowledge to enrich democratic debate and helping to better represent constituents. Involving Councillors can assist in identifying issues at an early stage and helps Councillors lead on community issues.

Whilst the Localism Act has given greater freedom to Councillors to engage in pre-application discussions, it is important that such discussions take place within clear published guidelines to avoid perceptions that Councillors might have fettered their discretion.

It is recognised that Councillors talk regularly to constituents to gauge their views on matters of local concern and the Nolan Committee argued that it would be impractical and unnecessary to keep a register of such conversations.

In addition to observing the general advice set out in the Code, Councillors are advised to adhere to the following guidance:

- Do not meet developers or their agents/representatives alone, or put yourself in a position where you appear to favour a person, company or group - even a 'friendly' discussion with a developer could cause others to mistrust and question your impartiality.
- Inform officers about any approaches made to you, and seek advice as to the best course of action.
- Keep records of any approaches made to you and declare those on the record of lobbying.
- Forward copies of any correspondence to the case officer or committee clerk received in connection with a proposed application or submitted application.

- Be prepared to attend pre-application meetings with developers and/or potential applicants, but only in the company of relevant officers.
- Clarify at the outset that you are there to listen and ascertain facts and that the discussions will not bind a council to making a particular decision and that any views expressed are personal and provisional. By the very nature of such meetings not all relevant information may be at hand, nor will formal consultations with interested parties have taken place.
- Recognise that consistent and impartial advice will be given by officers based upon the development plan and material planning considerations. Councillors should avoid giving separate advice on the development plan or material considerations as they may not be aware of all the issues at an early stage.
- Avoid becoming drawn into any negotiations, which should be conducted by officers (keeping interested Councillors up to date) to ensure that the County Council's position is co-ordinated.
- Use the meetings to show leadership and vision, and to encourage positive outcomes for all concerned.
- Feed in your own and your local community's concerns and issues. Members of the Planning & Licensing Committee can have a predisposition to an initial view, where the Member makes clear they are still willing to listen to all the material considerations and arguments presented at the committee meeting before deciding on how to exercise their vote.
- Do not use your position improperly for personal gain or to advantage anyone close to you.
- Do not seek to influence officers, or put pressure on them to support a particular course of action in relation to a planning application.
- Confirm that a written note will be made of all meetings by an attending officer who will also make the arrangements for such meetings. Ensure officers forward a copy of the note to you and the developer/potential applicant after the meeting.
- A note should also be taken of any phone conversations, and relevant emails recorded for the file. Notes should record issues raised and advice given. The note(s) should be placed on the file as a public record. If there is a legitimate reason for confidentiality regarding a proposal, a note of the non-confidential issues raised or advice given can still normally be placed on the file to reassure others not party to the discussion.

Bear in mind that there are other mechanisms to involve Councillors in pre-application discussions which may include information reports brought to committee

to raise issues and developer presentations to committee although these would need to be handled in a fair and balanced manner. The adopted Statement of Community Involvement sets out the County Council's approach to involving communities and other consultees in pre-application discussions.

Ultimately Members of Planning & Licensing Committee need to ensure that they do not fetter their ability to participate in the decision making process on a development proposal by making up their mind, or clearly indicating that they have made up their mind, on how they will vote prior to the consideration of the application at committee. Members of the Planning Committee can have a predisposition for a particular outcome of a proposal as it proceeds towards determination, where the Member is clear they are still willing to listen to all the material considerations presented at the committee before deciding on how to exercise their vote.

Planning & Licensing Committee Members need to avoid bias and predetermination and take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in an open and fair manner.

If Members follow this guidance, there should be no reason for anyone to level an accusation of bias against you. Ultimately it is the responsibility of the individual Member to ensure that their role on Planning & Licensing Committee is not compromised and it is also for them to strike the balance that may need to be made between their division and other interests and the requirements of the committee.

Useful source material

'Probity in Planning for Councillors and Officers' - Local Government Association and Planning Advisory Service 2013