Planning and Rights of Way Committee

Code of Best Practice

(incorporating Public Speaking Protocol)

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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 Rights of Way Committee (the '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 Council's Constitution (incorporating the codes and protocols on Councillor and Officer conduct, the Code on Councillor and Officer Relationships and the Council's Procedure Rules for meetings). This Code was last revised on 3 September 2019.

1.3 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 (including any member acting as a substitute for another member) at all times in relation to planning, rights of way matters and any other business that comes before committee (such as licensing and registrations matters) and includes both decision-making meetings of the Committee as well as less formal occasions, such as site visits, correspondence and meetings with the public, officers, or consultative meetings.

1.4 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.

The Work of the Committee

Introduction

2.1 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 Council itself such as schools and children's homes ("County Council Development"). More general development proposals are determined by the relevant District/Borough Council. The preparation, approval and adoption of Development Plans falls outside the remit of Committee, as does providing observations on behalf of the Council in its capacity as County Planning Authority and as a statutory consultee, on plans and proposals within other authorities.

2.2 The Committee also has responsibility for functions relating to public rights of way, and for determining applications for the registration of land as town or village greens and transferring rights of common and associated Commons Act Registration Authority duties. Non-regulatory matters for the management, maintenance and promotion of the rights of way network, including responsibility for the budgetary matters, fall outside the remit of committee.

2.3 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.

2.4 Particular note should be made of the role of committee in determining planning applications for its own development ("County Council Development") as these arrangements have the potential to lead to the County Council being accused of being 'judge and jury'. The 1992 Regulations allowing these applications to be determined by Committee (The Town and Country Planning General Regulations 1992) reinforces this point by stating that applications for planning permission for development to which these Regulations apply shall not be determined:

(i) by a committee of the County Council if that committee is also responsible (in whole or in part) for the management of any land or buildings to which the application relates; or
(ii) by an officer if their responsibilities include any aspect of the management of any land or buildings to which the application relates.

2.5 Whilst officers do work closely with other officers of the County Council when considering proposals at the pre-application stage and during the consideration of applications, such arrangements are no different to those carried out with private developers from the minerals and waste industry and are considered essential to the timely determination of planning applications.

The key is to ensure that there is a functional separation between the County Council as an applicant and the County Council as the planning authority. This matter is reinforced for County Council development applications which are accompanied by an environmental statement under The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 with the 2017 Regulations requiring appropriate administrative arrangements to be in place to ensure functional separation is in place between the applicant and planning authority.

2.6 The legislation relevant to Committee is complex and supplemented by Government guidance and case law. 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.

2.7 A brief overview of each of the types of Planning matters with which the Committee is concerned can be found below, along with the equivalent for Public Rights of Way, Common Land and Town or Village Green matters.

2.8 The 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.

Determination of planning applications

2.9 Whether a planning application is determined by Committee or by officers under delegated powers is directed by The Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026 (the 2026 Regulations). The purpose of the 2026 Regulations is to standardise decision making across all planning authorities in England (which have previously worked in accordance with their own schemes of delegation) in order to provide greater clarity and consistency about the role of planning committee in the decision-making process. The 2026 Regulations are supported by Government Guidance.

2.10 The 2026 Regulations split planning applications into two schedules: Schedule 1 and Schedule 2 applications.

2.11 Schedule 1 applications (typically minor, small-scale applications and technical approvals) **must be delegated to officers for determination in all cases**. Exceptions to this rule apply to the County Council's own development, as further discussed below, and so Schedule 1 applications are restricted to certain technical matters such as applications for certificates of lawfulness, or the making of non-material changes to a development.

2.12 Schedule 2 applications are effectively all other applications that do not fall with Schedule 1, **and these could be delegated to officers for determination or be determined at Committee**. For the County Council, Schedule 2 applications comprise all minerals and waste development and large-scale County Council development, such as new schools. These applications are presumed to be delegated to officers unless the application

raises:

- one or more issues of economic, social or environmental significance to the local area;
- one or more significant planning matters having regard to the development plan and any other material considerations;

And, in respect of all the above

- the nominated officer and nominated Councillor of the planning committee agree they should be referred to committee for determination.

2.13 Regarding the County Council's own development (referred to as 'own interest applications in the Regulations) falling within both Schedule 1 and Schedule 2, there might be occasions where, in the interests of transparency and public accountability, it is appropriate for an application to be referred to committee even if it does not raise significant planning, economic, social or environmental issues provided that the referral is consistent with the provisions within the 2026 Regulations.

2.14 Where a planning function is not listed in either Schedule 1 or 2, it is for the Council to decide whether it should be delegated to an officer or referred to Committee for a decision (as part of its local constitution).

2.15 Decisions on whether a Schedule 2 application is to be determined by officers or by Committee will ordinarily be made by the nominated officer and the nominated Councillor, unless the application has met all of the following local rules, in which case they can be automatically dealt with under delegated powers. The Council's local rules which allow Schedule 2 applications to be automatically determined under delegated powers are:

- The application has not generated an objection from a statutory consultee, the parish council or any adjoining/neighbouring parish council consulted during the statutory consultation period (typically 21 days for standard applications, 30 days for EIA applications) unless an extended period of time to respond has been agreed with officers
- The application has not generated more than three objections from the public during the statutory publicity period, unless the application has been submitted by the Place Department in which case an application cannot generate more than a single objection. Again, this can take into account extended periods of time to respond where agreed with officers
- The local Councillor has not objected to the application during the statutory publicity period or an agreed extended period of time

2.16 For Schedule 2 applications which do not meet all the above rules, the applications will be considered by the nominated officer and the nominated Councillor to determine whether it should be referred to Committee for determination or can be determined by officers under delegated powers, taking into account the criteria detailed in 2.12 above. The Guidance states that the nominated officer should be the Chief Planning Officer or equivalent and the

Council will need to ensure that they have other senior planning officers who can provide cover in order to avoid unnecessary delays in the referral process. Officers who have the authority to sign off delegated reports on planning applications comprise the Head of Planning and Environment; the Team Manager, Development Management; and the Senior Practitioner, Planning Applications. The Head of Planning and Environment will be able to fill the role of the nominated officer with the other two roles as substitutes. The Guidance states that the nominated Councillor should be the chair of the planning committee with arrangements in place for other Councillors to cover should the nominated Councillor not be available. The chair will fill the role of nominated Councillor and the vice chair will act as their substitute when required.

2.17 Nominated officers and nominated Councillors should make every effort to reach agreement on which applications should be referred to Committee. However, where agreement is not possible, the 2026 Regulations state that the decision must be delegated to officers.

2.18 Meetings between the nominated Councillor and the nominate officer to discuss Schedule 2 applications will take place regularly and soon after the statutory publicity and consultation period has closed on an application. This will allow non-contentious applications to progress to a timely determination. However, there might be occasions where the circumstances relating to a particular planning application change following a meeting, such as a sudden influx of late representations highlighting a particular matter of concern. In such situations, an application could be considered again at a meeting between the nominated Councillor and nominated officer.

2.19 As a minimum, the Council will keep a record of the cases the nominated officer and nominated Councillor have considered for referral to committee, the outcome of their consideration and the reasons for their decision. They should report this to the planning committee on a regular basis and make it available on their website. This will be done through the Development Management Progress Report presented to each regular committee meeting.

2.20 Reports to Committee on planning matters will include all relevant material including a description of the site and surroundings, a description of the proposed development, details of the publicity and consultation exercise carried out on the application (which will accord with the Council's Statement of Community Involvement), any relevant comments made by supporters of, or objectors to, any application, the officer's assessment of the application against planning policies and any other material considerations, 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 Section 18 below).

2.21 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 Council (with regard to minerals and

waste), the District/Borough Councils (all other planning matters), in addition to any Neighbourhood Plans which have been made. 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.

2.22 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 polices in the Development Plan.

2.23 Reports coming forward for a decision will recommend either approval or refusal. The report will explain the reasoning for the recommendation and, where refusal is recommended, this will always be accompanied by planning-related reasons.

2.24 Recommendations for approval will normally be accompanied by a series of conditions, set out in an appendix to the report, and sometimes a planning obligation. 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 any additional or revised condition after the Committee meeting has concluded. This shall be done in consultation with the Committee Chair and Vice Chair.

2.25 Periodical progress reports on operational matters and on matters following a decision of the Committee will be reported to Committee regularly. For example, where committee has previously refused planning permission for an application and the decision has been the subject of an appeal, the appeal decision would be reported to the Committee.

Applications requiring referral to the Secretary of State

2.26 In some planning cases the Council is required to consult the Secretary of State after a resolution to approve or refuse planning permission has been reached to allow him/her to review the case and to decide whether or not to 'call in' the application for his/her determination. Cases where this can apply are set out in legislation and can relate to certain inappropriate developments in the Green Belt, certain developments affecting Playing Fields and in some cases where the resolution is contrary to advice from a statutory consultee, such as the Environment Agency. Report recommendations will set out such consultation requirements and if the Council's resolution is not called in, the decision notice can be issued. The Secretary of State also has a broad power to issue a holding direction, again to allow a period of time in which to decide whether to call in the application. Where this situation arises, the Committee will be advised either within the report or verbally, depending on whether the application is a committee or delegated item. Both of these arrangements can be

accommodated for committee and delegated applications.

Applications requiring a legal agreement

2.27 Some planning applications recommended for approval can require 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, in order to secure some additional benefits or means of control which cannot be secured through planning conditions. The main provisions of the obligation will be set out in the report. If any such application is brought to committee for determination, the recommendation will include allowing officers to issue the decision notice once the agreement or unilateral undertaking is signed and sealed.

Public Rights of Way functions

2.28 The County Council has statutory duties and powers for the management, maintenance and enforcement of Nottinghamshire's public rights of way network.

2.29 The County Council is the surveying authority, which is responsible for maintaining the county's Definitive Map and Statement (DMS). This is the legal document which records the alignment and description of public rights of way. The County Council has a legal duty to keep the DMS up to date. Applications (Definitive Map Modification Orders or DMMOs) to make changes to the map can be made by members of the public, Parish Councils and other organisations. The team process Public Path Orders (PPO) and Town and Country Planning Orders (TCPA) such as Diversions, Extinguishments and Creations. The Team also work with highway colleagues to process Cycle Track Orders under the Cycle Tracks Act 1984, that is converting a public footpath to a highway over which the public have a right of way on both foot and cycle.

2.30 Requests for PPOs are largely received from farmers and landowners wanting to divert paths for land management reasons. However, PPOs are also used to amend historical anomalies. This is particularly important work, it protects the rights of users, reduces uncertainty for landowners and allows the Authority to provide a more efficient and accurate response to Property Searches. Requests for TCPA Orders are received from the County Council as part of its minerals and waste functions.

2.31 The processes for PPOs, TCPA Path Orders and Cycle Tracks are very similar and follow compatible procedures.

2.32 The County Council is the registration authority for Town and Village Greens (TVG) and Common Land, and the team deal with enquiries, corrections and applications. The team also have a general overview on strategic countryside access and work with partners to promote responsible public access on foot, cycle and horseback.

Public Rights of Way Orders

2.33 The first step in both the DMMO and PPO / TCPA process is for officers to undertake a pre-consultation exercise with a number of stakeholders such as utilities, other authorities, Row user groups, landowners and local elected members. If the relevant tests are satisfied and no objections are received, officers proceed to 'making' a legal Order, following the presentation of a report to the local member and the Chair and Vice-chair of the Planning and Rights of Way Committee. The Order is put on formal deposit and advertised in the local newspaper, notices erected on site and consultees directly contacted for comment. If no objections are received, the County Council confirms the Order with further notification and advertising, and the path is either added to the DMS if it's a DMMO or a change to the path occurs if it's a PPO / TCPA.

2.34 If objections are received at pre-order consultation, officers will discuss and present a report with a recommendation for endorsement by the local elected member and the Chair and Vice-chair of the Planning and Rights of Way Committee. The recommendation can be either to continue to formal Order making or to turn down the application. If it's a DMMO application whereby the Authority turn down the application, the applicant can appeal to the Planning Inspectorate for review. If it's a PPO, for example a Diversion, there is no appeal mechanism.

2.35 Where a legal Order is made for a DMMO and objections are received, the Authority has a legal duty to refer the DMMO to the Secretary of State (SOS) for the Planning Inspectorate for either a Public Inquiry, a less formal Public Hearing or for the case to be dealt with by an exchange of written representations. The Authority can support, object or hold a neutral stance at a subsequent Inquiry, Hearing or through written representations. A report will be presented to the local elected member, Chair and Vice-chair of the Committee with a recommendation of what stance the County Council will take.

2.36 If a PPO / TCPA legal Order is made and objections are received, there is currently no obligation for the Authority to submit the Order to the SOS. A report will be presented to the local elected member, Chair and Vice-chair of the Committee with a recommendation on whether to refer to the Secretary of State. If the decision is to refer the Order to the SOS, the report will recommend what stance is to be taken.

2.37 Prior to any presentation of a report to the local elected member, Chair and Vice-chair of the Planning and Rights of Way Committee, approval will be required from the Countryside Access Team Manager and their line manager e.g. Group Manager.

2.38 In the case of DMMOs, Cycle Tracks Orders and PPOs / TCPA Orders, 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 elected Member,

and such referral has been agreed to by the Committee Chair

c) the relevant case officer, Team Manager or Group Manager considers the matter to be exceptionally sensitive or controversial.

Common Land, and Town or Village Greens

Common Land

2.39 The County Council is the Registration Authority for Nottinghamshire. The Authority holds and maintains the official registers for Common Land and Town or Village Greens. The registers hold information about the land and contain maps showing the extent of the registered area.

2.40 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. Rights of common can involve the grazing of animals, taking wood, or cutting turf etc. In many cases these rights are no longer exercised, however, this does not stop the land from being Common land.

2.41 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 landowner. This means that a landowner cannot do anything which would restrict the exercise of a Common land right.

2.42 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. Natural England have published maps for all areas indicating the land (including Common land) to where the public now have open access rights.

2.43 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.

2.44 The County Council occasionally receive applications to make changes and variations to the Common Land register, for example this may be recording changes to the rights of the commoner. This is an exercise undertaken following internal consultation and a report will be taken to the Chair and Vice-chair of the Committee.

Town or Village Greens

2.45 The County Council has duties to register new Town or Village Greens and, in very 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.

2.46 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.

2.47 A Village Green can be in private ownership but are usually owned and maintained by town and parish councils. Unlike Common land there is no general right of **public** access over Town or Village greens, which instead is reserved for use by local people. The designation of 'Town' or 'Village' Green simply reflects the type of locality of the registered land.

2.48 Town or Village Greens have statutory protections under two 19th century Acts: The Inclosure Act 1857 (s12) and the Commons Act 1876 (s29). The main protection has the effect of preventing works, including building works, taking place on the land.

2.49 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". Where a trigger event has occurred, a report will be presented to the local elected member, Chair and Vice-chair of the Committee with a recommendation that the application cannot be further advanced.

2.50 A provision introduced in the Commons Act 2006 makes it possible for a landowner to register their own land voluntarily as either Common Land or a Town or Village Green. This does not involve objection or public inquiry but a report will be presented to the local elected member, Chair and Vice-chair of the Committee.

2.51 In all other circumstances, a report with an officer's recommendation will be presented to the Planning and Rights of Way Committee for a decision on whether to register the land as a Town or Village Green. 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. Again, this will be presented to the Planning and Rights of Way Committee, along with a cover

report on whether to register the said land as a Town or Village Green.

2.52 The Commons Act 2006 contains provisions relevant to earlier Commons and Greens registrations. Although not all of the provisions of the 2006 Act currently apply in Nottinghamshire, it does mean that in certain circumstances the registers may be amended to deal with the following:

(a) Applications can be made to correct a mistake in the Common land and Town or Village Green Registers specifically where the mistake is shown to be attributable to the Registration Authority (per Section 19(2)(a) of the Commons Act 2006). This is an administration exercise and will be undertaken by Officers.

(b) Where a mistake was shown to be made by a third party (e.g. a parish council), corrective applications can be made under paragraphs 6-9 of Schedule 2 of the 2006 Act to remove:
- buildings wrongly registered as Common land
- other land wrongly registered as Common land
- buildings wrongly registered as a Town or Village green
- other land wrongly registered as a Town or Village green

2.53 Nottinghamshire County Council has a set fee for applications made under paragraph 6-9. The application must be accompanied with evidence which shows that the property was wrongly registered. If objections are received to the application, additional fees may also be payable if the authority needs to seek external legal advice or if a hearing or public inquiry needs to be held.

2.54 A report with an officer's recommendation will be presented to the Planning and Rights of Way Committee for a decision on whether to amend the register. As per TVG applications, 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. Again, this will be presented to the Planning and Rights of Way Committee, along with a cover report on whether to make the said changes.

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. Printed copies of late representations/consultation responses can be made available to Members and time will be provided in the Committee meeting to allow information to be read in full. 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. Where there are a number of public speakers, it might aid the consideration of the application if officers are afforded the opportunity to respond to any matters raised following each individual speaker's presentation.

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. If properly requested in accordance with the Constitution, a recorded vote can be taken. The decision taken will be minuted, and the draft Minutes will normally be presented to the next ordinary meeting for approval as a true record.

Taking the Decision

4.1 Matters deliberated by the Committee shall 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 therefore necessary for Councillors to be present throughout the item being considered, including officer presentations, public speaking and any subsequent debate. If not, they will not be allowed to take part in the vote at the end of the item.

4.2 Items will usually be determined at the first meeting they are presented to committee. Items will only be deferred for determination at a future meeting in exceptional circumstances, such as:

- If Councillors consider that they do not have sufficient information to make a decision;
- If Councillors wish to see amendments to a proposal which require further discussions between officers and the applicant;
- When a site visit is considered necessary to fully understand the material facts relating to the item;

4.3 If an item is ultimately deferred, reasons for any deferment shall be explained in full by Councillors and minuted as, for planning applications, any deferment brings a risk of an appeal against non-determination, which would ultimately place the decision making process in the hands of the Planning Inspectorate.

4.4 If an item is deferred and a decision is not made until a subsequent meeting, only those Councillors who have attended both Committee meetings will be allowed to vote at the end of the item, unless all matters relating to the item in question, including officers' presentation and any public speaking, take place at the subsequent meeting. Further information on deferred items in relation to public speaking can be found in Appendix A at A8.3.

4.5 It is important for Councillors to demonstrate that they have not predetermined their decision by committing themselves one way or another before hearing all the arguments. 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. It is important that Councillors air their concerns whilst the item is being debated to allow the issues they raise to be fully understood by officers but, if Councillors are still minded to make a decision contrary to the recommendation at the conclusion of the debate, they must provide clear, justified, and defensible planning reasons to officers for their decision.

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. The Committee may determine that the public may be excluded from the meeting room while this takes place if the discussion of exempt information is involved and the relevant statutory tests are met.

Planning Applications

5.3 Should the officer 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 preparing conditions so as to control the development and ensure adequate protection of the environment and local amenity, a final draft of which shall be brought back to Committee for its approval.

5.4 Where the officer recommendation is to approve an application, and a majority of Councillors are minded to refuse it, material planning reasons for refusal must be given in full. It will be for Councillors to specify and debate what their planning reasons are, and officers can advise as to their robustness to any appeal, but ultimately those Councillors opposing the application should reach a settled position on their reasons for refusal so that they can be translated into the Decision Notice. Councillors should be aware of the need to have robust material planning reasons for refusal which are defendable at appeal, particularly as appeals using the written representations procedure do not allow the submission of further evidence or statements to explain or justify the reasons. Where appeals are heard by way of a Hearing or Public Inquiry, Members are likely to be involved in defending any appeal made against the refusal. The reasons for refusal 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 along with those Councillors who voted against the recommendation, before the Decision Notice is issued.

Rights of Way Matters

5.5 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. The Committee may determine that the public may be excluded from the meeting room while this takes place if the discussion of exempt information is involved and the relevant statutory tests are met. In many 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.

Appeals and Challenges

6.1 Any decision to refuse a County Matter planning application, or attach planning conditions which do not meet the tests for conditions (necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects) is challengeable on appeal, so reasons for refusal and conditions must be clear and robust and based on solid planning or policy criteria.

6.2 Specifically in relation to Rights of Way Definitive Map Modification Orders, 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 relevant Secretary of State (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.

6.3 If Committee members have decided contrary to the officer's recommendation and the decision is subject to appeal, it could weaken the Council's case at a hearing or public inquiry, or through the submission of written representations, 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 another officer who has not previously been involved in the application or a third party to present the case for them. Officers would, in any event, provide administrative assistance and support to Committee members in such a position.

6.4 In the case of appeals, the Council can be liable for an award of costs if the Council is found to have acted unreasonably. Unreasonable behaviour might be a failure to provide sufficient evidence to back up a position or decision on a certain matter, failures to cooperate and meet deadlines set by Inspectors or if the Council were to make a sudden change of position at the appeal stage, or acting contrary to well established case law. 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).

6.5 This is not to say that any decision against officer advice will always be open to successful challenge. In making decisions, Councillors can come to whatever lawful decision they feel is appropriate provided that their decision is based solely on sound/material Planning/Public Rights of Way, Common Land and Town or Village Green considerations, as appropriate.

6.6 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 will be better placed to try and defend such challenges where it can demonstrate compliance with statutory requirements, such as undertaking the statutory consultation and publicity, where relevant matters have been considered and where a reasonable judgement has been made in reaching a decision. The minutes and/or recordings of the Committee meeting may be relied upon as evidence. Substantial costs could be incurred if the claim is allowed against the Council's decision or even if the claim is successfully defended.

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
- Where considered necessary, seek officers' advice about the issues relating to an item, in particular when they are minded to vote against an officer recommendation
- Ensure that reasons for decisions are clearly stated and based on material considerations.

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[1]

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, the Committee Member 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 particular item and not take part in the decision making process. Alternatively, a Committee Member might wish to 'stand down' for the entire committee meeting, in which case a substitute Councillor could 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 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.

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

Dual Membership of Local Authorities/other statutory bodies

9.1 Councillors may be elected to both the 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 must act in their capacity as a Member of Committee when sitting on Committee.

9.2 Matters to be decided by the Council may well be discussed in other forums such as at a district/borough/parish/town council as part of the process of agreeing a consultation response on an application, (or at the Local Access Forum in the case of Public Rights of Way matters), even though it is the 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, having been involved in the debate leading up to the decision, provided that they retain an open mind when considering the application at County level. Alternatively, 'dual membership' Councillors could decide not to take part in any such district/borough/parish/town council meetings when they know they are going to be voting on the application when it comes before Committee.

Predetermination and Predisposition

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

10.2 If a Committee member does express their views for a particular outcome prior to the meeting, by campaigning for or lending support to a particular cause, or by speaking for or against it in another forum, they must be very clear that in order to take part in decision making at County level they must have regard only to those considerations which are material to the 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 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. Members should also be mindful of their own use of social media prior to an application being determined.

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 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 she/he has an interest that should be declared and the agenda for committee provides the opportunity to make such declarations, both pecuniary and non-pecuniary, before the main agenda items are considered. Councillors can seek initial advice **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 interests they need to formally register, which interests they need to declare in meetings and how this will affect their participation in meetings. Councillors should abide by any provisions in the Council's Constitution relating to gifts and hospitality.

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, statutory requirements and any other legal duties.

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 Council's Code of Conduct for Councillors and Co-opted Members, 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 lawful 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 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 district/borough and parish/town 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' arrangement 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 may be irrelevant.

Councillor Training

20.1 Planning and Rights of Way 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 At the start of each administration and before the first meeting of Committee following Council elections, all Councillors sitting on Committee, and any who have been nominated by their respective parties to act as substitutes on Committee, will undergo full training on all the aspects of Committee. The training will be provided by officers or by external consultants. The training will cover in detail all the matters included in this Code.

20.4 At the request of Committee, annual refresher training shall be provided covering those matters provided in the initial training along with any specific matters that Committee members wish to cover in greater detail.

20.5 Occasionally during the course of an administration, 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. Such presentations could arise as a result of a particular matter raised in the consideration of a planning application at a previous meeting of Committee and on which Committee members would like more information. Site visits for training purposes may also be arranged.

20.6 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 RIGHTS OF WAY 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 Public speaking is allowed remotely as well as in person. Whilst it is considered preferable for members of the public to attend committee in person, it is acknowledged that this might not always be possible and reasonable adjustments should be made to allow remote speaking. This protocol therefore sets out the arrangements for both in-person and remote public speaking at Committee.

A1.2 Speakers may be either in favour of the proposal, or in opposition to it, and a maximum of three members of the public will be entitled to speak in opposition to a proposal, and three in support. This is over and above the provisions to allow district/borough/parish/town councils, the elected local Member and the applicant to speak. 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.

A1.3 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 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.

A1.4 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.**

A1.5 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 A1.3 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 usually be with the relevant officer by 4:00pm on the preceding Thursday (this day may be different as a result of any intervening bank holidays).

A2.2 Currently, such registration may be made by telephone or by email. Details of how to register a request for planning matters only are also posted on the Council's website.

A2.3 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 and will also be asked to confirm if they intend to attend Committee in person or whether reasonable adjustments need to be made to allow them to attend remotely. Those wishing to address the meeting remotely will be given details by the Committee Clerk of how they are to access the meeting on the day. This will normally be through Microsoft Teams or another similar platform.

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 the meeting, either in person or remotely, 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, either in person or remotely, 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 and are attending the meeting in

person must make themselves known to the relevant officer at the relevant building's Reception 30 minutes before the start of the meeting, so that they can be given instructions on procedure. Those persons who are confirmed as speakers and are attending the meeting remotely must join the Microsoft Teams meeting relating to that meeting at least 15 minutes before the start of the meeting, using the link previously provided to them. Prior to the start of the meeting, all public speakers should hand to the relevant officer, or provide by email, 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 PowerPoint presentations or videos 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-h 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 members of the public 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/Town Councils/Meetings;

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 and is directly affected by the matter under debate;

f) The Member of Parliament for the constituency within which the item under discussion is located;

g) In relation to planning matters only, the applicant or their representative.

h) In relation to Public Rights of Way matters only: The Nottinghamshire Local Access Forum.

i) If a 'local Member' (i.e. the Councillor whose electoral division is affected by the item under consideration) who has made a valid written submission in connection with the application 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 B5.3 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 (B4.3 a) and B4.3 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.

County Councillors

A5.1 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.

A5.2 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 above. 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.

A5.3 Where the local Member wishes to speak as the local Member representing local views they must advise the Committee Chair, the Planning Support Officer or the Democratic Services Officer in accordance with the timescales for other speakers as set out in A2.1 above of their wish to speak as the local Member.

What can and cannot be said

A6.1 Speakers must address only issues relevant to the matter in hand and its

determination by the Committee:

A6.2 For planning matters, only material planning considerations should be discussed, such as the effects of the proposal on the environment and impacts 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.

A6.3 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.

A6.4 Speakers are not allowed to ask questions of Councillors, officers or other speakers.

A6.5 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?

A7.1 Following the public speaking and speeches by each non-Committee members, the Committee Chair may ask the relevant officer to comment or clarify 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.

A7.2 Members of the Committee will then debate the matter, which may involve further clarification from officers and those who have registered to speak if this helps in Members' deliberations.

A7.3 Speakers may remain in the room unless the press and public have been excluded from the meeting or a Councillor is required to leave the room as a result of an interest in the relevant item in which case the Councillor will leave the room after speaking.

A7.4 Members of the Committee will then reach a decision. Once the decision is made, speakers may remain in the room but usually choose to leave before the next item on the agenda.

A7.5 In any event, the Committee's decision will be published on the 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?

A8.1 Should, following the conclusion of all public speaking, 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 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.

A8.2 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.

A8.3 The timing of any deferment will determine which Councillors are able to vote on the matter in question, should one or more Councillor be unable to attend the subsequent committee meeting and is therefore substituted. If the matter is deferred before public speaking has commenced, officers can introduce the item again at the subsequent meeting in order that all those Councillors intending to vote are present for the entirety of the item, including any public speaking. If public speaking has already taken place before the deferment and no new evidence comes to light which necessitates a further round of public speaking, then any Councillors who were not at the original committee meeting will not be able to vote on the item at the subsequent meeting. This approach reflects the details contained in 4.1 of this Code.

PROTOCOL FOR SPECIAL PRESENTATIONS AT PLANNING AND RIGHTS OF WAY COMMITTEE (PLANNING APPLICATIONS ONLY)

B1.1 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. Special presentations allow groups or organisations a longer period of time to present their case to Committee and also allow the use of visual aids as part of that presentation, such as a PowerPoint presentation or the playing of a video.

B1.2 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.

B1.3 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, or neighbouring areas affected by the proposal, will be invited to attend for the presentation.

B1.4 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 (which can include the applicant) 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.

B1.5 The maximum time allowed for each presentation shall be ten minutes.

B1.6 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.

B1.7 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.

B1.8 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 to allow time to ensure the presentation works on the Council's IT equipment. Responsibility for the proper working of the presentation 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. No handouts or photographic material shall be handed to Councillors in the meeting.

B1.9 Unless these instructions are complied with, the Committee Chairman reserves the right to refuse the use of such presentations, and to direct that the presentation continues without their use so as not to delay consideration of the matter.

B1.10 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.

B1.11 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.

B1.12 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.

B1.13 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.

B1.14 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

C1.1 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.

C1.2 Councillors can ask to 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 make arrangements for the visit in advance and report first to its reception.

C1.3 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

C2.1 Formal site visits can help Councillors understand local conditions and the physical characteristics of the site and proposed development/existing and proposed routes of paths (as appropriate).

C2.2 Officers will make arrangements for site visits at the request of Committee or the chair and vice chair.

C2.3 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.

C2.4 All members of the Committee will normally attend formal site visits, together with the appropriate local Member who will be invited. If the proposal may have a significant impact on adjoining areas, the invitation will be extended to Councillors representing adjoining electoral divisions.

C2.5 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 will be provided with Personal Protective

Equipment (PPE) for those visits where it is necessary for the site.

C2.6 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.

C2.7 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.

C2.8 As the decision for a formal site visit may 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.

C2.9 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

C3.1 Wherever possible, details of the site visit will be included in any subsequent report to Committee.