



meeting	PLANNING COMMITTEE	
date	13 JULY 2004	
from:	Director of Environment	agenda item number 8

NEW WAYS OF WORKING – CODE OF BEST PRACTICE FOR MEMBERS OF PLANNING COMMITTEE

Purpose of Report

1. To advise Members of the adoption of a Code of Best Practice for Members of the Planning Committee.

Code of Best Practice

2. Members will recall that the Draft "Code of Best Practice" for Members of Planning Committee was approved at the meeting of 25 November last year. The outline of what the Code would cover was set out in a special presentation to Members on 20 October 2003.
3. Following consideration by the County Council at its meeting on 6 May 2004, it was resolved that "with effect from 6 May 2004 approval be given to revised Standing Orders for Planning Committee as set out in the report and that the Monitoring Officer be authorised to make such amendments to the Council's Constitution to give effect to those Standing Orders and to the Code of Best Practice as she deems appropriate".
4. The Code of Best Practice has been amended to take on board comments and procedural changes made since the production of the draft and is appended to this report as Appendix 1 (attached for Members only). It is also available as a Background Paper, listed at the end of this report, and a copy has been placed in the Local Government Library, County Hall
5. The Code covers the following topics:-
 - Planning Committee and the Constitution
 - Member Training
 - How Planning Committee Functions
 - Public Speaking
 - Site Visits
 - Taking the Decision
 - Appeals, Challenges and Complaints

- Performance and Monitoring

7. It is the intention to produce the Code in a loose-leaf format, that can be amended from time to time in the light of changing circumstances. In this way, Members should always have an up-to-date version.
8. Furthermore, to assist Members, the key points have been highlighted and will be produced as a separate note so that Members can have that to hand as an 'aide-memoire'.
9. The Code of Good Practice includes the introduction of public speaking, the arrangements for which are set out as an annexe to the Code. In addition, a leaflet has now been produced which will be sent out to those persons who have formally made a written representation to a planning application.
10. The text of this leaflet is attached as Appendix 2. Only this photocopy style will be used for the initial period, and once all participants are satisfied that the system is working successfully, it will be published in line with the Department's 'house style'.
11. Members are reminded that the option of public speaking is to be introduced as from September at the next ordinary meeting of Committee. At this stage it is not known whether there will be any members of the public who wish to avail themselves of this opportunity at that meeting.

Statutory and Policy Implications

12. This report has been compiled after consideration of implications in respect of finance, equal opportunities, personnel, Crime and Disorder and those using the service. Where such implications are material, they have been brought out in the text of the report.

RECOMMENDATIONS

13. It is RECOMMENDED that the Committee approve and adopt the Code of Best Practice, including the Annexe on Public Speaking at Committee, hereby appended to this report.
14. It is FURTHER RECOMMENDED that the Committee note the text of the proposed leaflet on public speaking.

PETER WEBSTER
Director of Environment

Legal Services' Comments

Committee have power to decide the Recommendation. [SHB 25.6.04]

Director of Resources' Financial Comments

The contents of this report are noted. [DJK 28.6.04]

Background Papers Available for Inspection

Code of Best Practice – A Guide for Members of Planning Committee

Electoral Division(s) Affected

All.

EPD.NEH/VS/ep4546
17 June 2004 (23.6.04)

**“CODE OF BEST PRACTICE” –
A GUIDE FOR MEMBERS OF PLANNING COMMITTEE**

1. INTRODUCTION

- 1.1 This code of Best Practice is designed to help Councillors understand their role whilst acting as Members of Planning Committee. It sets out the role of Planning Committee, how Committee operates, and what Members need to take into consideration when dealing with matters connected with the work of Planning Committee.
- 1.2 This code has taken the following into account during its preparation:
- The Third Report of the Committee on Standards in Public Life: Local Government in England and Wales (the Nolan Report) - 1997.
 - Model Code of Conduct for Members introduced under Part III of the Local Government Act 2000.
 - Members’ Planning Code of Good Practice – Association of County Secretaries and Solicitors, 2003.
 - Probity in Planning – the role of Councillors and Officers – Local Government Association 2002.
 - Code of Professional Conduct – Royal Town Planning Institute, 2001.
 - The County Council’s Constitution, effective from 2002.
- 1.3 This Code should be read in conjunction with the Constitution and the Council’s Standing Orders.
- 1.4 This Code was considered by the County Council at its meeting of 6 May 2004, when the Monitoring Officer was authorised to amend the Constitution, to give effect to the Code of Practice and to changes to Standing Orders as appropriate. The report highlighted that this Code of Practice is to be seen as an aim or aspiration of the Planning Committee in how it conducts its work, and a failure to follow this guidance should not give rise to any legal challenge against decisions of the Committee.
- 1.5 The Code covers the following topics
- The Scope of Planning Committee and its relationship with the Constitution and Standing Orders.
 - Probity in Planning – the role of Members in dealing with planning applications, declarations of interest, lobbying, relationship with officers.
 - Member Training.
 - How the Planning Committee functions.
 - Public Speaking at Committee.

- Site Visits.
- Taking the decision.
- Appeals, Challenges and Complaints.
- Monitoring and Performance.

1.6 References in this code to considering and determining planning applications shall also be taken to refer to consideration and determination of other matters brought before Committee, such as matters to do with enforcement, minerals review sites or other related topics.

2. PLANNING COMMITTEE AND THE CONSTITUTION

- 2.1 The work of Planning Committee, and how it operates, is laid down within the Council's Constitution, effective from 2002.
- 2.2 For the purpose of clarification, Members are reminded that the new Constitution sets out how the Council operates, how decisions are made, and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people.
- 2.3 The Council appoints a number of 'Regulatory and other Committees', of which Planning Committee is one. Part 3 of the Constitution sets out the remit of Planning Committee.
- 2.4 In summary Planning Committee is responsible for the regulatory powers of the County Council relating to development control and highways. Expressly excluded from the work of Planning Committee is the preparation, approval and adoption of Development Plans (ie the Structure Plan and the Minerals and Waste Local Plans), and providing observations on behalf of the County Council in its capacity as County Planning Authority, on statutory and non-statutory plans and proposals of other authorities.
- 2.5 The planning system is used to regulate how land is developed and used in the public interest. Decisions Members will be asked to make in respect of planning applications and other related planning matters must be made in accordance with the Development Plan unless material considerations indicate otherwise (S54A of the Town and Country Planning Act 1990).
- 2.6 The work of Planning Committee will revolve 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.
- 2.7 The Council has a monitoring and enforcement role, and this Code of Best Practice applies equally to that role, although a separate Enforcement Policy and Enforcement Protocol are in operation.
- 2.8 The Planning Committee also has a regulatory role in respect of certain highway functions, most notably rights of way. Should additional regulatory powers be given to Planning Committee in the future, it should be noted that this Code of Practice applies only to the planning functions of the Committee.
- 2.9 All functions within the remit of Planning committee are also delegated to the Director of Environment (save 2 which are delegated to the Executive Head of Democratic and Legal Services). The arrangements for what can and cannot be delegated to officers are also set out in the Constitution
- 2.10 The Council's Standing Orders also lay down various principles as to the conduct of business of Planning Committee.

WHEN REPRESENTING THE COUNTY COUNCIL AS A MEMBER OF PLANNING COMMITTEE, MEMBERS MUST OBSERVE THE REQUIREMENTS AND GUIDANCE SET OUT IN THE COUNCIL'S CONSTITUTION AND ADOPTED STANDING ORDERS.

3. CODE OF CONDUCT AND PROBITY IN PLANNING

- 3.1 The Constitution sets out a Code of Conduct for Members. The Code, effective from 1 May 2002, is in accordance with Section 51 of the Local Government Act 2000, and applies to all Members of the Council.
- 3.2 It is not necessary to repeat the Code in this document, but elements of it are highlighted, as the issue of probity when dealing with planning matters, formed a substantial part of the Committee on Standards in Public Life (the Nolan Committee), and Members should be aware of certain key messages.
- 3.3 The Constitution states: **“EACH MEMBER SHOULD MAKE SURE THAT HE/SHE IS FAMILIAR WITH THE REQUIREMENTS FOR PERSONAL CONDUCT SET BY THE CODE. IT IS HIS/HER RESPONSIBILITY TO MAKE SURE THAT WHAT HE/SHE DOES COMPLIES WITH THIS CODE. EVERY MEMBER SHOULD REGULARLY REVIEW HIS/HER PERSONAL CIRCUMSTANCES WITH THIS IN MIND, PARTICULARLY WHEN THOSE CIRCUMSTANCES CHANGE. IF IN ANY DOUBT A MEMBER SHOULD SEEK ADVICE FROM THE COUNTY COUNCIL’S MONITORING OFFICER (THE HEAD OF LEGAL SERVICES) OR FROM HIS/HER OWN LEGAL ADVISOR. IN THE END, HOWEVER, THE DECISION AND THE RESPONSIBILITY ARE THE MEMBER’S.”**

Summary of the Code of Conduct

- 3.4 The Code covers a number of topics, including a series of general obligations on Members, Members’ interests, including prejudicial interests and disclosed interests, registration of financial and other interests, the role of Overview and Scrutiny Committees, and the registration of gifts and hospitality.

Confidentiality and Access to Information

- 3.5 A Member must not (a) disclose information given to him/her in confidence by anyone, or information which he/she believes is of a confidential nature, without the consent of a person authorised to give it, unless he/she is required by law to do so; nor (b) prevent another person from gaining access to information to which that person is entitled by law. (Part 3 of the Code of Conduct.)
- 3.6 At certain times, information relating to planning proposals, or proposed action in connection with a particular planning issue, will be brought to the attention of Members on Planning Committee. This may be for a number of reasons - for example to ascertain Members’ viewpoints during negotiations, and may be either through discussion with the Chair, Vice Chair or other interested and local Members, or may be reported to Committee.
- 3.7 If the latter route is used, the report may be an exempt item, and not for general publication or circulation under paragraphs 7, 12(a) and 12(b) of Part 1 of Schedule 12A of the Local Government Act 1972. The report may be treated as exempt because it contains sensitive commercial information, contains legal advice or if its disclosure might prejudice a future action of the Council. Needless to say, Members, whether on Planning Committee or not, must not disclose the contents of such reports.

Members' Interests

- 3.8 Part 5 of the Code of Conduct deals with Members not using their powers improperly to secure either a personal advantage or an advantage for some other person. This could be relevant to planning matters in a number of ways, such as through personal business interests in supplying goods and services, or by using their position to discuss a planning application, which may affect their property personally, when other members of the public would not have the opportunity to do so. Likewise, Members must not use their position to seek preferential treatment for friends or relatives, or any firm or organisation with which they are connected.
- 3.9 Should a Member have a personal or prejudicial interest in respect of a planning matter brought before Committee, they must abide by the provisions of Part 8 of the Code of Conduct, which deals with declarations of interest.
- 3.10 Each Member is personally responsible for deciding whether he/she has a personal or prejudicial interest that should be disclosed, but advice can be sought from the Monitoring Officer, the Head of Members Services or the Clerk to the Committee. Members are reminded to seek such advice in good time, as the proceedings of Committee cannot be delayed while a Member is advised.
- 3.11 The Code gives advice on the level of financial involvement which would warrant a personal interest. Any disclosure of personal interest might be considered to be a prejudicial interest. The Code says, subject to certain exceptions, that 'a Member with a personal interest in a matter has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest'.
- 3.12 The test of a prejudicial interest, therefore, is not whether a Member would be influenced by his or her personal interest, but whether a reasonable person, who knew all the facts, would think it likely that the Member would be influenced by that interest.

Dual Membership of Local Authorities

- 3.13 Members may be elected to both the County Council, and a District Council, and indeed may be Members of the Regulatory Planning Committee for both authorities. Members may also serve on a Parish Council.
- 3.14 If that is the case Members will have a dual role. Bearing in mind that for County Matters and the County Council's own development, it is the County Council's Planning Committee which is the decision making authority, and there is no reason why Members in that position should not be party to the decision, or involved in the debate leading up to the decision, provided one clear rule is followed.
- 3.15 **MEMBERS MAY HAVE BEEN INVOLVED IN DISCUSSIONS ABOUT A PARTICULAR PLANNING MATTER AT THE DISTRICT COUNCIL LEVEL, BUT WHEN IT COMES TO MAKING A DECISION AT THE COUNTY**

COUNCIL LEVEL, THEY MUST COME TO THAT DECISION MAKING PROCESS WITH AN OPEN MIND.

- 3.16 In other words, if a Member of Planning Committee, in advance of the decision-making meeting has taken a firm view on the planning matter, either in meetings of the District Council or elsewhere, they would not be able to demonstrate that, in participating in the decision, all the relevant facts and arguments had been taken into account – they would have fettered their discretion. Were they to participate in a decision in those circumstances, they might place the County Council in danger of a judicial review. (Challenge and Judicial Review is dealt with in Section 9.)
- 3.17 This advice, that Members of Planning Committee should scrupulously avoid forming a fixed view on the issue in advance, is further reinforced below in the section dealing with lobbying.

Overall advice

- 3.18 **IN ALL OF THE ABOVE CIRCUMSTANCES IT IS THE INDIVIDUAL MEMBER'S RESPONSIBILITY TO CONSIDER WHETHER THEIR INVOLVEMENT WITH A PARTICULAR MATTER, AND THEIR PAST CONDUCT IN LEADING UP TO THE DECISION MAKING STAGE, IS SUCH THAT IT COULD GIVE RISE TO PUBLIC PERCEPTION THAT THE MEMBER MIGHT BE PREJUDICED WHEN MAKING THE DECISION. IF IN ANY DOUBT, EARLY ADVICE SHOULD BE SOUGHT, AND IF THE CONCLUSION IS THAT THEIR CONDUCT COULD BE SEEN AS PREJUDICIAL, THEY SHOULD TAKE NO PART IN THE DEBATE, NOR HAVE A VOTE ON THE ISSUE, IN LINE WITH THE CODE OF CONDUCT.**

Relationship with Cabinet and the Overview and Scrutiny Functions

- 3.19 It is not the role of Planning Committee to make policy – that is done through the Cabinet Member for the Environment, Cabinet or the County Council itself. Legislation prevents the Cabinet Member for Environment (the Planning function) from being Chair of Planning Committee. However, the advice from Government is that the Cabinet Member should also be a Member of Planning Committee, to ensure appropriate channels of communication are maintained.
- 3.20 The Planning Committee is a decision-making body in its own right. Its decisions are not, therefore, subject to review or scrutiny by the Council's Overview or Select Committees.

Relationship with Officers

- 3.21 A Member must not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, the County Council.
- 3.22 The Guidance Notes to the Code of Conduct state that "Members and officers are servants of the public and are indispensable to each other. However, their responsibilities are distinct. Members are responsible to the electorate; officers are responsible to the Council. Officers' job is to give advice to Members and to the Council, and to carry out the Council's work under the

direction and control of the Council, its Committees and Sub-Committees and the Cabinet”.

Officers' Code of Conduct

- 3.23 Whereas Officers must comply with the Council's own Code of Conduct for Officers, they are also guided by their own Codes of Conduct, generally laid down by the professional association to which they belong. Most of the planning officers working in the Environment Department will be members of the Royal Town Planning Institute (RTPI).
- 3.24 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. It goes on to say that members (of the RTPI) shall 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.
- 3.25 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 the Code, whoever undertakes the work.

Lobbying of Members

- 3.26 Planning applications, particularly if involving complex proposals, will 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.
- 3.27 Once the proposal is in the public domain, "pressure" can be applied to Members, to either approve or refuse an application.
- 3.28 It is important to recognise that lobbying is a normal and perfectly proper part of the political process. Those who may be affected by a planning decision will often seek to influence it through an approach to their Local Member or to a Member of the Planning Committee.
- 3.29 As stated in the Nolan Committee's Third Report on Standards in Public Life (1997), "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".
- 3.30 However, unless care and common sense is exercised by all the parties involved, such lobbying can lead to the impartiality and integrity of a councillor being called into question.
- 3.31 **IF APPROACHED ABOUT A PARTICULAR APPLICATION, MEMBERS MUST TAKE GREAT CARE TO AVOID EXPRESSING ANY OPINION, EITHER IN FAVOUR OR OPPOSITION, THAT MAY BE TAKEN AS AN INDICATION THAT THE MEMBER HAS ALREADY MADE UP HIS OR HER**

MIND ABOUT THE PROPOSAL, BEFORE THEY HAVE BEEN INFORMED OF ALL THE RELEVANT FACTS, EVIDENCE AND ARGUMENTS, EMBODIED IN THE COMMITTEE REPORT OR IN SUBSEQUENT WRITTEN OR ORAL INFORMATION GIVEN TO THEM AFTER THE PAPERS HAVE BEEN PUBLISHED.

- 3.32 **MEMBERS SHOULD RESTRICT THEMSELVES TO GIVING FACTUAL ADVICE ABOUT PROCEDURE. THEY SHOULD ADVISE THOSE MEMBERS OF THE PUBLIC WHO SEEK THEIR SUPPORT TO PUT THEIR VIEWS IN WRITING AND SEND THOSE TO THE DIRECTOR OF ENVIRONMENT (IDEALLY MARKED FOR THE ATTENTION OF THE CASE OFFICER ASSIGNED TO THE APPLICATION).**
- 3.33 If Members do express an opinion, they should make it clear that they will only be in a position to take a final decision once they have heard all the relevant information at Committee.
- 3.34 It is the general public's expectation, and indeed the expectation of the Local Government Ombudsman, that a planning application will be processed and determined in an open and fair manner, in which Members taking the decision will take account of all the evidence presented to them before arriving at a decision, and to commit themselves one way or another before hearing all the arguments makes them vulnerable to accusations of partiality.
- 3.35 Section (9) of this Code of Best Practice deals with the role of the Ombudsman and with legal challenges, but it is worth stressing here that complaints and challenges can be made about the way a decision has been reached, not just about the decision itself. Members should, therefore, ensure they do not put themselves in such a position where a complaint or challenge could be made about the way they have made their decision
- 3.36 It is almost inevitable that Members, if alerted early on to a planning application, and whether lobbied or not, will form some kind of judgement about the merits of a particular proposal.
- 3.37 **MEMBERS SHOULD NOT OPENLY DECLARE THEIR VIEWS BEFORE THE MATTER IS DEBATED IN COMMITTEE. UNDER NO CIRCUMSTANCES SHOULD THEY ANNOUNCE WHICH WAY THEY INTEND TO VOTE IN ADVANCE OF THE COMMITTEE MEETING.**
- 3.38 It is recognised that a Local Member who happens also to be a Member of Planning Committee, can be put in a difficult position if a particularly contentious or sensitive application in their division is brought before Committee. This is particularly true where a large body of public opinion exists one way or the other, about the proposal.
- 3.39 In such circumstances, if a Member does make known their views for a particular outcome prior to the meeting, or indeed campaigns for or lends support to a particular cause, it would be very difficult for that Member to come to Committee with an open mind. Although this may not be prejudicial in terms of the Council's Code of Conduct, the proper course of action for such a Member would be to make an open declaration and not vote.

Ultimately the decision as to whether to vote or partake in the debate has to be one for the individual Member concerned.

- 3.40 Planning Committee Members are advised not to organise support for, or opposition to, any planning application.
- 3.41 Bearing in mind the advice that Members should come to Planning Committee with an 'open mind', it is plain that it would not be in line with that principle, if Members acting as a particular political affiliation, had met in advance to decide how to vote. Such a practice might indeed be held to be maladministration by the Ombudsman. Political whips should, therefore, not be used to influence the outcome of a planning application.
- 3.42 Members themselves should not lobby other members of Committee to vote either for or against a particular proposal.

Pre-Application Discussions

- 3.43 It is normal practice for discussions with applicants to take place in advance of the application being lodged. Indeed such practice is encouraged, and officers will, on occasions, be involved in discussion for some time before an application is finally put together and submitted.
- 3.44 For major applications, such an approach is formalised through the Environmental Assessment Regulations 1992, 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. Members will not normally be involved in such discussions.
- 3.45 Should Members be approached by applicants or potential applicants, in all cases they should alert the Director of Environment, who, if it is appropriate to meet with the applicant, can arrange to do so with the relevant case officer(s) present, so that a formal, written note of the discussion can be made. Such formal note shall be placed on case file, and a copy sent to the applicant.
- 3.46 Members should also make a note of any potentially contentious telephone discussions with applicants. Copies of e-mails and fax documents sent to them by applicants, as well as copies of all correspondence, should be passed on to the case officer.
- 3.47 Any comments made by Members to applicants, should only be of a procedural nature. Members should avoid expressing any opinion as to the merits of a proposal and any comments or views given are personal and provisional, and do not bind the council to any particular decision. Any advice or comment should be, at most, limited to a reminder that decisions made by the council must be in line with the Development Plan, except where material considerations indicate otherwise.
- 3.48 Where Members have held discussions or meetings with applicants, this must be disclosed at the relevant Committee meeting.
- 3.49 **MEMBERS ARE ADVISED NOT TO MEET WITH APPLICANTS UNLESS ACCOMPANIED BY AN OFFICER FROM ENVIRONMENT DEPARTMENT.**

Contact with the Media

- 3.50 Members may be approached by the media (local or national newspapers, radio or TV) for a comment about a particular proposal. The general advice still holds for such approaches, and Members should avoid committing themselves to a view on any proposal before it is considered at Committee.
- 3.51 A general rule will be press comments leading up to a Committee will be made by officers. Comments following Committee would normally be given by the Chair of the Committee.

Special Presentations to Members

- 3.52 From time to time, there may be merit in inviting applicants and local people/groups to address the Committee. At such a presentation, no decision must be taken, nor any indication given to any interested party by Members, that a particular outcome is favoured. Arrangements for such presentations are set out in section 6 dealing with Public Speaking.

Availability of Information

- 3.53 Subject to the issue of confidentiality referred to above in paragraph 3.48, Members of Planning Committee will be entitled to receive all relevant submissions, plans, details of applications, if such request is made to the Director. The same facility will be made available to a Local Member in whose area a planning application is situated.
- 3.54 Similarly, if Members seek a meeting with officers to discuss a particular proposal, arrangements will be made to arrange such a meeting. A note of the discussion will be taken and placed on the case file, and a copy of that note passed to the Member concerned, and copied to the Chair of Planning Committee.
- 3.55 Should Members seek to visit a site with an officer (with or without the applicant), the procedure should follow the advice set out in Section 7.

Probity in Planning

- 3.56 It will be fairly obvious that the power to make decisions on planning applications, whether positively or negatively, or to sanction certain actions, can have a huge impact on the lives of local people. Furthermore, planning decisions can have major consequences for the environment as a whole.
- 3.57 Pressure brought to bear on Individual Members, through lobbying and through personal interests, can therefore play a considerable part in the decision making process, and if not handled correctly can leave the Member open to speculation and suspicion, and can then leave the Authority vulnerable to challenge.
- 3.58 Members are strongly recommended to take heed of the advice set out in this particular part of the document, and remember that when they come to take

decisions on planning matters, not only must they do so with an open mind, but must be seen as having an open mind as well.

4. MEMBER TRAINING

- 4.1 Planning Committee will deal with a wide range of complex topics and Members must understand how the planning system works, and what issues they should or should not consider, before coming to a decision.
- 4.2 It would be impracticable to expect Members of Planning Committee to become acquainted with every nuance of planning law, or to be familiar with all aspects of the relevant policy and guidance documents. The Committee report will provide this information, but Members do need to have at least a rudimentary grasp of the planning system, and what it entails.
- 4.3 Other Members, not on Planning Committee, will also need to be involved in the planning process. For example, various stages of Minerals and Waste Local Plan preparation, will require approval of the full County Council. Members may become involved through a particular proposal within their Electoral Division.
- 4.4 **AT THE START OF EACH NEW PERIOD OF COUNCIL ADMINISTRATION, MEMBERS WILL RECEIVE A TRAINING PACK, INCLUDING A HANDBOOK ON THE PLANNING PROCESS, SETTING OUT, IN BROAD TERMS, THE RELEVANT LEGISLATION, AND WHAT FACTORS MEMBERS MUST CONSIDER WHEN DETERMINING PLANNING APPLICATIONS, MAKING DECISIONS ABOUT ENFORCEMENT MATTERS, OR DEALING WITH OTHER ASPECTS OF THE PLANNING SYSTEM.**
- 4.5 **AS SOON AS POSSIBLE AFTER THE MEMBERSHIP OF PLANNING COMMITTEE IS ANNOUNCED, THOSE MEMBERS MUST ATTEND A TRAINING SESSION, TO TAKE THEM THROUGH THE VARIOUS PROCEDURAL ISSUES THEY ARE LIKELY TO MEET. NO MEMBER SHALL BE ALLOWED TO VOTE ON ANY MATTER COMING BEFORE PLANNING COMMITTEE UNTIL THEY HAVE ATTENDED SUCH A SESSION.**
- 4.6 **FOR NEW MEMBERS WHO JOIN PLANNING COMMITTEE AT SOME POINT AFTER THIS INITIAL TRAINING SESSION, A COPY OF THE HANDBOOK WILL BE ISSUED, BUT THAT MEMBER SHALL UNDERGO AN INDIVIDUAL TRAINING SESSION WITH THE RELEVANT OFFICER(S) OF THE COUNCIL, BEFORE THEY MAY VOTE AT PLANNING COMMITTEE.**
- 4.7 From time to time, new legislation, policy guidance or new procedural matters will arise. It will be the intention to bring these to the attention of Members through information reports. If appropriate, changes can be made to the Handbook.
- 4.8 Occasionally it may be helpful for presentations on particular aspects of general interest to be given to Committee Members, outside of the Committee meeting itself. It may also be beneficial for Members to visit sites operating up-to-date techniques, particularly in respect of mineral working and waste management.

- 4.9 Should Members attend individual training events, such as the RTPI's Planning Summer School, or other seminars, workshops or training events to gain some procedural or technical competence, not only must appropriate authorisation be obtained, but the knowledge gained needs to be shared with other Members of Committee.
- 4.10 **IT SHALL BE A REQUIREMENT THAT A MEMBER WHO ATTENDS A TRAINING EVENT SHALL PREPARE A WRITTEN REPORT ON THAT EVENT, TO BE PRESENTED TO THE NEXT AVAILABLE MEETING OF PLANNING COMMITTEE.**
- 4.11 Should individual Members wish to discuss any aspect of the planning system in a less formal way, there is no reason why they should not approach an appropriate officer and seek further guidance.
- 4.12 Members are reminded that the Local Government Library and the Library within Environment Department subscribe to various planning journals, notably 'Planning' (weekly) and the 'Journal of Planning and Environment Law' (monthly), 'Minerals Planning' and 'Waste Planning' (Quarterly).
- 4.13 Both libraries also have access, through the Internet, to a wide range of documents relating to legislation, new procedures or research, and Members may wish to avail themselves of that service.
- 4.14 The Local Government Library also monitors the national and local press for relevant items, which are kept on a topic file for Members to consult. It is also possible for individual Councillors to register their interest with the Library, who can then arrange to send out material on an individual basis.

5. HOW PLANNING COMMITTEE FUNCTIONS

- 5.1 Planning committee is currently scheduled to meet every four weeks. Exact dates may vary according to the Council diary. Meetings are currently held on Tuesday mornings, commencing at 10.30, and held in the Council Chamber. This may, of course, be altered due to particular circumstances.
- 5.2 Papers for Committee are published five working days in advance of the meeting, as required by the Access to Information Act 1995.

Setting the Agenda

- 5.3 Following the 'standard items' - attendance, declarations of interest etc, the agenda pattern will be dictated by whatever business is proposed for that meeting. If an application has resulted in considerable local interest, it is likely that such application(s) will be heard early on in the proceedings. This will help visitors who may not wish to stay to hear other issues debated.
- 5.4 Should there be a request for an objector or a supporter to speak at Committee, this too will mean it is likely to be heard early on in the agenda (see Section 6 below for arrangements).

The Committee Report

- 5.5 The Director of Environment (sometimes in conjunction with the Executive Head of Democratic and Legal Services) will produce a report on each individual topic to be discussed at Committee. Those reports dealing with planning applications which Members are being asked to determine will normally follow a set pattern, prepared in accordance with corporate guidelines.
- 5.6 Members will be aware that planning applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan, be it the Structure Plan (to be replaced by the Regional Spatial Strategy) and/or the relevant District Local Plan, or Minerals or Waste Local Plan, will set out a series of policies, against which each proposal is tested. 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. (What constitutes the Development Plan will be amended by the requirements of the Planning & Compulsory Purchase Act 2004.)
- 5.7 Should Members wish to read the individual policies in more detail, these can be viewed in the Local Government Library, or on request, the relevant extract of the Plan and its policies can be made available before the meeting. Members should contact the case officer, whose name and contact details will be referred to in the report, to request policy background.
- 5.8 The report will follow on to set out the material considerations, which will take into account any representations made on the application, either in support of it or raising objections to it. Additionally Members will need to take into account any comments made by supporters of or objectors to any application,

should that application be the subject of a request for public speaking at committee (see Section 6 below).

- 5.9 The Director will always aim to give a positive recommendation on any proposal, either recommending approval or refusal. It would be very unusual indeed for an “open recommendation” to be put forward, where the views of Committee are sought without guidance from officers. It is quite possible that recommendations will be finely balanced, one way or the other.
- 5.10 Recommendations for approval will inevitably mean a series of conditions need to be imposed on the decision. These will be set out in an appendix to the report. By and large they will be in their final version, but occasionally, Members will be asked to give authority to officers to conclude the exact wording. The report will also contain a paragraph giving the reasons for the approval.
- 5.11 Where a Planning Obligation (a Section 106 Agreement) has been negotiated, the Heads of Terms of that Agreement will generally be set out in an appendix.
- 5.12 Where a recommendation for refusal is being put forward, this will always be accompanied by reasons for refusal.

Supporting Information

- 5.13 The report will contain a plan or plans illustrating the proposal. A location plan will be included. This will either be a separate plan, or an inset into the main plan. It is appreciated that Members from a division in the north of the County may not be familiar with locations in the south, and vice versa.
- 5.14 Generally, the application plans showing the proposal in detail will be on display, either outside the Council Chamber or elsewhere in another Committee room. Members are advised to look at the plans before taking their place in the Chamber.
- 5.15 Where it helps, photographs will be used in reports. In certain situations, an officer will give a presentation using PowerPoint or other appropriate technology.

Additional Information

- 5.16 Once the recommendation has been moved and seconded, the Chair will generally ask the officer present to introduce the item. From time to time this will be the case officer. Should there be any corrections or updates to the report, these too will be introduced at this point.
- 5.17 Late representations received after papers have been circulated will be brought to the attention of Members either by memo before the meeting, or at the meeting. If there is some significant late correspondence bringing new information, the meeting will be adjourned to enable Members to read the new material.

Background Papers

- 5.18 The Report will list 'background papers'. Guidance as to what constitutes a background paper is set out in the Local Government (Access to Information) Act 1985. Normally any document that is published and in the public realm, eg the relevant Local Plan, will not be listed as a background paper.
- 5.19 Background papers will include relevant external correspondence, such as that between the Department and the applicant, and any letters of representation or responses to consultation. For legal reasons, certain items of correspondence may be exempt from being a background paper.
- 5.20 Should Members wish to see copies of background papers, they should contact either Members Services or the author of the report.

Taking the Decision

- 5.21 Having debated the item, the Chairman will ask Members to vote in the normal way. The decision taken will be minuted, and the minutes will appear at the next available meeting for approval as a true record. Further advice on how Members should reach their decision is set out in Section 8 below.
- 5.22 At the end of the meeting, unless Members need to keep a copy of their report for a particular reason, they are asked to recycle their papers.

Matters Delegated to Director of Environment

- 5.23 Not every planning application, or related matter, will come before Planning Committee. The majority of planning applications will be dealt with under the Director's delegated powers, without reference to Committee, other than to report the decision at a later date.
- 5.24 This process is well understood, and ensures that Committee is not bogged down with routine business, and enables the system to deal with straightforward applications, as expeditiously as possible, in line with various national Performance Indicators and Departmental targets.
- 5.25 If alerted to an application, either through the Council's own reporting procedure, or as a Local Member as part of the consultation process, or at the request of a local resident or interested person, a Member may request that the item be considered at Planning Committee rather than by the Director under delegated powers. Such a request shall be made to the Chair of Planning Committee, who, if in agreement with that request shall notify the Director as soon as possible thereafter.
- 5.26 The matter will then be brought to the next available meeting, and would also give any single local objectors the opportunity to speak under the arrangements for public speaking set out in Section 6.
- 5.27 The current delegation arrangements have been updated. This new updated list is as follows:-

For the purpose of determining planning applications, delegated decisions may be made by the Director on all Minerals, Waste and County council development applications with the exception of:

- (a) Minerals and waste development involving a site area of greater than 15ha or extraction/input of in excess of 30,000 tpa + new built development with a floorspace in excess of 10,000sqm.
 - (b) Those involving a departure from the development plan and that also requires a referral to GOEM.
 - (c) Those which are accompanied by an Environmental Impact Assessment.
 - (d) Those which have financial implications for the County Council; for instance those applications which have an accompanying Planning Obligation/S106 Agreement or could involve the Council in the payment of compensation.
 - (e) Those which have received objections within the statutory consultation period or other such period as agreed with the CPA, from the relevant District or Parish Council or Local Member that cannot be resolved by amendment to the scheme or the imposition of planning conditions.
 - (f) Those which have been referred to Planning Committee by a Local Member and referral has been agreed by the Chair.
 - (g) Those which are recommended for refusal (including those with associated enforcement action recommended).
 - (h) Those which have received significant objections, within the statutory consultation period or other such period as agreed with the CPA, from consultees or neighbouring occupiers.* (For clarification "significant" objections requiring referral must (i) raise material planning considerations; (ii) be unresolvable by amendment to the scheme or imposition of planning conditions; (iii) involve more than three objections from separate properties.) This will also apply to applications which are objected to by means of a petition or by more than three "standard"/duplicate letters from separate people.
- [*The case officer should liaise with the Team Manager, as appropriate, to confirm whether referral to Planning Committee is required.]
- (i) Those which are submitted by the Environment Department.
 - (j) Those which, in the considered view of the Director, raise issues of regional or national significance.
 - (k) Those involving the determination of new planning conditions for mineral sites, and the issuing of other such notices as may be appropriate under the Minerals Review Provisions of the Environment Act 1995, where in the opinion of the Director, compensation is likely to become payable.

- (l) Those involving the making and serving of orders under the Town and Country Planning Act, 1990 for revocation, modification, discontinuation, prohibition and suspension, where in the opinion of the Director compensation is likely to become payable.

Departures from the Development Plan

- 5.28 Where an application is considered to be a Departure from the Development Plan, even if there are no objections, this will be brought before Committee, so that the Council's formal views can be made known to the Government Office. Committee will be asked to authorise the Director to approve the application, should the application not be "called-in" for determination by the Secretary of State.

Applications accompanied by Environment Impact Assessment

- 5.29 Those applications accompanied by an Environmental Impact Assessment (EIA) will always be reported to Committee. Special consideration must be given to such applications, so each of the issues addressed in the EIA will be considered in the report.

Applications accompanied by/requiring a Planning Obligation

- 5.30 A Planning Obligation, either in the form of a unilateral undertaking or a legal agreement under Section 106 of the Town and Country Planning Act 1990, is a device to secure some additional benefit or means of control which cannot be dealt with through the permission itself or by conditions imposed thereon. Again, because of the complexity of such matters, and the legal implications associated with them, they will be brought before Committee.
- 5.31 Normally, in such cases, Committee will be asked to resolve to give their support to the application, with authority being given to the Director of Environment to make the decision, once the Agreement is signed and sealed.

6. PUBLIC SPEAKING

- 6.1 One of the recommendations of the Nolan Report was that local authorities should adopt rules on openness, allowing for discussion on planning matters by both Members and the public.
- 6.2 A Code of Best Practice in Planning Procedures referred to in the Nolan report states that: "There should be opportunities for applicants and objectors, and other interested parties, such as parish councils, to make presentations to Planning Committee."
- 6.3 This approach was further endorsed by the Planning Green Paper, published in 2001 which states that the government "is looking to local authorities to ensure that their new constitutions... provide a transparent framework for making decisions on planning applications, as well as other issues."
- 6.4 In order that both Members, and those who wish to speak, gain the most benefit from the allowance of speaking at Committee, there has to be a clearly and well publicised system, easily understood by all who wish to partake of this service.
- 6.5 A separate, free leaflet has been published, which is made available to all those who make representations on an application. It is also available on-line on the Council's web site.
- 6.6 The Council's constitution has been amended following the meeting of the County Council on 6 May 2004, such that the standing orders for Planning Committee now include the adoption of the procedure for allowing public speaking. The Code of Practice for Public Speaking is set out as an annexe to this document.

How the System Works

- 6.7 **ANYONE WHO HAS MADE A WRITTEN REPRESENTATION IN CONNECTION WITH A PLANNING APPLICATION THAT WILL BE DECIDED BY COMMITTEE, HAS THE RIGHT TO SPEAK AT THE RELEVANT MEETING. THIS WILL INCLUDE THOSE IN OPPOSITION TO AN APPLICATION, AND THOSE IN FAVOUR OF IT. THOSE WISHING TO SPEAK MAY DO SO ONLY IN ACCORDANCE WITH THE AGREED CODE OF PRACTICE FOR PUBLIC SPEAKING.**
- 6.8 Equal opportunity will therefore be given to objectors and supporters of a proposal, meaning that an applicant will be able to speak at the meeting if they so wish. On a County Council application this could be another Chief Officer or their representative.
- 6.9 Anyone who intends to speak must first register their wish to do so. A time limit has been set for each group of speakers. A written summary of the points to be covered is requested.
- 6.10 A maximum of 3 speakers will be entitled to speak in opposition to an application (and 3 speakers in support). Each speaker, whether speaking as

an individual or as part of a group or deputation, will have a maximum of 3 minutes.

- 6.11 District Councils and Parish Councils have the right to speak also, as has the Local County Council Member (if not a Member of Planning Committee).
- 6.12 On an occasion where a complex or controversial application is being discussed, therefore, a maximum of about 30 minutes speaking time will be permissible.
- 6.13 The guidance leaflet explains what matters can be addressed, which must be relevant to the application. Objectors and supporters are not allowed to ask questions of Members. Members may only ask questions of those speaking for the purpose of clarification.
- 6.14 Once the period of public speaking has finished, the application will be debated in the normal way, and a decision made by Committee. Should the decision be deferred, no further public speaking is allowed when the application is referred back to a later meeting.

Special Presentations

- 6.15 In exceptional circumstances, and with the discretion of the Chair of Planning Committee, a special presentation may be held. This will only be in exceptional circumstances where the matter is of such a complex technical or legal nature, and where there are significant policy implications, and where the nature of public interest is so high as to warrant such an approach.
- 6.16 Requests for presentations will be treated on their merits, and it shall be at the Council's discretion through the Chair's decision, whether such presentations are held.
- 6.17 If a presentation is to be allowed, for the purposes of giving information to Members, opportunity should be given for either side to give a presentation within an equal time frame. Members will be able to ask questions.
- 6.18 Suitable dates and venues will be arranged through the Party Whips. The Local Member in whose area the proposal is situated, should also be invited to the Presentation.
- 6.19 In some circumstances, developers may request such an opportunity before an 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 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.
- 6.20 It is stressed that the giving of presentations outside of the main Committee cycle, is not considered to be a regular event, and is likely to be appropriate in only a handful of cases.
- 6.21 **IN EXCEPTIONAL CIRCUMSTANCES, AND AT THE DISCRETION OF THE CHAIR OF PLANNING COMMITTEE, A SPECIAL PRESENTATION MAY**

BE HELD, GIVING OBJECTORS AND SUPPORTERS THE OPPORTUNITY TO ADDRESS COMMITTEE. SUCH PRESENTATION WILL BE FOR THE PURPOSES OF INFORMATION AND MEMBERS MUST NOT DEBATE THE APPLICATION AT THAT STAGE OR EXPRESS AN OPINION ABOUT IT, BUT RESERVE COMMENT UNTIL THE APPROPRIATE COMMITTEE MEETING.

7. SITE VISITS

- 7.1 It is often helpful to Members to have seen a particular site 'on the ground' before coming to a decision. While reports will contain relevant plans and sometimes photographs, and larger scale plans, sections, elevations and impressions can be displayed at Committee, there is often still the need to see a site to get a good understanding of the site and how it sits in relation to the landscape and to the surrounding environment.

Informal site visits

- 7.2 There is nothing to stop Members from visiting the site themselves in advance of the meeting. However, if the site cannot be seen from the public highway and involves going onto the site or on adjacent private land, they should first contact the relevant case officer, who can liaise with the applicant or land owner.
- 7.3 Members visiting sites of mineral or waste activity must comply with current health and safety legislation. This will often involve the wearing of personal safety equipment (appropriate footwear, reflective jacket/waistcoat, hard hat).
- 7.4 If Members wish to visit a County Council property – school, elderly persons home, library etc., they should of course always report first to reception.
- 7.5 Even when accompanied by relevant planning staff at the site, Members must make it clear they are there to see the site and assess its implications, and should not comment on the merits of the scheme. They may, of course, ask for factual information about a particular scheme. Any information obtained from such an informal site visit should be reported back to Committee, so all Members have the same information.

Formal site visits

- 7.6 Where the Committee as a whole indicate a wish to see the site, certain more formal arrangements need to apply. There will be occasions when the Director feels it appropriate to advise Committee that a particular proposal is being considered, and in advance of bringing a report to make a decision a short factual report may be brought to Committee. This might advise that a site visit be arranged.
- 7.7 This process, which will not be invoked in the majority of cases, has the benefit of saving time should Members only decide they need to see a site once the report for decision is with them for consideration.
- 7.8 Members at Committee, may also defer consideration of an application for a formal site visit.
- 7.9 In either of the above cases, the procedure will be as set out below. **IF MEMBERS DO DEFER CONSIDERATION, REASONS MUST BE GIVEN AS TO WHY A SITE VISIT IS NECESSARY, SUCH AS WHERE PARTICULAR SITE FACTORS ARE SIGNIFICANT IN TERMS OF THE WEIGHT TO BE ATTACHED TO THEM, OR DIFFICULTY FOR MEMBERS TO ASSESS OTHER FACTORS WITHOUT AN INSPECTION.**

7.10 THE CHAIR, VICE CHAIR AND PARTY WHIPS WILL CONFER AND TOGETHER WITH THE DIRECTOR WILL ESTABLISH A DATE AND TIME FOR THE VISIT. WHERE A MATTER HAS BEEN DEFERRED FOR A SITE VISIT AT A COMMITTEE MEETING, IT SHOULD ALWAYS BE THE INTENTION TO ARRANGE THE SITE VISIT BEFORE THE NEXT MEETING OF COMMITTEE, SO AS TO AVOID UNNECESSARY DELAY.

7.11 Transport arrangements will depend on circumstances. A mini-bus or coach from County Hall, although on the face of it a more sustainable option than all Members travelling independently, is not always the best approach. It may be more convenient, and involve less travel, if Members make their own way to the site from their home. For this reason no hard and fast rule can be laid down.

7.12 Where a mini-bus, coach or private car is to be used from County Hall, Officers will advise Members in writing of the arrangements, and will require written confirmation from Members of their intention to use the transport being provided. If no such notification is received, this can, of course, cause confusion.

Attendance at Formal Site Visits

7.13 LOCAL MEMBERS, IF NOT ON PLANNING COMMITTEE, SHALL BE INVITED TO ATTEND. IF THE PROPOSAL MAY HAVE A SIGNIFICANT IMPACT ON ADJOINING AREAS, THE INVITATION SHALL BE EXTENDED TO MEMBERS REPRESENTING ADJOINING ELECTORAL DIVISIONS.

7.14 If access to the site involves the use of private land or by going onto Council owned property, Officers will arrange that beforehand. Officers will be present to advise members of the proposal, and to point out salient features and highlight key issues. Wherever possible, details of the site visit will be included in any subsequent report to Committee.

7.15 If the site is a mineral and waste operation, again Members are reminded that they will need to comply with health and safety legislation. Personal Safety Equipment is generally loaned to visitors by the site operators. Members are, in any event, always advised to wear stout footwear, and be prepared for adverse weather conditions.

7.16 Site Managers or indeed applicants and their agents may, therefore, be present on site. They shall be advised by letter that they are not allowed to lobby Members, but are able to accompany the party for health and safety reasons, and to answer any factual questions put to them.

7.17 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 objectors. Again, lobbying of Members is not allowed, and objectors will not be allowed to accompany Members on the visit.

7.18 IT IS STRESSED THAT NO DECISION SHOULD BE TAKEN ON THE SITE VISIT. DECISIONS ON APPLICATIONS CAN ONLY BE TAKEN IN

FORMALLY CONSTITUTED MEETINGS. MEMBERS ARE AGAIN REMINDED THAT THEY SHOULD NOT COMMIT THEMSELVES TO A PARTICULAR STANCE AT THE SITE VISIT, BUT SHOULD ONLY DO SO ONCE THEY HAVE ALL THE RELEVANT INFORMATION, AT THE MEETING WHERE THE DECISION WILL BE TAKEN.

Meetings away from County Hall

- 7.19 If a formally constituted site visit takes place some distance from County Hall, it may be appropriate to arrange a site visit and then a meeting of Committee at a venue close to the site. This will have an advantage for local people who may find it difficult to attend meetings at County Hall.
- 7.20 **IF APPROPRIATE, A SPECIAL COMMITTEE MEETING WILL BE ARRANGED AT A VENUE CLOSE TO THE SITE THAT IS THE SUBJECT OF MEMBERS' INSPECTION, SUCH MEETING TO FOLLOW THE HOLDING OF THE SITE INSPECTION.**
- 7.21 Irrespective of whether there is to be a site visit, Members and officers may consider it prudent to hold a meeting away from County Hall.
- 7.22 In all such cases, the meetings have to be properly constituted, which involves adequate and appropriate notification and publicity. Meetings will still follow the normal procedure, and will be attended by appropriate staff from the Environment Department, Members Services and Legal Services. Meetings will often (but not always) be held in County Council property.

8. TAKING THE DECISION

8.1 SECTION 54A OF THE TOWN AND COUNTRY PLANNING ACT 1990 STATES THAT WHEN DETERMINING A PLANNING APPLICATION, THE DECISION MUST BE MADE IN ACCORDANCE WITH THE DEVELOPMENT PLAN, UNLESS MATERIAL CONSIDERATIONS INDICATE OTHERWISE.

8.2 The officer report will set out all the policy implications arising from the Development Plan (Structure Plan, District Local Plan, Minerals Local Plan, Waste Local Plan), together with all the responses from consultations and publicity arrangements. The report will weigh up all these issues, and will come to a judgement as to whether any material considerations are such that a decision not in accordance with the Development Plan is warranted.

8.3 MEMBERS, WITH THE BENEFIT OF THE ADVICE AND RECOMMENDATION IN THE REPORT, TOGETHER WITH ANY OTHER INFORMATION RECEIVED AT THE COMMITTEE (THROUGH LATE REPRESENTATIONS OR HEARD THROUGH THE PUBLIC SPEAKING PROCESS), MUST THEN DETERMINE THE APPLICATION AS THEY SEE FIT.

Decisions taken against Officer Advice

8.4 Members may choose not to accept the recommendation in the Committee report and may make a contrary decision. In those circumstances, arrangements need to be made to ensure decisions are both legally sound, robust enough to stand challenge and protect the Council in the future.

8.5 Should the recommendation be to refuse an application, and Members vote to approve the application, that any decision to approve will inevitably need to be accompanied by relevant conditions.

8.6 If officers have prepared the case on the basis of a refusal, such conditions will not be available for the Committee meeting. In those circumstances it is recommended that Members resolve to grant planning permission, subject to such conditions as the Director of Environment deems as appropriate, so as to control the development and ensure adequate protection of the environment and local people. As necessary, such conditions can be drawn up in agreement with the Chair, and Vice-Chair before they are issued. Confirmation that the decision has been issued in accordance with Committee resolution can be reported back at the earliest opportunity.

8.7 It may be prudent for the meeting to be adjourned for Members to receive legal or professional advice before they make a decision contrary to an officer recommendation.

8.8 If the application is a departure from the Development Plan, and has been advertised as such, any decision to approve rather than refuse will require the application to be referred to the Government Officer for the East Midlands before any permission could be issued.

8.9 Where the officer recommendation is to approve an application, and Members wish to see it refused, then reasons for refusal must be given.

- 8.10 It will be for Members to determine what the reasons are which have prompted them to come to such a decision. These need to be translated into a form of words to be incorporated on the Decision Notice. Again, such wording will not have been prepared in advance, and in these circumstances, it is recommended that the Chair temporarily adjourns proceedings to enable planning officers and the lawyer present at Committee to draft appropriate reasons.
- 8.11 Members are reminded that any decision to refuse is challengeable on appeal, and thus reasons for refusal must be robust and based on solid planning or policy criteria so that they may be defended, and do not put the council at risk of having costs awarded against it in the event of an appeal being upheld.
- 8.12 This is not to say that any decision to refuse against officer advice will always be open to a request for costs if an appeal against the decision is upheld. In a democratic process, Members are entirely free to come to whatever decision they feel is appropriate. However, that decision must be taken for sound planning reasons.
- 8.13 **DECISIONS TAKEN BY MEMBERS ARE CHALLENGEABLE, EITHER ON APPEAL OR IN THE COURTS. ANY DECISIONS TAKEN MUST, THEREFORE, BE FOR CLEAR AND DEFENSIBLE PLANNING REASONS.**

9. APPEALS, CHALLENGES AND COMPLAINTS

Appeals

- 9.1 Where planning permission has been refused, (or an enforcement notice served in relation to a breach of planning control) an appeal may be made to the First Secretary of State (the Office of the Deputy Prime Minister).
- 9.2 Although unusual, it is also possible to appeal against the imposition of a condition imposed on a planning permission.
- 9.3 Appeals are processed through the Planning Inspectorate, and may be heard at a Public Inquiry, at a hearing, or be dealt with by written representations. There is a wealth of guidance and legislation covering the appeal process. Applicants now have three months in which to appeal.
- 9.4 There is no third party right of appeal under English planning law. In other words, if permission is granted, no aggrieved objector has a right of appeal.
- 9.5 If Members have voted to refuse an application against officer advice, it may weaken the Council's case on appeal if the officer making the original recommendation to approve is then asked to defend it on appeal, particularly at a public inquiry.
- 9.6 It is accepted that officers are servants of the Council, and may be instructed to give evidence, but that, in the long run, may not be the most appropriate way forward.
- 9.7 In these circumstances, which it is anticipated will be fairly infrequent, the Chair or another Member of Committee should give the evidence at any subsequent public inquiry. Officers would be able to assist and would be able to present all the factual evidence.
- 9.8 **SHOULD MEMBERS REFUSE PERMISSION AGAINST OFFICER ADVICE, MEMBERS WILL BE EXPECTED TO GIVE EVIDENCE AT ANY SUBSEQUENT APPEAL.**

Non-determination

- 9.9 Should no decision be reached on an application within 8 weeks of it being lodged (or within 16 weeks where an Environmental Impact Assessment has been submitted with the application), and if no extension of time to these periods has been agreed, applicants have a right of appeal against 'non determination'.
- 9.10 Should that situation arise, a report will be prepared for the first available Committee meeting, so that the Council's position can be established, and evidence prepared accordingly.

Legal Challenges

- 9.11 **MEMBERS ARE REMINDED THAT THEIR DECISIONS ARE OPEN TO LEGAL CHALLENGE. EVEN IF PERMISSION IS GRANTED BY**

COMMITTEE, SUBJECT TO MEETING THE NECESSARY CRITERIA, THERE IS NOTHING TO STOP AN AGGRIEVED PARTY MOUNTING A LEGAL CHALLENGE AGAINST THE DECISION OF THE COUNCIL.

- 9.12 Although rare, there is a growing use of legal challenges. These could cost the authority dear in defending the challenge, let alone the award of costs if the challenge is upheld. For costs to be awarded, one side has to have acted 'unreasonably'. A Legal Challenge has to be made on a Point of Law, so it is crucial that Members follow the guidelines set out in this document, in the constitution, and elsewhere, and do not make 'reckless' decisions or take any action that could in any way compromise the position of the Authority.
- 9.13 A challenge under Judicial Review procedure normally has to be made within three months of the planning decision being made. A challenge under Human Rights Act legislation can be made one year after the decision.

Complaints Procedure

- 9.14 Decisions of Planning Committee will often not be popular, particularly where a decision has been made against the wishes of local people. The role of Committee is to make a balanced judgement, and it will be inevitable that hard decisions need to be made, for the greater good, at the risk of upsetting various parties along the way.
- 9.15 It is possible that aggrieved persons may choose to complain. Given that there is no third party right of appeal, and the use of legal challenges will be infrequent, the right to complain may be the only route that objectors feel is open to them.
- 9.16 Complaints may be made against officers or against Members. Initially complaints against officers might well be dealt with within the Department, but may progress to a more formal complaint made through the Chief Executive's Department. There is a well-established procedure for dealing with such complaints.
- 9.17 Complaints against Members might be made in respect of how Members acted in the run-up to a Committee, or at the meeting itself. Again complaints would initially be handled through the Chief Executive's Department. Should the matter not be resolved to the satisfaction of the complainant, the matter could ultimately be referred to the Standards Board for England.
- 9.18 It is also possible that a complaint may be made against the Council to the Local Government Commissioner - the Ombudsman. If that is the case, it is possible that Members may be required to provide statements to the Ombudsman as to how certain events unfolded.
- 9.19 The Ombudsman may uphold a complaint, and find maladministration in the way a particular case was handled. The Ombudsman can also recommend an award of costs to a complainant where maladministration has been found that has led to an injustice.
- 9.20 At the end of the day, a complaint is made against the way the Council behaved - not the decision it took (although that may well be the motive

behind the complaint). Even if a complaint is upheld, it will not alter the decision of the Committee. That can only be altered through the appeal process (if the decision was to refuse) or through a successful legal challenge.

10. PERFORMANCE AND MONITORING

- 10.1 Members will wish to know how the Committee is operating. Information reports will be brought to Committee advising Members of new applications, and decisions taken under delegated powers. Information reports on other relevant topics such as new legislation or policy guidance will also be prepared as appropriate.
- 10.2 Quarterly, a report will be brought before Planning Committee to advise on the Council's performance in meeting Best Value Performance Indicators.
- 10.3 Annually, a report will be brought before Planning Committee to advise Members of the annual Best Value performance, plus other relevant information relating to the work of the preceding year.
- 10.4 Also regular reports will be brought relating to various enforcement and monitoring activities, and, as appropriate, on progress with appeals.

Annual Inspection

- 10.5 Members may wish to see how the decisions they have made are being carried out on the ground. Although information reports will detail progress of certain planning applications brought before Committee, there is no formal opportunity to actually view the consequences of the decisions being made.
- 10.6 In the past there has been an annual Environment Tour, which looked at all matters within the remit of the Cabinet Member for Environment. This would not necessarily have the time to visit a specific issue more relevant to Planning Committee.
- 10.7 **AN ANNUAL PLANNING COMMITTEE TOUR WILL BE ARRANGED TO VIEW CERTAIN KEY SITES. THESE WILL EITHER REFLECT DECISIONS TAKEN PREVIOUSLY BY COMMITTEE, OR WILL GIVE AN OPPORTUNITY TO MEMBERS TO VISIT SITES TO SEE SOME PARTICULAR ASPECT OF THE COMMITTEE'S WORK IN PRACTICE.**
- 10.8 The arrangements for such an event will be agreed with the Chair and will be reported to Committee in advance of the event.

Review of the Code of Best Practice

- 10.9 The workings of this Code of Best Practice should be reviewed periodically, and a report brought to Committee to advise Members of any suggested changes, and to report on the operation of particular arrangements, such as the move to allow public speaking.

ANNEXE TO CODE OF BEST PRACTICE

PROTOCOL FOR PUBLIC SPEAKING AT PLANNING COMMITTEE

- The County Council is responsible for determining County Matter planning applications (dealing with minerals and waste issues) and applications for its own development made under the Town and Country Planning General Regulations 1992 procedure. There are a number of related matters which also come to the County Council for determination.
- Such applications and related submissions are dealt with at the Council's Planning Committee. How the Planning Committee functions is set out in a Code of Best Practice.
- At its meeting of 6 May 2004, the County Council adopted the Code of Best Practice, incorporating this annexe in relation to public speaking at its meetings of Planning Committee in connection with a planning application (or related submission) to be determined by the Council.
- The County Council deals with planning applications in line with current legislation and Government policy and advice, having regard to the Development Plan and other material considerations. As part of that process it will take into account the views of those persons affected by the proposals, the key statutory consultees and local residents. Should local residents comment upon a planning application they will be given the opportunity to speak at the Committee meeting which will determine the application.

Who Can Speak

- Anyone who has made a written submission in connection with a planning application which the Council is considering, has an opportunity to speak at the relevant Planning Committee meeting. The written submission must have been made by the time the papers for the meeting are published.
- Speakers may be either in favour of a proposal, or in opposition to it.
- Normally public speaking is only allowed where an application is being referred to Committee for a decision for the first time. (Occasionally, progress reports on major submissions are taken for information purposes, or to arrange site visits.)
- If no decision is made, no further public speaking is to be allowed – except in certain circumstances (see below).

How a request to speak must be made

- Anyone who wishes to speak at a Planning Committee must first register their wish to speak with the relevant officer. Registration must take place no later than three clear working days before Committee. [ie if Committee is on Tuesday, registration must be made no later than 4.00 pm on the preceding Wednesday.] Early registration of a request to speak is encouraged.

- The registration should be made on a form which will be supplied by the Environment Department. Details of how to register a request will be made available through a leaflet and will be on the council's web site.
- Anyone wishing to speak will be chosen on a "first come, first served" basis. Those registering will be asked to supply contact details, in case they need to be advised of changed arrangements.
- Where a group of objectors wish to speak, it is recommended that they nominate a spokesperson to address the Committee on their behalf.
- Individuals may request that an item be referred to Planning Committee by asking their Local Member to request the Chair of Planning Committee to include it on the agenda of a forthcoming meeting.
- Should a speaker not be able to attend in person, for any reason, someone nominated by them may act as substitute, providing they have written confirmation from the registered speaker that the person can speak on their behalf. It is not necessary for local residents to employ specialists/lawyers to speak on their behalf, although such circumstances will be permissible. Normally representatives of national or local organisations and bodies, or spokespersons on behalf of consultees will not be allowed to speak, unless with prior written agreement of the Chair.
- Those persons who are confirmed as speakers must make themselves known to the Committee Clerk at least 30 minutes before the start of the Committee, so that they can be given instructions on procedure. They should hand to the Clerk a written summary of the points they will be making to assist in the compilation of the Committee Minutes.
- 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. All such submissions should have been made to the Director of Environment in advance. The use of overhead projectors, slide projectors or PowerPoint displays is not allowed.
- No cameras, tape recorders or other types of recording equipment shall be permitted to be used/operated while business is being transacted.
- Applications where a request to speak has been properly registered will normally be heard early on in the Committee agenda.
- The Chair will introduce the item, and ask the relevant Officer to present the item, who will add any further information relevant to the report and application.
- The Chair will invite any deputations to speak, in this order:
 - representatives of the District/Borough Council, representatives of the Parish Council and any Local Member in whose area the application lies (but who is not a Member of Planning Committee);

- those speakers who have been properly registered to speak in opposition to the proposal;
- those speakers who have been properly registered to speak in favour of the proposal, or who are the applicants or their agents.
- Those persons addressing the Committee are not allowed to ask questions of Members, Officers or of each other.
- Members, through the Chair, may ask questions of speakers but only for the purpose of clarification of any particular point.

How long speakers may take

- Each speaker, whether speaking as an individual or as part of a group (or deputation), will have a maximum of 3 minutes. A maximum of 3 speakers will be entitled to speak in opposition to an application (and 3 speakers in support).
- Assuming each of the groups referred to above take up the option to speak at Committee the maximum time allowed on each application would be 30 minutes.
- Speakers will be advised when the final minute of their allotted time has been reached, so that they may conclude their presentation.

What can be said

- Speakers must address only issues relevant to the planning application and its determination by the Committee. This will include the effects of the proposal in terms of Structure Plan and Local Plan policies, Government guidance and policy, current legislation, case law, highways and transport issues, public amenity, disturbance to the environment and impact on them as local residents.
- Speakers must not refer to non-planning issues such as property rights, any covenants relating to land, competition, moral or personal issues, loss of view or property value. Speakers must also not make any defamatory comments, nor use insulting or unacceptable language, nor in any way behave so as to disrupt the workings of the Committee. The Chair shall have the discretion to curtail the speaking opportunity in such circumstances, may ask speakers to leave the Chamber, or in extreme circumstances may adjourn the meeting.

What happens next

- Once the period of public speaking has been concluded, the Chair may ask the relevant officer to comment on any matters of fact arising from the presentation.
- Speakers should retire to the Public Gallery, and are not allowed to join in with the debate.
- Members will debate the application, and in line with current standing orders will reach a decision without any further public involvement.

- Should the applications under consideration be deferred for a site visit or for any other reason, no further opportunity for public speaking shall be allowed, unless the application has undergone substantial amendment by the time it is reconsidered, or if a period of 6 months or more has elapsed and new information has come to light.
- Should the application be deferred before the public speaking period had commenced, those registered to speak will be notified of when the Committee will reconsider the application, and they will be given equivalent opportunity to speak at the later meeting.
- Once the decision is made, speakers may remain in the Public Gallery or may leave before the next item on the agenda.
- In any event, all speakers will be notified in writing of the Committee's decision.
- In the event of any dispute regarding the procedures or this protocol, the Chair's decision shall be final.

Public Awareness and Review of the Procedure

- The procedures shall be reviewed on a regular basis.
- The above protocol shall be summarised in a free guidance note to local residents available as a paper copy or on the Council's web-site, updated from time to time as necessary following a review of procedures.

GUIDANCE ON PUBLIC SPEAKING AT PLANNING COMMITTEE

MAKING YOURSELF HEARD – PUBLIC SPEAKING AT NOTTINGHAMSHIRE COUNTY COUNCIL PLANNING COMMITTEE

The County Council has adopted a Code of Best Practice for members of its Planning Committee. The Code incorporates a protocol allowing public speaking at meetings of Planning Committee in relation to planning applications being determined by the Council.

Why you should read this leaflet

This leaflet explains how to go about speaking to Councillors in Planning Committee before they take a decision about a planning application. It may be relevant to you if you:

Object to or support an application or
Wish to speak on behalf of an objector or supporter

And you have already sent your views in writing

Which applications go to Planning Committee?

The Council has the option to deal with certain matters either through its Planning Committee or through a process of decision making by officers using powers delegated to them by the Council. If an item goes before Planning Committee you have the right to speak at the relevant meeting.

Where and when are Committee meetings held?

Meetings are normally held once a month at County Hall on Loughborough Road in West Bridgford. Committee reports are available 5 working days before the committee meetings.

MAKING A REQUEST TO SPEAK

Who is entitled to speak?

If you have made a written submission in connection with a planning application that the Council is considering you now have the opportunity to speak at the relevant Committee if the application is to be treated in that way. You may be in favour of a proposal or in opposition to it. However, public speaking is generally not allowed if the application is being referred to Committee for a second time.

How do I make a request to speak?

To register your wish to speak please return the enclosed request slip to the Planning Support Officer. The registration form is available on the Council's website at:

www.nottinghamshire.gov.uk/environment/planningmatters/developmentcontrol.htm

You may complete this on-line and e-mail it back to us at:

development.planning@nottscc.gov.uk.

You must register no later than three clear working days before Committee. For example, if Committee is on Tuesday, registration must be made no later than 4pm on the previous Thursday. However, you are encouraged to register as early as possible, as there is a limit on numbers who may speak.

Can someone else speak on my behalf?

Someone nominated by you may act as a substitute providing they have written confirmation of this from you as the registered speaker. You may employ specialists or lawyers to speak on your behalf but it is not necessary for you to do so. Usually representatives of national or local organisations, or spokespersons on behalf of consultees will not be allowed to speak unless they have the prior written agreement of the Chair of the Committee.

What happens once I have made my request to speak?

Your request to speak will be acknowledged by the Planning Support Officer either by telephone, letter or e-mail.

How many people may speak at Committee?

A maximum of 3 people will be entitled to speak in opposition to an application (and 3 people in support). This will operate on a "first come first served" basis.

You should note that even if you do not wish to speak, or are not one of the first 3 to register, your written representations will be contained in the Committee report. Equal weight is given to written and verbal representation. Your letter will form one of the background papers to the Committee report, which will be available for public inspection 5 days before the Committee meeting.

PROCEDURE AT COMMITTEE MEETING

What happens at the meeting?

- The chair will introduce the item and ask the Planning Officer to present any further information relevant to the report and application.
- The chair will then invite you to speak.

- The chair will invite the relevant officer to respond to any factual matter raised by your presentation. (You will not be able to respond or speak further at this stage).
- You should then retire to the public gallery.
- The Committee Members will then debate the application and make a decision.

What is the order of speaking for each application?

1. Representatives of the District/Borough Council, Parish Council or any Local Member in whose area the application lies.
2. Those properly registered to speak in opposition to the proposal.
3. Those properly registered to speak in favour of the proposal (such as the applicant).

Can I use any equipment or circulate photographic material during my presentation?

The use of overhead projectors or powerpoint slides is not allowed and no additional documents or photographs can be submitted to the Committee Members.

Can I ask questions of the Committee?

You are not allowed to ask questions of Members, Officers or of each other.

Will I be asked questions by the committee?

Members, through the Chair, may ask you questions but only for the purpose of clarification.

How long will I have to speak?

Each speaker, whether speaking as an individual or as part of a group, will have a maximum of **3 minutes**. Notice will be given to you when the final minute of your allotted time has arrived.

What can I say at Committee?

Only issues relevant to the planning application should be addressed in your presentation. These include;

- Impact on local residents and the environment.
- Relevant planning policies and Government guidance.

You should not refer to non-planning issues such as property rights, covenants, financial competition, loss of property value or view.

The Chair will ask you to leave the Committee if you use unacceptable language or disrupt the proceedings of the Committee in any way.

What happens after the Committee meeting?

Everyone who has made written representations will be notified in writing of the Committee's decision.

Access/Other Formats

This leaflet and the registration form can be made available in other formats on request. County Hall is wheelchair accessible. If you have any other special requirements please contact us on 0115 977 4277.

Contacting Us

Address: Development Control
 8th Floor, Trent Bridge House
 Fox Road
 West Bridgford
 Nottingham
 NG2 6BJ

Tel: 0115 977 4277

Fax: 0115 977 2418

E-mail: development.planning@nottscc.gov.uk

REGISTRATION TO SPEAK AT COMMITTEE

Name

Address

.....

.....

.....

Post Code

*** Daytime telephone no**

Mobile telephone no

E-mail address

Date of Planning Committee at which you wish to speak

.....

Description of Planning Application that your presentation will relate to

.....

.....

Application Ref no. (if known)

What is your view on the proposed development? (Please place a cross in the appropriate box)

Support

Object

Please ensure that you register as early as possible (but no later than 3 clear working days before the Committee Meeting).

*** Please ensure that you provide a contact telephone number in case the Council needs to contact you at short notice before the Committee meeting.**

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