



## 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 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 23<sup>rd</sup> April 2014 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).
- 1.3 This Code has also been revised to take account of the changes to the Council's committee structures which has resulted in Rights of Way matters being brought under the remit of Planning and Licensing Committee.
- 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 planning and rights of way matters and includes both decision-making meetings of the Committee as well as less formal occasions, such as site visits and 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 Full Council and Policy Committee are responsible for determining policy in relation to the Committee's functions. Otherwise, Part 4(A) of the County Council's Constitution sets out the current terms of reference of the Committee:-
  - 1.6.1 Much of the Committee's work relates to discharging functions 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 such as schools and libraries (“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 the Communities and Place 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 Communities and Place Committee.

1.6.2 The Committee also has responsibility for functions relating to public rights of way, and for determining applications for the registration of land as common land and as town or village greens. Non-regulatory matters for the management, maintenance and promotion of the rights of way network, including responsibility for the budgetary matters, are the responsibility of the Communities and Place Committee.

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 therefore covers the following areas:

2. The Work of the Committee
  - 2A) Planning, development management, licensing and registration functions
  - 2B) Public Rights of Way, Common Land, and Town or Village Green functions
3. Committee Administrative Procedures
4. Taking the Decision
5. Decisions against Officer Advice
6. Challenges & Complaints
7. The Role of Committee Members
8. Acting as the Local Member
9. Dual Membership of Local Authorities / other statutory bodies
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 Visits
20. Councillor Training
21. 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 Planning matters with which the Committee is concerned can be found below, with the equivalent for Public Rights of Way, Common Land and Town or Village Green matters at **Appendix D**.
- 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, for Planning matters, a separate Local Enforcement Plan is in operation, adopted in May 2015 (a copy of which can be found at:  
<http://www.nottinghamshire.gov.uk/media/1708/local-enforcement-plan.pdf>).
- 2A) Planning, development management, licensing and registration functions
- 2A.1 For Planning matters, the Statement of Community Involvement sets out the County Council's approach to public consultation in the determination of planning applications, including both statutory and non-statutory publicity and consultation requirements. The original Statement of Community Involvement was adopted in 2007 with a review adopted in 2013. A further review is expected to commence in the near future.
- 2A.2 While a number of functions are reserved to the Committee, many are delegated to officers as operational decisions. The exercise of the Committee's functions will therefore operate so that a full report will be taken to Committee for:
- a) Applications for new minerals or waste sites involving a site area greater than 25 hectares or extraction/input in excess of 30,000 tonnes per annum.
  - b) Section 73 variations on existing minerals or waste sites which involve increasing the rate of extraction/input by more than 30,000 tonnes per annum.
  - c) New built development with a floor space in excess of 1,000 square metres.
  - d) Applications involving a departure from the Development Plan and which meet the criteria for applications being referred to the Secretary of State before granting planning permission. Departure applications which do not meet the criteria for referral to the Secretary of State will only be determined under delegated powers with the prior agreement of the Local Member(s).

- e) Applications to which a \*statutory consultee has made an objection. [\*as defined by the Town and County Planning (Development Management Procedure) (England) Order 2015 and any subsequent amendments].
- f) Applications accompanied by an Environmental Impact Assessment.
- g) Applications which have financial implications for the County Council such as:
  - Section 106 agreements/obligations/restoration bonds;
  - Review of minerals permissions (ROMPs) and revocation orders where compensation is likely to be payable;
  - Applications subject to a Planning Performance Agreement.
- h) Applications which have received material planning objections, in writing, from the District/Borough or Parish Council or local County Councillor(s) within the statutory consultation period or within an extended period as agreed by the County Council.
- i) Applications which have been referred to Committee by the Chair and/or Vice Chair of Planning and Licensing Committee and/or by the local County Councillor(s).
- j) Applications which have received 4 or more material planning objections within the statutory consultation/publicity period (or other such period as agreed with the County Council) from non-statutory consultees or members of the public which remain unresolved following amendments to the scheme or through the imposition of planning conditions and where the objections have not been withdrawn in writing.
- k) Applications which are submitted by Place Department (or any subsequent Department following any future restructuring where the applicant is in the same Department as the Development Management Team) where these are the subject of any material planning objections.
- l) Applications which raise issues of regional or national importance or relate to proposals involving emerging technologies.
- m) Applications for variations (Section 73 applications) to planning permissions which involve the variation or removal of a condition which Members of Planning and Licensing Committee requested be brought back to committee for determination.
- n) Irrespective of whether any of the criteria above are met, any application which is recommended for refusal unless the refusal is on the grounds of insufficient information.

2A.3 The report to Committee will include all relevant material including any relevant comments made by supporters of, or objectors to, any application, and the officer's recommendation(s). Additionally, Committee members will need to

take into account any relevant comments made at Committee itself, should that application be the subject of public speaking (as set out in paragraph 18 below).

- 2A.4 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 adopted planning policy documents prepared by both the County Council (with regard to minerals and waste) and the District / Borough Councils (all other planning matters). The report will detail 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.
- 2A.5 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. Issues raised which are not material, such as impacts on property prices and loss of view, will be highlighted in the officer's report. 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.
- 2A.6 All operational decisions within the remit of the Planning and Licensing Committee are also delegated to the relevant Corporate Director so as to enable the system to deal with straightforward applications as expeditiously as possible. The corresponding Scheme of Delegation to Officers is set out in Part 4(B) of the Constitution and the Committee will receive regular updates on these operational decisions.
- 2A.7 Any Councillor may request that an application within their electoral division be considered at Planning and Licensing Committee rather than by officers. 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.
- 2A.8 Reports coming forward for a decision will recommend either approval, usually subject to conditions and sometimes a planning obligation, or refusal with the reasons for refusal clearly set out.
- 2A.9 Recommendations for approval will normally be accompanied by a series of conditions, and these will be set out in an appendix to the report. Occasionally (if a particular matter has been the subject of debate, for example) the Committee will be asked to give officers authority to conclude the exact wording of a condition after the Committee meeting has concluded. This shall be done in consultation with the Committee Chair and Vice Chair. The report will explain the reasoning for the decision and, where refusal is recommended, this will always be accompanied by planning-related reasons.
- 2A.10 Periodical progress reports on operational matters and on matters following a

decision of the Committee will be reported to Committee regularly.

#### Departure from the Development Plan

2A.11 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”.*

2A.12 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 & 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 issue the Decision Notice, should it not be ‘called in’ for determination by the relevant Secretary of State.

#### Applications accompanied by an Environmental Statement

2A.13 Those applications accompanied by an Environmental Statement will always be reported to Committee given the complex nature of the applications and the wide range of issues that need to be considered in the officer’s report.

#### Applications accompanied by / requiring a Planning Obligation

2A.14 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, applications recommended for approval subject to a Planning Obligation will be brought before Committee for determination. Normally the main provisions will be set out in 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. A time limit of three months is usually given from the date of the resolution to conclude the obligation, unless an extension of time has been agreed in consultation with the Committee Chair and Vice-Chair.

#### 2B) Public Rights of Way, Common Land, and Town or Village Green functions

2B.1 While a number of functions are reserved to the Committee, many are delegated to officers as operational decisions. In the case of Public Rights of Way, Common Land, and Town or Village Green functions, those delegated to officers are listed in **Appendix E**, Table A with those reserved to Committee listed in Table B. The exercise of the Committee’s functions will therefore operate so that a full report will be taken to Committee where (other than for

Definitive Map Modification Orders (which are covered at 2B.6.4. below)):

- (a) the County Council proposes to exercise a Table B function which consists of deciding whether to make an order, and at the pre-order consultation stage objections or adverse comments are received (but only where conditions c, d, or e below are met);
  - (b) the County Council proposes to exercise a Table B function which is something other than the making of an order (for example the creation of a bridleway by agreement, or the registration of land as a village green);
  - (c) the County Council proposes to exercise either a Table A or Table B function which has been referred to Committee by the local Member and such referral has been agreed to by the Committee Chair;
  - (d) the County Council proposes to exercise either a Table A or Table B function which is considered by the case officer to be exceptionally sensitive or controversial;
  - (e) where the Committee Chair 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).
- 2B.2 The report to Committee will include all relevant material including any relevant comments made by supporters of, or objectors to, any application, and the officer's recommendation(s). Additionally, Committee members will need to take into account any relevant comments made at Committee itself, should that application be the subject of public speaking (as set out in paragraph 18 below).
- 2B.3 Where Committee authorises that an order be made under 2B.1(a) above, and no objections are made to that order during the statutory period after it has been made, officers will proceed to confirm the unopposed order without referring the matter back to Committee.
- 2B.4 Except where it falls within paragraphs 2B.1(c) or 2B.1(d) above a Table 1 function is delegated to the Corporate Director (Place). This will enable 'day-to-day' / operational matters including those requiring prompt attention, such as enforcement matters, to be dealt with outside the usual Committee cycle. A progress report updating Committee members as to current or completed enforcement action and other operational matters will be brought to Committee regularly.
- 2B.5 Except where it falls within paragraph 2B.1 above, a Table 2 function is delegated to the Corporate Director (Place). This will enable unopposed matters where the County Council engages in a process of pre-order consultation to gauge the views of a number of different parties including Parish and District Councils, local elected Members, user groups and utility companies, to be dealt with outside the usual Committee cycle. While there is no legal requirement to do so, it also consults the owner and / or occupier of any of the affected land at this stage, and the absence of any objections or

adverse comments from any party at the pre-order stage is a useful indication that a proposal is likely to be widely / universally supported.

2B.6.1 In the case of Definitive Map Modification Orders only, should no objections or adverse comments be made at pre-order stage, but objections or adverse comments only made once the order is made then the matter will be included in the periodical progress report brought to this Committee, but would not normally be the subject of a specific report to committee seeking a decision.

2B.6.2 Should objections be made to any other order during the statutory period after it has been made then unless those objections are withdrawn, a full report will be brought to Committee to determine whether to refer the order to the Secretary of State seeking its confirmation.

2B.6.3 The reason for the above distinction is that for orders other than Definitive Map Modification Orders the Council has a discretion as to whether to seek confirmation of the Order by the Secretary of State, and it is therefore appropriate that, should objections be received, a report be brought to Committee for a decision to be made. By contrast, if objections are received to a Definitive Map Modification Order then, unless the objections are withdrawn, the Council is required by law to refer the Order to the Secretary of State. In the absence of new information which may substantively affect Committee's view, there is therefore no decision for the Committee to make. Where any relevant new information is presented / discovered, a report will be brought before the Committee for a further decision.

2B.6.4 In the case of Definitive Map Modification Orders only, a report will only be brought to Committee for a decision where:-

- a) the Committee Chair requests it;
- b) the matter has been referred to Committee by the local Member and such referral has been agreed to by the Committee Chair; or
- c) the relevant case officer considers the matter to be exceptionally sensitive or controversial.

### **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 Committee Chair 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 Committee Chair 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 Chair, 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, Committee may wish to defer the final decision on the matter to receive additional specific information, or they may resolve to accept the application, authorising officers to implement the decision subject to officers either:

5.3.1 preparing such conditions as officers consider appropriate, so as to

control the development and ensure adequate protection of the environment and local people (in the case of Planning matters); or

- 5.3.2 investigating particular points and concluding that they would not materially affect Committee's decision (in the case of Public Rights of Way and Common Land and Town or Village Green matters).
- 5.4 This can be done solely by officers, or, should Committee so resolve, in agreement with the Committee Chair and Vice-Chair.
- 5.5 Where a decision is made contrary to officer recommendation the Committee **must** provide relevant reasons for their decision **in full**.
  - 5.5.1 In relation to Planning matters, 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. This should be agreed with the Committee Chair and Vice-Chair before the Notice is issued.
- 5.6 In relation to Public Rights of Way and Common Land and Town or Village Green matters, adjournment of the meeting for a short time for Councillors to receive legal or other advice before they make a decision contrary to the recommendation is advised. At the discretion of the Committee Chair, the public may be excluded from the meeting room while this takes place. In most situations it will be preferable for the matter to be deferred. Such steps are essential due to the quasi-judicial nature of decisions and will enable the Council to justify its position in any challenge to that decision.

## **Challenges & Complaints**

- 6.1 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.
  - 6.2.1 Specifically in relation to rights of way matters, where the Council decides not to make an order, or to confirm an unopposed order, there is a right of appeal against that decision. Where an order is made and receives objections, the Council cannot confirm it unless the objections are withdrawn. Should they not be withdrawn, the order can only be confirmed by the Secretary of State for Environment, Food and Rural Affairs (to whom the order must be sent for determination, even if the Council does not seek confirmation). These matters are processed through the Planning Inspectorate, and are inevitably heard at a local hearing or public inquiry or dealt with by submission of written representations.

- 6.2.2 If Committee members have decided contrary to the officer's recommendation, it could weaken the Council's case at public inquiry if the officer who made the original recommendation (or an officer involved in the production of the original report) was asked to present the Committee's case. In these circumstances, either the Committee Chair or another Committee member will speak in support of the Council's case at any public inquiry or hearing, or alternatively they will instruct a third party to present the case for them. Officers would, however, provide administrative assistance and support to Committee members in such a position.
- 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 information / policy statements (in the case of Planning matters) or to give such information 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 (in the case of Planning matters) or where an application has been decided for reasons not within the prescribed / relevant legal test/s (in the case of Public Rights of Way and Common Land and Town or Village Green matters).
- 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 / Public Rights of Way, Common Land and Town or Village Green considerations, as appropriate.

**Respective Roles of Committee Members and Officers / 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 Member<sup>1</sup>**

- 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:
- 8.2 Where a matter is of particular concern to residents of a Committee Member's electoral division they may wish to put the concerns of their electorate forward by speaking as the local elected representative at Committee. In order that they may strongly put forward the views of their electorate a Committee Member may consider it best to 'stand down' from the Committee for that date and not take part in the decision making process. Instead, another Councillor would be appointed in their place on the Committee for that meeting.
- 8.3 Alternatively, if a Councillor 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 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.

## **Dual Membership of Local Authorities / other statutory bodies**

- 9.1 Councillors may be elected to both the County Council and to a District / Borough Council and, in the case of Planning matters, 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, (or at the Local Access Forum in the case of Public Rights of Way matters), 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.

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

## **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 (as the local Member (per paragraphs 8.1-8.2 above)) 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 Planning & Licensing Committee.
- 10.4 It is each individual Councillor's responsibility to consider whether their involvement with a particular matter / people / group, 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 would find it difficult to believe that the Councillor had a fully open mind before the committee meeting, bearing in mind the local significance of the matter. Not only must Councillors attend committee with an open mind, but must be aware of the need to demonstrate this throughout all parts of the process, including when coming to their individual decision in committee.

### **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. Indeed it was stated in the Nolan Report in relation to Planning matters: "*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 Chair 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 The practice of permitting a developer to make a 'special presentation' to Committee before a planning application is submitted has been discontinued. However, where a developer holds a public pre-application exhibition, members of the Committee may wish to attend. Should they do so, 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 Dialogue and meetings with applicants at various stages is essential, but will normally only involve officers, and occasionally the local Councillor(s).
- 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) or interested parties 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. In



relation to Planning matters, most of the planning officers will be chartered members of the Royal Town Planning Institute. In relation to Public Rights of Way, Common Land and Town or Village Green matters, most officers will be members of the Institute of Public Rights of Way and Access Management.

- 17.3 Under the terms of such codes of professional conduct, officers 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. Officers 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.
- 17.4 Furthermore, in relation to Planning matters, officers who are 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. In order that 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. This gives an opportunity for applicants and objectors, and other interested parties, such as parish councils, to make presentations to the Committee. Details of how the system operates for the majority of planning applications and for all Rights of Way matters are set out in **Appendix A** to this Code. Equal opportunity will be given to objectors and supporters of a proposal. In relation to County Council Development, this could be a Chief Officer from the relevant department or their representative.
- 18.2 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 on planning applications which are 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. These 'special presentation' arrangements do not apply to Rights of Way matters and details of the arrangements are set out in **Appendix B** of this Code.

### **Site Visits**

- 19.1 All sites are inspected / visited 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 C**. In relation to determining Definitive Map Modification Orders based on historical documentary evidence, no site visit will be appropriate as the physical situation on-site today is irrelevant.

### **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 visits 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 orders in the system. Committee members also have the guidance on Rights of Way in their training packs and the Councillors' intranet pages.

### **Review of the Code of Best Practice**

- 21.1 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 will be reviewed on a regular basis. The protocol is published on the Council's website and updated as necessary.

### **What happens if there is a dispute?**

In the event of any dispute regarding the procedures or this protocol, the Committee Chair'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. Organisations and bodies who have made a formal representation on a rights of way, common land or town or village green matter may speak as one of the three allocated slots either for or against a proposed course of action. Additionally to those individuals or groups, a representative of the Local Access Forum will be allowed to speak for three minutes on rights of way matters.
- A1.2 Anyone who has made a valid written submission in connection with an item to be determined at Committee (including by e-mail) and has informed the County Council of their wish to be notified of the date of the meeting at which the application is to be considered, will be given an opportunity to register to speak 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, (e.g. to grant or refuse permission in relation to Planning matters, or to make or not make an Order in relation to Public Rights of Way matters). **No public speaking is allowed in respect of other reports.**
- A1.4 For the avoidance of doubt, no public speaking will be permitted in the case of applications for registration of town or village greens (or common land) where a separate forum (e.g. a public inquiry) has been or will be employed for the application to be fully explored, as there is an opportunity for supporters and objectors to be heard at that forum.

### **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:

[Follow this LINK to register to speak in relation to Planning matters](#)

[Follow this LINK to register to speak in relation to Rights of Way matters](#)

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.

### **What happens in the meeting?**

A4.1 The Committee Chair 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 A4.3a-g below, whether speaking as an individual or on behalf of a group, will have a maximum of **three minutes**. 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. 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 Committee Chair 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 another 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;
- g) In relation to Public Rights of Way matters only: The Local Access Forum.
- h) 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 may, with the consent of the Committee Chair, be given an opportunity to speak at this point and can speak for a maximum of ten minutes. (Subject to A6.3 below)

A4.4 If a speaker, including an elected Member, 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 the 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 written submission. In the case of Planning matters, this must be 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.

A5 **[NOT USED]**

**County Councillors**

A6.1 Where a Nottinghamshire County Councillor is not on the Committee but considers that the item may have a significant 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 Chair.

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 Committee Chair, to speak for a maximum of 10 minutes. Councillors should advise the Committee Chair 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:

A7.1.1 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.

A7.1.2 For rights of way matters, speakers must restrict themselves to elaborating on the evidence either for or against a proposed course of action, and what will be relevant will depend on the type of proposal under consideration.

A7.2 Speakers are not allowed to ask questions of Councillors, officers or other speakers.

A7.3 If any speaker behaves inappropriately or in any way behaves so as to disrupt or delay the work of Committee, the Committee Chair 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 Committee Chair may ask the relevant officer to comment on any matters of fact arising from what has been said. At the sole discretion of the Committee Chair, the relevant officer may, where the Committee Chair considers it would be helpful,

be asked 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 Committee Chair 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 Committee Chair. 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.

**PROTOCOL FOR SPECIAL PRESENTATIONS AT PLANNING AND LICENSING COMMITTEE (PLANNING APPLICATIONS ONLY)**

- 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; for example if Committee were to meet on a Tuesday, the written transcript must be with the relevant officer by 4:00pm on the preceding Wednesday.
- 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 solely on 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 VISITS**

### **Informal Site Visits**

1. Individual Councillors can visit a site themselves in advance of the Committee meeting, though Committee members wishing to visit 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. In relation to Public Rights of Way, while a landowner's permission is not required to visit rights of way already on the Definitive Map, permission from landowners should be obtained to inspect proposed routes or application areas whether unaccompanied or with an officer.
2. Ideally, Councillors should always be accompanied by the case officer, even on informal site visits. 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 visit 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 visit should be reported in accordance with the procedures described earlier in this Code.

### **Formal Site Visits**

4. Formal site visits will be held only when they provide a material benefit, for example, to understand local conditions and the physical characteristics of the site / existing and proposed routes of paths (as appropriate).
5. Where Committee members consider that there is substantial benefit to be gained from a site visit, a formal site visit 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 visit will be undertaken will be at the sole discretion of the Committee Chair. Similarly, where officers consider it appropriate, a short factual report will be brought to an earlier committee recommending a site visit. In relation to Planning matters, the need for site visits should be considered by Committee members when reviewing the Committee's Work Programme.
6. Once the decision to undertake a site visit has been confirmed, Democratic Services will liaise with the relevant officers, Committee Chair, Vice-Chair 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 visits, 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 visit is fact finding and no discussion of the merits of the matter should take place. 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. In relation to Planning matters, 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.
11. As the decision for a formal site visit 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 visits 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.
12. 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**

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

**OVERVIEW OF PUBLIC RIGHTS OF WAY, COMMON LAND AND TOWN OR VILLAGE GREEN AREAS OF WORK**

**(i) PUBLIC RIGHTS OF WAY**

Public rights of way fall into four distinct categories:-

- 1) Footpath – Walkers only
- 2) Bridleway – Walkers, horseriders & cyclists (though cyclists must give way to walkers and horseriders)
- 3) Restricted Byway – All of the above, plus non-mechanically-propelled vehicles (i.e. horse & cart / buggy, etc)
- 4) Byway Open to All Traffic. – All classes of user, so pedestrians, equestrians, cyclists, and vehicles both horse-drawn and mechanically-propelled.

The legislation which deals with rights of way activities is quite complex, and includes a number of important statutes, such as the National Parks and Access to the Countryside Act 1949, Countryside Act 1968, Highways Act 1980, Wildlife and Countryside Act 1981, Countryside and Rights of Way Act 2000, and the Natural Environment and Rural Communities Act 2006. Most of the legislation affecting rights of way is either quasi-judicial or regulatory in nature, typically involving recognition of existing routes or changes to the network by the extinguishment, diversion or creation of new routes or changing its status. Frequently-occurring areas of work for the Committee will be the following:

**Definitive Map Modification Orders**

The County Council has a statutory duty to make a Definitive Map Modification Order where a highway exists or can reasonably be alleged to exist. This can be prompted by the discovery of evidence by the Council or as a result of a formal application being made. The Definitive Map may be modified by the addition of a previously unrecorded route or the deletion of a route currently recorded, or by the upgrading or downgrading of a currently recorded route. Claims may be based on user or historical evidence or a combination of both. Claims are processed in accordance with the priorities set out in the Council's Rights of Way Improvement Plan (RoWIP). Upon receipt of an application, or on the discovery of evidence, officers will undertake research and make an assessment of the relevant information. The requirement to recognise the route by making a Modification Order is a quasi-judicial decision and depends only on whether the right of way exists or can reasonably be alleged to exist - there is no scope for consideration of matters such as community interests, desirability, safety, suitability &c.

**Public Path Orders**

The County Council has a discretionary power to make legal orders to divert, create or extinguish Footpaths, Bridleways and Restricted Byways. (For Byways Open to all Traffic and Restricted Byways, application must be made to the Magistrates' Court instead.) These can arise from applications or requests from local residents, path users, developers, farmers, schools, or indeed the Council itself may propose to make a change. A request for a diversion is the most common of these.

(ii) **COMMON LAND**

The County Council is a Registration Authority for the purposes of the Commons Act 2006 and the Commons Registration Act 1965. The 1965 Act established, for the first time, registers to conclusively record the existence of common land. The Council is responsible for keeping and maintaining this statutory register and, in limited circumstances under the 1965 Act, to take action to protect the registered land. (Action is normally taken by those whose rights are being infringed, i.e. the common rights owners.)

Common land is land, usually in private ownership, which has registered rights of common over it. These rights of common are held by persons other than the owner of the land and are rights to either do something on the land or to take something from it. Such rights do not have a recreational aspect.

Generally, the main features of common land are that it is open, unfenced and sometimes remote.

Those persons who are able to exercise the registered rights are generally known as "commoners". Common land and commoners' rights constitute a very ancient institution. They arose as part of the fabric of life in England and Wales and have their origins in the manorial system. Most common land and commoners' rights have fallen into disuse and, being forgotten, were lost over the centuries. It is generally in the more remote areas that common rights have survived in their use. The rights are held in common with the land owner. This means that a land owner cannot do anything which would restrict the exercise of a common land right.

Rights of common can include the following:

- **Estovers** – Taking wood, gorse or furze
- **Herbage** – Grazing sheep or cattle
- **Pannage** – Eating of acorns or beechmast by pigs
- **Piscary** – Taking of fish
- **Turbary** – Taking peat or turf

The Countryside and Rights of Way Act 2000 (CROW Act) provides for the public to have access to open countryside and this includes access to common land. The Countryside Agency have published maps for all areas indicating the land (including common land) to where the public now have open access rights.

It was popularly believed that every person had a right to go onto any common land. Before the Countryside and Rights of Way Act 2000 came into effect, the public in general did not have rights to go onto common land unless that land was in the area of an Urban District, or was crossed by public rights of way (in which case, people had to stay on the route of the right of way).

Registration was first carried out in the late 1960s. Some areas are quite small: such as

an ancient pinfold, being a circular piece of land with a diameter of six feet (where one or two animals could be kept, perhaps overnight for safety). Larger areas run into several acres and can support the grazing of substantial numbers of animals of various kinds. These areas might also have been waste land of the manor. Some were allotted under inclosure awards in the 18th or 19th centuries for digging sand or gravel for road maintenance.

There are also a number of green lanes which are quite properly registered as common land.

Where a right of common has been registered, the commoner has the legal entitlement to the peaceful enjoyment of that right, and action which impedes the exercise of that right, for example the erection of fencing, will be unlawful. Registered common land is protected from development by statutory controls, with the Secretary of State's consent being required for certain types of work to be carried out on the land.

### **(iii) TOWN OR VILLAGE GREENS**

As with its duty to register common land, the County Council has duties to register new town greens or village greens and, in limited circumstances, to act to protect the registered land. Town or village greens have a not dissimilar history to common land. They are, however, defined fundamentally separately for the purposes of registration.

Town or Village Greens are typically areas of land found in identifiable settlements or geographical areas where local people go to undertake lawful sports and pastimes. These sports and pastimes can include a wide variety of organised or ad hoc games, picnics, dog walking, observing wildlife and other similar activities. Although town or village greens may be owned by individuals, many of them are owned and maintained by local Parish Councils.

Town or Village Greens have statutory protections under two 19th century Acts: the Inclosure Act 1857 (section 12) and the Commons Act 1876 (section 29). The main protection has the effect of preventing works, including building works, taking place on the land.

It is possible for any person to apply to register another person's land as a town or a village green, provided that the legal tests are met – the most crucial of which is that for a period of at least 20 years a significant number of local inhabitants have used the land 'as of right' to indulge in lawful sports and pastimes. This right to apply may, however, be excluded if any one of a number of Planning-related "trigger events" has occurred on the land, although the right may become exercisable again if a corresponding "terminating event" has occurred since the "trigger event".

When an application is received, it may then be given publicity which will invite objections. Depending on the complexity and the volume of evidence for and against, it may be necessary to appoint an independent inspector to hold a public inquiry to establish the facts. The inspector does not make a decision but makes a report with a recommendation to the Council as Registration Authority.

The decision as to whether or not to register the land can only be determined on the facts established and the law as applied to those facts. There is no scope allowed for consideration of matters such as desirability or community interests. The Registration Authority's decision can only be made by examining the evidence to see if the facts show that all of the criteria are met.

Failure to meet even one of the criteria means that an application must be rejected on the facts.

A provision introduced in the Commons Act 2006 makes it possible for a land owner to register their own land voluntarily as either Common Land or a Town or Village Green. This does not involve objection or public inquiry.

**HIGHWAYS & PUBLIC RIGHTS OF WAY FUNCTIONS**

**TABLE A ('Day-to-Day' / Operational Functions undertaken by Officers)**

*(Italicised functions are not yet in force)*

<b>Function</b>	<b>Provision of Act or Statutory Instrument</b>
Power to grant a street works licence	Section 50, New Roads and Street Works Act 1991
Maintaining the register of information with respect to maps, statements and declarations	Section 31A, Highways Act 1980
<i>Maintaining the register of applications under sections 118ZA, 118C, 119ZA and 119C of the Highways Act 1980</i>	<i>Section 121B, Highways Act 1980</i>
Duty to assert and protect the rights of the public to the use and enjoyment of highways <sup>2</sup>	Section 130, Highways Act 1980
Duty to serve notice of proposed action, if any, in relation to obstruction	Section 130A, Highways Act 1980
<i>Power to temporarily divert footpath or bridleway due to works presenting a danger to users of the way</i>	<i>Section 135A, Highways Act 1980</i>
<i>Functions relating to the making good of damage and removal of obstructions</i>	<i>Section 135B, Highways Act 1980</i>
Power to permit deposit of builder's skip on highway	Section 139, Highways Act 1980
Power to license planting, retention and maintenance of trees etc in part of highway	Section 142, Highways Act 1980
Power to remove structures from the highway	Section 143, Highways Act 1980
Power to authorise erection of stiles etc on footpaths or bridleways	Section 147, Highways Act 1980
Powers relating to the removal of things so deposited on highways as to be a nuisance	Section 149, Highways Act 1980
Power to license temporary erection of structure which obstructs the highway in connection with works to buildings etc	Section 169, Highways Act 1980
Power to consent to temporary deposits or excavations in streets	Section 171, Highways Act 1980
Powers relating to the obligation to erect hoarding or fence during building works	Sections 172 & 173, Highways Act 1980

<sup>2</sup> This power is also delegated to the Committee as an overarching duty to be exercised by officers and/or Committee as appropriate.



<b>Function</b>	<b>Provision of Act or Statutory Instrument</b>
Power to consent to the placing of rails, beams etc. over highways	Section 178, Highways Act 1980
Power to restrict the construction of cellars etc under street	Section 179, Highways Act 1980
Power to consent to the making of openings into cellars etc. under streets, and pavement lights and ventilators	Section 180, Highways Act 1980
Power to enter into land management agreements with owners & occupiers of land	Section 39, Wildlife and Countryside Act 1981
Maintaining the register of applications made under section 53(5), Wildlife and Countryside Act 1981	Section 53B, Wildlife and Countryside Act 1981
Power to prepare map and statement by way of consolidation of definitive map and statement	Section 57A, Wildlife and Countryside Act 1981
Power to temporarily prohibit or restrict traffic on footpaths, bridleways, restricted byways and byways open to all traffic.	Section 14, Road Traffic Regulation Act 1984
Power to temporarily prohibit or restrict traffic on footpaths, bridleways, restricted byways and byways open to all traffic in connection with certain events.	Section 16A, Road Traffic Regulation Act 1984

**TABLE B (The main Functions undertaken by Committee)***(Italicised functions are not yet in force)*

<b>Function</b>	<b>Provision of Act or Statutory Instrument</b>
Power to create footpaths and bridleways by agreement or otherwise	Sections 25 & 26, Highways Act 1980
Power to apply for the stopping up or diversion of a highway	Section 116, Highways Act 1980
Power to extinguish footpaths and bridleways	Section 118, Highways Act 1980
Power to make a rail crossing extinguishment order	Section 118A, Highways Act 1980
Power to make a special extinguishment order	Section 118B, Highways Act 1980
<i>Power to determine application by proprietor of a school for a special extinguishment order</i>	<i>Section 118C(2), Highways Act 1980</i>
<i>Power to determine application for public path extinguishment order for the purposes of agriculture, forestry, or the breeding or keeping of horses</i>	<i>Sections 118ZA, Highways Act 1980</i>
Power to divert footpaths, bridleways and restricted byways	Section 119, Highways Act 1980
Power to make a rail crossing diversion order	Section 119A, Highways Act 1980
Power to make special diversion order	Section 119B, Highways Act 1980
Power to require applicant for order to enter into agreement	Section 119C (3), Highways Act 1980
<i>Power to determine application by proprietor of a school for a special diversion order</i>	<i>Section 119C(4), Highways Act 1980</i>
Power to make an SSSI diversion order	Section 119D, Highways Act 1980
<i>Power to determine application for public path diversion order for the purposes of agriculture, forestry, or the breeding or keeping of horses</i>	<i>Sections 119ZA, Highways Act 1980</i>
<i>Power to decline to determine applications under Section 118ZA, 118C, 119ZA and 119C</i>	<i>Section 121C, Highways Act 1980</i>
Power to stop up private means of access to highways	Section 124, Highways Act 1980
Duty to assert and protect the rights of the public to the use and enjoyment of highways <sup>3</sup>	Section 130, Highways Act 1980

<sup>3</sup> This power is also delegated to officers as an overarching duty to be exercised by Committee and/or officers as appropriate.

## Appendix 1

Function	Provision of Act or Statutory Instrument
Power to apply for variation of an order made under section 130B of the Highways Act 1980	Section 130B(7), Highways Act 1980
Power to authorise temporary disturbance of service of footpath, bridleway or restricted byway due to excavation or engineering works for the purposes of agriculture	Section 135, Highways Act 1980
Power to extinguish footpaths and bridleways where land acquired compulsorily or otherwise	Section 32, Acquisition of Land Act 1981
Duty to keep the definitive map and statement under review	Section 53, Wildlife and Countryside Act 1981
Power to include modifications in other orders	Section 53A of the Wildlife and Countryside Act 1981
Duty to reclassify roads used as public paths	Section 54, Wildlife and Countryside Act 1981
Power to convert footpaths into cycle track	Section 3, Cycle Tracks Act 1984
Power to seek approval to extinguish public right of way over land acquired for clearance	Section 295, Housing Act 1985 (c.68)
Power to authorise stopping-up or diversion of footpath or bridleway to enable development in accordance with planning permission	Section 257, Town and Country Planning Act 1990
Power to extinguish footpath or bridleway over land held for planning purposes	Section 258, Town and Country Planning Act 1990
Power to enter into agreements with respect to means of public access	Section 35, Countryside and Rights of Way Act 2000
Power to provide means of public access in absence of agreement	Section 37, Countryside and Rights of Way Act 2000
Power to register variation of rights of common	Commons Registration Act 1965 and Commons Act 2006
Application to Magistrates Court to remove obstruction on access land	Section 39 Countryside and Rights of Way Act 2000
Various	Powers under the Natural Environment and Rural Communities Act 2006
General	Powers under all other legislation associated with the County Council's functions in respect of Public Rights of Way