

Public Document Pack

Mid Devon District Council

Scrutiny Committee

Monday, 23 May 2016 at 2.00 pm
Exe Room, Phoenix House

Next ordinary meeting
Monday, 20 June 2016 at 2.00 pm

Those attending are advised that this meeting will be recorded

Membership

Cllr F J Rosamond
Cllr Mrs H Bainbridge
Cllr Mrs C P Daw
Cllr Mrs S Griggs
Cllr T G Hughes
Cllr Mrs J Roach
Cllr T W Snow
Cllr N A Way
Cllr Mrs G Doe
Cllr Mrs A R Berry
Cllr R Evans
Cllr J L Smith

A G E N D A

Members are reminded of the need to make declarations of interest prior to any discussion which may take place

- 1 **ELECTION OF VICE CHAIRMAN**
 To elect a Vice Chairman for the municipal year 2016-17.

- 2 **APOLOGIES AND SUBSTITUTE MEMBERS**
 To receive any apologies for absence and notices of appointment of substitute Members (if any).

- 3 **PUBLIC QUESTION TIME**
 To receive any questions relating to items on the Agenda from members of the public and replies thereto.

Note: A maximum of 30 minutes is allowed for this item.

- 4 **MEMBER FORUM**
An opportunity for non-Cabinet Members to raise issues.
- 5 **MINUTES OF THE PREVIOUS MEETING** *(Pages 5 - 10)*
To approve as a correct record the Minutes of the last meeting of this Committee (attached).
- The Committee is reminded that only those members of the Committee present at the previous meeting should vote and, in doing so, should be influenced only by seeking to ensure that the minutes are an accurate record.
- 6 **DECISIONS OF THE CABINET**
To consider any decisions made by the Cabinet at its last meeting that have been called-in.
- 7 **CHAIRMAN'S ANNOUNCEMENTS**
To receive any announcements that the Chairman of Scrutiny Committee may wish to make.
- 8 **PORTAS**
Members of the PORTAS Group will be in attendance to answer questions, at the request of the Committee.
- 9 **PLANNING AND ENFORCEMENT IMPROVEMENT** *(Pages 11 - 24)*
The Chief Executive was asked by the Council's Scrutiny Committee to investigate the efficacy and effectiveness of the Planning Service, with particular reference to the way enforcement is carried out and how members are engaged with the work of the council in this service area.
- 10 **REVIEW OF PLANNING COMMITTEE PROCEDURES** *(Pages 25 - 108)*
At the request of the Committee to receive a report from the Head of Planning and Regeneration regarding Planning Committee Procedures, which were reviewed by the Planning Committee on 9th March 2016.
- 11 **5 YEAR LAND SUPPLY** *(Pages 109 - 114)*
To receive at the request of the Committee a report regarding the Council's 5 year housing land supply.
- 12 **PERFORMANCE AND RISK** *(Pages 115 - 142)*
To receive a report from the Head of Communities and Governance providing Members with an update on performance against the corporate plan and local service targets for 2015-16 as well as providing an update on the key business risks.
- 13 **REVIEWING THE COSTS OF EFFICIENCIES** *(Pages 143 - 150)*
To receive a report from the Reviewing the Cost of Efficiencies Working Group.

14 **START TIME OF MEETINGS**

To agree the start time of meetings for the remainder of the municipal year.

15 **IDENTIFICATION OF ITEMS FOR THE NEXT MEETING**

Members are asked to note that the following items are already identified in the work programme for the next meeting:

Devolution
Safeguarding

Note: - this item is limited to 10 minutes. There should be no discussion on items raised.

Stephen Walford
Chief Executive
Friday, 13 May 2016

Anyone wishing to film part or all of the proceedings may do so unless the press and public are excluded for that part of the meeting or there is good reason not to do so, as directed by the Chairman. Any filming must be done as unobtrusively as possible from a single fixed position without the use of any additional lighting; focusing only on those actively participating in the meeting and having regard also to the wishes of any member of the public present who may not wish to be filmed. As a matter of courtesy, anyone wishing to film proceedings is asked to advise the Chairman or the Member Services Officer in attendance so that all those present may be made aware that is happening.

Members of the public may also use other forms of social media to report on proceedings at this meeting.

Members of the public are welcome to attend the meeting and listen to discussion. Lift access the first floor of the building is available from the main ground floor entrance. Toilet facilities, with wheelchair access, are also available. There is time set aside at the beginning of the meeting to allow the public to ask questions.

An induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter. If you require any further information, or

If you would like a copy of the Agenda in another format (for example in large print) please contact Julia Stuckey on:

Tel: 01884 234209

E-Mail: jstuckey@middevon.gov.uk

Public Wi-Fi is available in all meeting rooms.

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MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **SCRUTINY COMMITTEE** held on 18 April 2016 at 2.00 pm

Present

Councillors

F J Rosamond (Chairman)
Mrs H Bainbridge, T G Hughes,
Mrs J Roach, T W Snow, Mrs G Doe,
Mrs A R Berry, R Evans, D J Knowles and
Miss C E L Slade

Apologies

Councillor(s)

Mrs C P Daw, Mrs S Griggs, N A Way and R M Deed

Also Present

Councillor(s)

R L Stanley and Mrs M E Squires

Also Present

Officer(s):

Liz Reeves (Head of Customer Services), Julia Stuckey (Member Services Officer) and Amy Tregellas (Head of Communities and Governance and Monitoring Officer)

153 **APOLOGIES AND SUBSTITUTE MEMBERS**

Apologies were received from Cllr Mrs C P Daw who was substituted by Cllr Miss C E L Slade, Cllr Mrs S Griggs, Cllr N A Way and Cllr R M Deed who was substituted by Cllr D J Knowles.

154 **PUBLIC QUESTION TIME**

There were no members of the public present.

155 **MEMBER FORUM**

Cllr Mrs J Roach raised the matter of Safeguarding and the review that was being undertaken by Devon County Council following an incident in Tiverton. The Head of Communities and Governance informed the Committee that the appreciative enquiry had now been completed and that a high level verbal summary had been issued. The officer was waiting for the lead officer to report back to her and hoped that an update would be provided at the next meeting.

Cllr T W Snow raised the matter of recycling materials being sent to landfill in some areas of the country due to the fall in their value. The Head of Communities and Governance assured the Committee that officers kept a close eye on the value of materials and worked with other local authorities to ensure that the best prices were obtained.

156 **MINUTES OF THE PREVIOUS MEETING**

The minutes of the last meeting were approved as a correct record and **SIGNED** by the Chairman.

157 **DECISIONS OF THE CABINET**

The Committee **NOTED** that none of the decisions made by the Cabinet at their last meeting had been called in.

158 **CHAIRMAN'S ANNOUNCEMENTS**

The Chairman thanked the Committee for their contribution in the last year.

159 **CABINET MEMBER FOR THE WORKING ENVIRONMENT AND SUPPORT SERVICES**

The Committee had before it a report * updating it on services covered within the remit of the Cabinet Member for the Working Environment and Support Services.

The Cabinet Member outlined the contents of the report. Discussion took place regarding:

Community Safety – a project to upgrade the CCTV system in Tiverton was underway which would improve picture quality;

Fly tipping and whether offenders could be prosecuted if evidence of their address was found within the waste;

Anti-social behaviour and statistics which were reported to the Community Well Being Policy Development Group (PDG) annually;

Modern Day Slavery was considered to be a high risk in Mid Devon owing to the high number of jobs in agriculture;

The Cabinet Member attended the monthly Police and Crime Commissioners Scrutiny Panel;

Computer fraud and the risks of this;

Electoral Services were busy organising two elections, the Police and Crime Commissioner and the EU Referendum;

Electoral Registration encouraged 16 years olds to register to ensure that they could vote when they were 18;

Legal Services – whether or not the Legal Service was adequately staffed to cope with the high level of work that was being processed due, in the main, to property sale and purchase. The Head of Communities and Governance informed the Committee that a new Business Support Officer had been appointed and that the Legal Executive was leaving and was being replaced by a Solicitor. She was

constantly reviewing the situation, was aware of issues caused by delays in legal work and was working with the team to rectify this;

Public Health – Concerns regarding the health of staff and their ability to continue manual lifting as they would be required to work to an older age and the question of whether they would be able to undertake such physical work;

The Public Health agenda appeared to give no reference to diet and nutrition;

How the Public Health agenda was determined;

Customer Services – The Crediton Office had closed and the Town Council had been moved downstairs. The Town Council were being very helpful in dealing with the public and had been provided with a leaflet giving all contact details for the authority. A surgery was being held fortnightly to ease the transition;

A personal experience of the ‘tell us once’ scheme was praised;

The Annual Complaints report which was reported to Cabinet annually;

Freedom of Information data files not being published on the website which the Cabinet Member would look into;

Human Resources – the annual appraisal system was being reviewed to consist of more regular discussion throughout the year.

The Chairman thanked the Cabinet Member for her comprehensive report.

Notes: i) Cllr Mrs J Roach declared a personal interest as she was working with a charity that was purchasing a property from the authority and the Legal Service was dealing with the sale.

ii) * Report previously circulated and attached to Minutes.

160 **RIPA UPDATE**

The Committee had before it a six monthly update * from the Legal Services Manager regarding RIPA.

The Head of Communities and Governance outlined the contents of the report, confirming that there had been no cases of RIPA being used in the year 2015-16. Usage had decreased due to the Protection of Freedoms Act which prevented the use of covert surveillance for crimes that did not hold a sentence of at least six months.

The Officer confirmed that recommendations and actions from the Office of Surveillance Commissioners had been completed, other than training which was ongoing.

Discussion took place regarding;

- There was a potential to use covert surveillance to prosecute for fly tipping;

- It was necessary to go before the magistrates for permission prior to any investigation;
- Successful prosecutions had taken place in the past regarding fly tipping but could be expensive.

Note: * Report previously circulated and attached to Minutes.

161 **COMMUNICATIONS WORKING GROUP SIX-MONTHLY REVIEW**

The Group had before it a report * from the Head of Customer Services regarding recommendations from the Communications Working Group. The Officer explained that the Working Group had been put in place in August 2013 and progress on their recommendations had been reviewed six-monthly since then.

Discussion took place regarding the fact that the Chief Executive had shown some concerns regarding communication and it was **RESOLVED** that this matter be left with him to move forward.

It was **AGREED** that an agenda item be added for 12 months' time in order that Members could assess progress from a Members perspective.

(Proposed by Cllr Mrs J Roach and seconded by Cllr F J Rosamond)

Note: Report previously circulated and attached to Minutes.

162 **COUNCIL WEBSITE**

The Committee had before it a report * from the Head of Customer Services regarding the authority's website. The officer explained that the website should be the first port of call for members of the public and should be seen as a 'shop window' as well as a place for carrying out tasks.

Discussion took place regarding recent changes which had made it more difficult for Members to access Committee pages and the need for improvements to the search facility regarding the Councillor and Democracy pages. The Head of Customer Services agreed to look into this.

Note: Report previously circulated and attached to Minutes.

163 **CHAIRMAN'S ANNUAL REPORT**

The Group had before it and **NOTED** a draft report * by the Chairman on the work of the Committee since May 2015. Subject to a few minor grammatical changes a final copy of this report would be submitted to Council on 27 April 2016.

Note: - Report previously circulated and attached to Minutes.

164 **IDENTIFICATION OF ITEMS FOR THE NEXT MEETING**

Tiverton Pannier Market

Review of Planning Committee Procedures
Devolution
Safeguarding
5 Year Land Supply
PORTAS

(The meeting ended at 4.00 pm)

CHAIRMAN

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SCRUTINY 23RD MAY 2016

REPORT OF: STEPHEN WALFORD, CHIEF EXECUTIVE

PLANNING AND ENFORCEMENT SERVICE - ASSESSMENT AND IMPROVEMENT REPORT

Cabinet Member Cllr Richard Chesterton
Responsible Officer Stephen Walford, Chief Executive

Reason for Report: The Chief Executive was asked by the Council's Scrutiny Committee to investigate the efficacy and effectiveness of the Planning Service, with particular reference to the way enforcement is carried out and how members are engaged with the work of the council in this service area.

RECOMMENDATIONS:

That:

1. The Head of Planning & Regeneration brings forward the Local Enforcement Plan for Cabinet to consider as a matter of priority to set the framework for enforcement activity at MDDC.
2. The Head of Planning & Regeneration ensures that staff within the enforcement service are invested in through additional training to help provide them with the necessary confidence about sharing information with members (with reference to Data Protection Act constraints).
3. The Head of Planning & Regeneration take steps to appoint additional resource specifically into the enforcement team to clear any real or perceived backlog, and that consideration is given to the merits of operating this service as a discrete entity to share knowledge, expertise and resource (as opposed to the current area-based model).
4. The Head of Planning & Regeneration ensures that 'Part II' reports are only ever brought as an exception in order to maintain transparency as far as Data Protection rules allow.
5. The Chief Executive, in conjunction with the Head of Planning & Regeneration and the Head of Communities & Governance, considers setting a target for the processing and completion of S106 agreements.
6. The Head of Communities & Governance considers reviewing (in conjunction with the Head of Planning & Regeneration) whether the current legal expertise available in-house is appropriate to process planning matters swiftly, and to take steps to re-provision this as opportunity permits.
7. The Cabinet Member for Planning & Regeneration considers a report investigating the introduction of S106 Monitoring Fees in order to adequately resource the level of required activity.
8. The Chief Executive considers the value of instructing Internal Audit to look at this area before the end of 2016/17 in order to explore further opportunities for service improvement and efficiency.

9. That local performance indicators for the enforcement service are set and are reported quarterly to the Planning Committee.
10. That Members are provided with a suite of reports on planning enforcement cases on a monthly basis, and are reported to Planning Committee quarterly.
11. That the Planning Committee considers the level of delegation that exists in relation to enforcement activity.

Relationship to Corporate Plan: The primary purpose of the planning system is to regulate the use and development of land in the public interest and be a positive force in protecting what is good in our environment and preventing what is unacceptable. The Planning Service is a statutory service, the effective operation of which is central to the delivery of Corporate Plan priorities of community, housing, economy and environment. The Local Development Plan sets out the strategy and approach to development in the district, together with community and environmental safeguarding / enhancement until 2026.

Financial Implications: The net budget for the Planning Service for 16/17 has been set at £493,000 with expected income from applications and other sources of £834,000. Activity by the Planning Service also directly results in the award of New Homes Bonus from the government.

Legal Implications: National Planning Policy Framework 'The purpose of planning is to help achieve sustainable development. Sustainable development is about positive growth, making economic, environmental and social progress for this and future generations.' The same document advocates a positive approach, with planning taking an enabling role.

The Service operates within a highly regulated environment which has been, and continues to be, subject to significant Government changes. The Planning Service including the enforcement of planning control must operate within the legal and performance parameters established through legislation, case law and Government performance indicators, but should also command public confidence in the system. The operation of the Planning System will by its nature often involve making difficult decisions that will not be universally supported within the community.

Risk Assessment: The operation of the Planning Service is by its nature open to what can be high levels of public scrutiny with potential for challenge. It must operate within legislative constraints. The Government is currently seeking to accelerate the delivery of housing and continues to make changes to the planning system to achieve both this and wider aspirations of increasing the speed of decision making. The Government has also recently published its intention to open up the assessment of planning applications to alternative providers on a pilot basis. This may indicate a wider intention to introduce competition into elements of the planning system.

The Local Planning Authorities are expected to operate in a reasonable way, in accordance with statutory requirements and Government guidance. There is an expectation that the Council will be able to justify its decision making. Risk in relation to planning arises from lack of an adopted and up to date development plan, lack of a five year land supply, departure from legislation and guidance, as well as an inability to justify and evidence decisions.

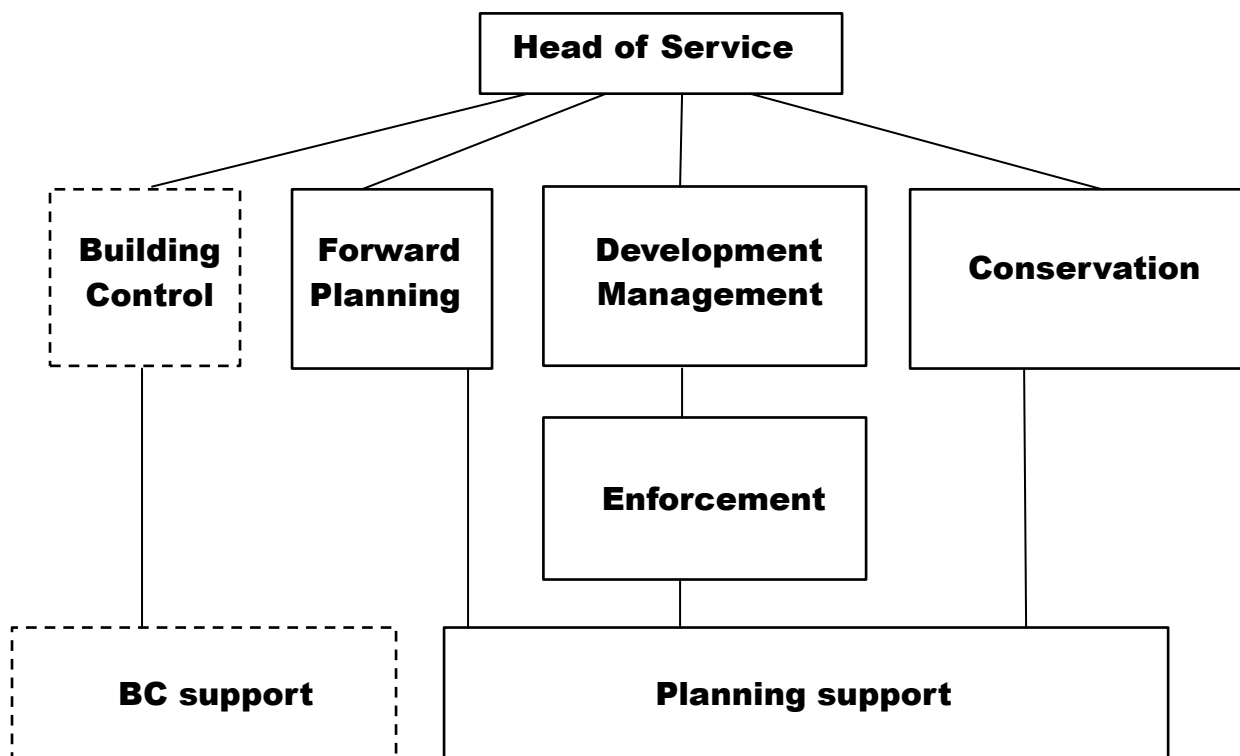
INTRODUCTION

1.1 Having been asked to undertake an assessment of the Planning and Enforcement service, the Chief Executive has carried out an initial review, as described below.

2.0 CONTEXT – OVERVIEW OF THE SERVICE AND ITS OPERATION

2.1 The purpose of the planning system as set out in the National Planning Policy Framework and therefore of the service is to: ‘to help achieve sustainable development. Sustainable development is about positive growth, making economic, environmental and social progress for this and future generations.’ The same document advocates a positive approach, with planning taking an enabling role. The Planning Service has a key role in realising Corporate Plan priorities of economy, homes, community and environment, primarily through delivering on the strategy and policies as set out in the Local Plan.

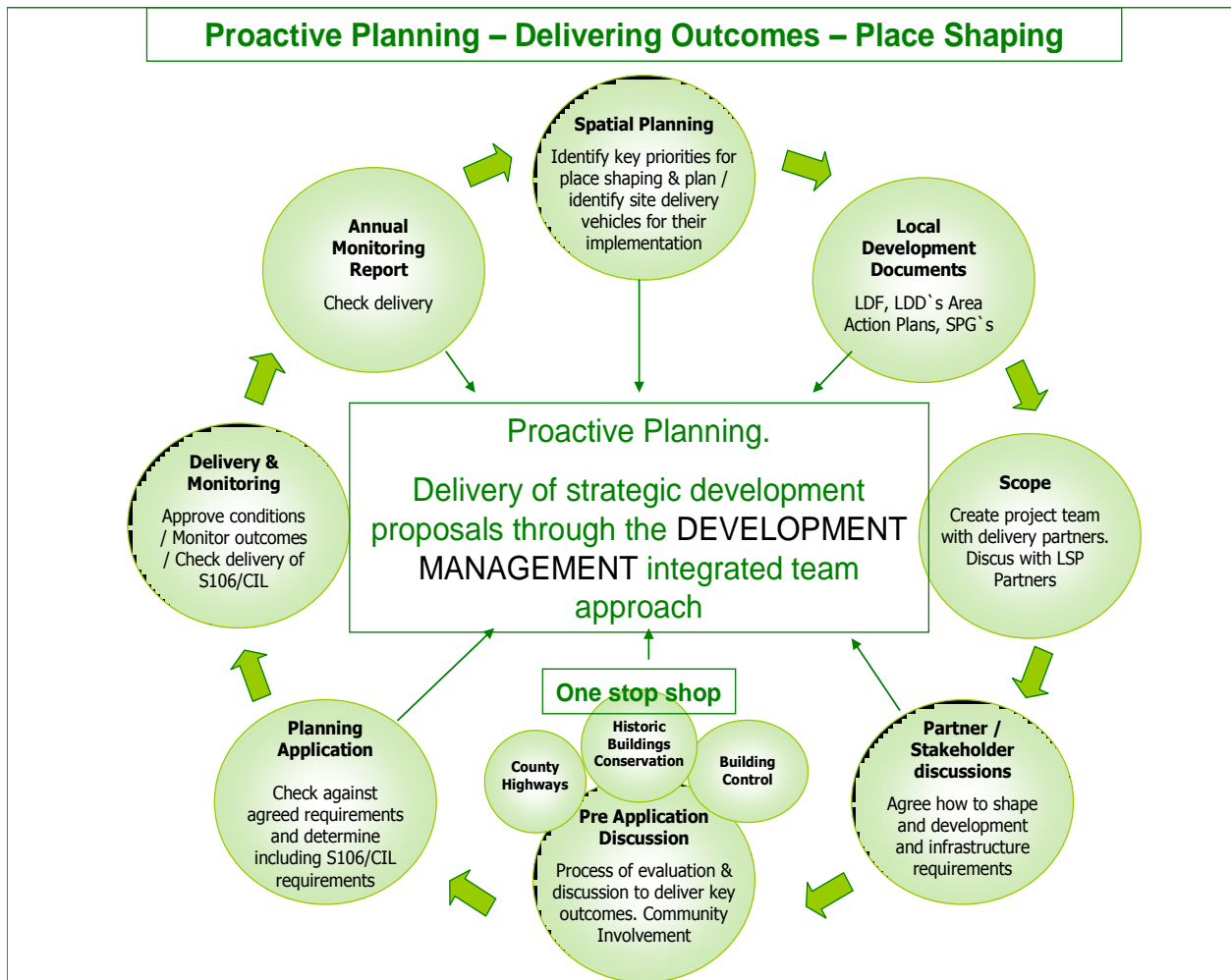
2.2 The Planning Service comprises the following elements: Forward Planning and Conservation, Development Management and Enforcement. Whilst the Building Control service forms part of the planning service from an organisational structure perspective it is subject to separate legislative requirements. Cabinet has also agreed the investigation of a future Building Control service operation in partnership with North Devon Council. It is therefore not included within the scope of this report. The service is currently structured as follows:



2.3 The service staffing (full time equivalent) is 27.85. At the time of writing this report there are several vacant posts within Development Management and for 1 FTE Enforcement Officer. A structure chart (December 2015) is attached at **Appendix 1**). Since then, a further Area Planning Officer post in Development Management has been created to increase capacity at a senior

level. The service operates within a series of smaller teams. The development management part of the service that conducts pre-application discussions and assesses formal applications operates within a team structure that is geographically based. Similarly the Conservation Officers and Enforcement Officers work primarily to geographical areas. The Development Management part of the service is currently operating with 10.2 FTE case officers, of which 0.8 FTE deals with the Tiverton Eastern Urban Extension.

- 2.4 The budget for the Planning Service in 16/17 is £493,000, with expected income from applications and other sources of £834,000. Applications for development are, in the main, subject to fees that are set by Government regulation. It is nationally recognised that planning fees do not fully cover the cost of processing such applications. Whilst locally-set fees to fully reflect the cost of the service have been considered by the Government, there appears to be no intention to bring this in within the immediate future. Recent changes to the planning system have also seen the increase in permitted development rights that have resulted in a reduction in planning applications received, but more prior notifications, for which there is a lesser fee, but similar levels of work. On a local discretionary basis, the Council operates a chargeable pre-application advice service (this element of the service is not statutory) and increasingly looks to enter into planning performance agreements with developers within which the Council will look to cover its costs for providing this level of service.
- 2.5 Planning fees are set nationally and do not cover the cost of delivering the planning service. Therefore, in order to ensure that the necessary staff resources can be deployed to deliver the service that applicants want, and that members and the public expect, the challenge in this service area is to encourage pre-application discussions so that when applications do arrive they are of a quality that minimises the amount of officer time required post-receipt (this is also essential in order to meet government targets on processing times). In addition to this, major applications should be encouraged to enter into Planning Performance Agreements (PPAs) to provide a mutually-beneficial framework for progressing the consideration of an application alongside the resourcing necessary to meet an agreed timetable (PPAs agree a process/timeline, NOT an outcome.)
- 2.6 Unlike Building Control, the consideration of planning applications is not open to competition. However the Government is to pilot allowing alternative service providers to process (not determine) applications on a cost recovery fee basis. This may indicate a future direction of travel and see councils and other approved providers being able to process applications in other council areas.
- 2.7 The following diagram illustrates the development process in respect of parts of the planning service, from spatial strategy and policy formulation via development plans, to pre-application discussions, formal application consideration (via committee or delegated), delivery, enforcement and monitoring.



- 2.8 There is an interrelationship between the service and others in the Council, in respect of synergies with other corporate strategies such as housing provision and economic development. In addition the planning service relies upon Legal Services for the drafting and issue of S106 agreements, formal enforcement action paperwork, as well as legal support for planning appeals and court appearances. Other services also provide consultation responses on planning and other applications.
- 2.9 The service has been the subject of ongoing Government change in terms of legislative requirements. Further changes are expected with the main Government emphasis being upon accelerating the delivery of housing, the relaxation of control (for example with greater permitted development rights) and increasing performance management targets aimed to speed up the system.
- 2.10 Planning enforcement is a statutory function of local government although the power to take formal action is discretionary. The Council as Local Planning Authority has responsibility for the investigation of reported breaches of planning control. Unauthorised development can be detrimental to the local environment and a source of community tension. Failure to investigate and enforce planning conditions or address unauthorised development can reduce the effectiveness of a Local Planning Authority and undermine public confidence in the planning system. The enforcement of planning control is not subject to national performance targets in the same way as the determination of planning and other applications.

3.0 TARGETS AND WORKLOAD.

3.1 In the last 3 years the number of applications dealt with by the council is as set out below.

	2013	2014	2015
Total applications	1136	1484	1110
Majors	33	28	27
Minors	400	392	374
Others	600	905	512
Prior notifications	-	89	164
Certificate of lawful use Notifications	53	37	6
	44	33	27

Further work is associated with giving pre-application advice.

3.2 There has been an increasing trend over the last couple of years for the relaxation of permitted development rights. This has resulted in a reduction in the development requiring planning permission and hence the overall number of planning applications received. However it has also led to more applications to establish if prior approval is required and an increase in prior notifications. This can involve similar levels of work to the assessment of a planning application, but with the receipt of a lower fee.

3.3 Targets related to processing planning applications deal generally with time taken to determine. National performance targets are:

- 60% of majors applications determined within 13 weeks.
- 65% of minor applications determined within 8 weeks.
- 80% of other applications determined within 8 weeks.

Additional performance requirements over speed and quality of decision making are:

- SPEED: More than 50% of major applications determined within a rolling 2 year period to be determined within 13 weeks.
- QUALITY: Of all major applications determined within a rolling 2 year period, no more than 20% to be overturned at appeal.

3.4 The Government has also introduced the 'planning guarantee'. All planning applications are to be determined within 26 weeks of validation (or such extension of time as may be agreed with the applicant). Failure to adhere to this leads to the return of the planning fee to the applicant.

3.5 Activity within the enforcement part of the service 15/16 is set out below:

Enforcement 2015/16	Qu 1	Qu 2	Qu 3	Qu 4
New enforcement cases registered	14	71	54	83
Enforcement cases closed	47	53	39	62
Committee authorisations sought	3	2	1	2
Planning contravention notices served	Data	9	5	10

	available from Qu 2			
Breach of condition notices served	0	1	0	0
Enforcement notices served	2	1	0	3

Comparison with other authorities in Devon for the issue of different types of enforcement related notices in 2015 is attached at **Appendix 2**.

- 3.6 The number of open pending enforcement cases where investigation is in progress at the time of writing this report is 179. This does not include cases where formal action is in progress. Cases opened in 15/16 exceeded those closed by 21. The number of new cases opened in quarter 1 was abnormally low due to the introduction during that quarter of more comprehensive recording of new cases. Previously many cases where there was found to be no breach or were resolved swiftly without formal action were not recorded on the system. This did not reflect the full extent of work undertaken by the enforcement team.
- 3.7 A temporary senior enforcement officer has been appointed on a short term contract until a permanent appointment can be made to the current vacant post in enforcement.

4.0 PERFORMANCE.

- 4.1 A report to Planning Committee 11th May 2016, on planning performance 15/16, established that the service has met Government performance targets as well as the majority of local performance indicators. The table at **Appendix 2** shows 2015 performance in relation to both England and other Devon authorities. The table below indicates performance against national and local targets for the last 3 financial years and shows an upward trend in performance against these indicators.

Planning Service Performance	Target	2013/14	2014/15	2015/16
Major applications determined within 13 weeks	60%	37	64*	47%* (87%)
Minor applications determined within 8 weeks	65%	54	67	68%
Other applications determined within 8 weeks	80%	77	78	86%
Householder applications determined in 8 weeks	85%	88	90	93%
Listed Building Consents	80%	71	70	71%
Enforcement site visits undertaken within 15 days of complaint receipt	87%	89	94	89%
Delegated decisions	90%	93	95	94%
No of applications over 13 weeks old without a decision	Less than 45 applications	50	36	40
Major applications	More than	Not	50	53%

determined within 13 weeks (over last 2 years)	50%	reported		
Major applications overturned at appeal as % of all major decisions in last 2 years	Less than 20%	Not reported	14%	10%
Determine all applications within 26 weeks or with an extension of time (per annum –Government planning guarantee)	100%	Not reported	95	99%

*Important note on major application statistic reporting: The 47% statistic for major applications determined within 13 weeks reported above includes all major applications and does not take into account any extensions of time agreed with the applicant or planning performance agreements (PPAs) that have been entered into. Government instructions to Councils over this performance target remove reporting applications with extensions of time or PPAs from this target as they are reported separately. Once these have been removed 87% of major applications were determined within 13 weeks compared with the target 60%. This performance target has therefore been met.

- 4.2 All national performance targets were met in 2015/16 together with the majority of local performance targets. However the Government has indicated an intention to introduce new targets in relation to speed and quality of decision making for non-major applications. The existing target on the quality of decision making (major applications) is proposed to be tightened. The performance environment within which the Development Management part of the service operates is therefore becoming more challenging, particularly against the background of financial constraint.
- 4.3 Unlike other areas of the service, there are no national enforcement performance indicators. However some councils do set local standards for measuring the delivery of the enforcement service. In Mid Devon, the only enforcement performance indicator currently measured is the percentage of site visits undertaken within 15 days of complaint receipt (the target is at least 87% completed within that time period).
- 4.4 The introduction of a suite of meaningful and measureable performance targets for enforcement should be actioned urgently. Investigation has indicated that national enforcement performance in Wales is measured against:
- Percentage of enforcement cases investigated (determined whether a breach of planning control has occurred and if so, resolved whether or not enforcement action is expedient) within 84 days.
 - Average time taken to investigate enforcement cases (days)
 - Percentage of enforcement cases where enforcement action is taken or a retrospective application received within 180 days from the start of the case (in those cases where it is expedient to enforce).
 - Average time taken to take enforcement action.

Other performance targets for consideration are:

- Issue instructions to Legal within 10 days of Committee resolution (target >90%).
 - Close 80% of cases within 12 weeks of complaint receipt.
- 4.5 It is also important that the number of cases opened, number closed and number of open cases is tracked. Time taken within the Legal Service to serve notices following receipt of instructions should also be subject to comprehensive tracking as this is a potential source of delay.
- 4.6 The Legal Service also directly impacts upon planning performance in time taken to draft and complete S106 agreements. More use should be made of standard clauses in order to deliver efficiencies and reduce delay. Target setting for the completion of S106 agreements should also be considered. The Government has indicated an intention to require the completion of S106 agreements within the life of the planning application (8/13 weeks). Sufficient staff resources are required in the Legal Service to deliver these. A new Planning Solicitor post is currently being recruited to.
- 4.7 Within enforcement specifically, the council should be triaging enforcement activity and, for those within the most severe category of breach, it should be taking all necessary steps to recover costs through the courts wherever possible. Consideration should also be made on a case by case basis for recovering the financial benefit to the contravener arising from the planning breach via use of the Proceeds of Crime Act.
- 4.8 Enforcement service standards are set out in the Enforcement Policy Statement dated 2005. This document should be reviewed and incorporated into a Local Enforcement Plan and up to date service standards issued. The adoption of a Local Enforcement Plan setting out the council's approach to the enforcement of planning control, and prioritisation of cases should be actioned urgently. It is recognised that the enforcement of the planning service must have the confidence of the public and members that breaches will be investigated and appropriately addressed using the tools available.
- 4.9 There will always be a gap between Member's (or public) expectation or aspiration of enforcement activity and what the service actually delivers. In part this is due to Government guidance on planning enforcement: that it is discretionary (rather than an automatic requirement), is required to meet a public interest test and that it must be expedient to do so. Furthermore, Government guidance makes it clear that where a breach of planning control would receive planning permission if applied for, enforcement action would be inappropriate. Action is also required to be proportionate to the breach. Day to day operation of the planning enforcement service therefore requires on a case by case basis an assessment of the nature of the breach, its significance and hence the priority to be assigned to its investigation and any subsequent action together with whether action is appropriate.
- 4.10 The gap between expectation / aspiration and service delivery can widen as a result of the limited resources available to deliver the service. Proactive monitoring of all planning conditions may be desirable and is often expected by the public, but is not deliverable within the resources available.

5.0 COMMUNICATIONS AND CONFIDENTIALITY.

- 5.1 Members rightly have an expectation of being kept informed on matters of interest or significance within their ward or, with higher profile issues, across the district as a whole. Within the enforcement service this may be achieved via several means: the establishment of regular alerts on cases opened, closed and on hand, together with quarterly reporting to Planning Committee. In conjunction there is an expectation that ward members are kept apprised of complaint investigation and outcome.
- 5.2 There are aspects of the work of the enforcement team that require confidentiality under the terms of the Data Protection Act 2000. Such confidentiality is associated with personal data. Enforcement staff treat the identity of the complainant as confidential in order to safeguard the operation of the system and give confidence for breaches to be reported without risk of reprisal or intimidation. To date, details of live cases under active investigation where formal action has yet to be authorised are not released publically until such time as reported to Planning Committee. However this does not prevent members being kept apprised of live cases. Research on practice amongst other councils shows a lack of consistency. Some consider all enforcement cases confidential until reported to Planning Committee, whilst others list cases on their website (with care over what details are revealed). Clarity of approach is needed following consultation with the council's senior information risk owner (SIRO).
- 5.3 There is a balance between an individual's rights under the Data Protection Act and the rights of Members to have access to information pertaining to the running and operation of the Council. Sensitive information such as enforcement information, if provided to members, would not usually contain personal information. If it is the ward member **and they have completed the Data Protection Policy training** then, if necessary for them to carry out their duties, they can receive the information including personal information. Member training for data protection covers awareness of obtaining personal information inappropriately and likewise disclosing personal information and the relevant monetary penalties.

6.0 BENCHMARKING OF ENFORCEMENT ACTIVITY.

- 6.1 In accordance with the resolution of Scrutiny Committee from the meeting on 22nd February 2016, a benchmarking exercise on planning enforcement in Mid Devon against other local authorities in the region has taken place and is set out in the following tables:

Staffing

Local Authority	FTE Planning enforcement staff
DEVON	
Mid Devon	2.5
North Devon	2.6
Torrige	2
Torbay	1
Teignbridge	2

South Hams & West Devon	3.5
East Devon	3
Exeter City	0 (Dealt with by Planning Officers)
Plymouth City	2
SOMERSET	
Taunton Deane & West Somerset	2
South Somerset	1 compliance officer + dealt with by Planning Officers
North Somerset	5 enforcement, 0.6 technical officer, 0.4 planning assistant
Sedgemoor	2

6.2 As can be seen from this table, Mid Devon broadly compares with the level of staffing resource in place at other local authorities (it should be noted that North Somerset is a unitary authority and therefore has a much broader range of enforcement responsibility/activity).

Delegated Authority

6.3 Complete delegated authority exists in some local councils to undertake enforcement action. Others have delegated 'householder development' related enforcement. Compared with the 6 other councils where information on this aspect has been received, more extensive delegated authority for enforcement action exists compared to that which is in place at Mid Devon. Members of the Planning Committee may wish to review this in the future.

Contact for more Information:

Stephen Walford, Chief Executive swalford@middevon.gov.uk

Circulation of the Report: All Members

List of Background Papers:

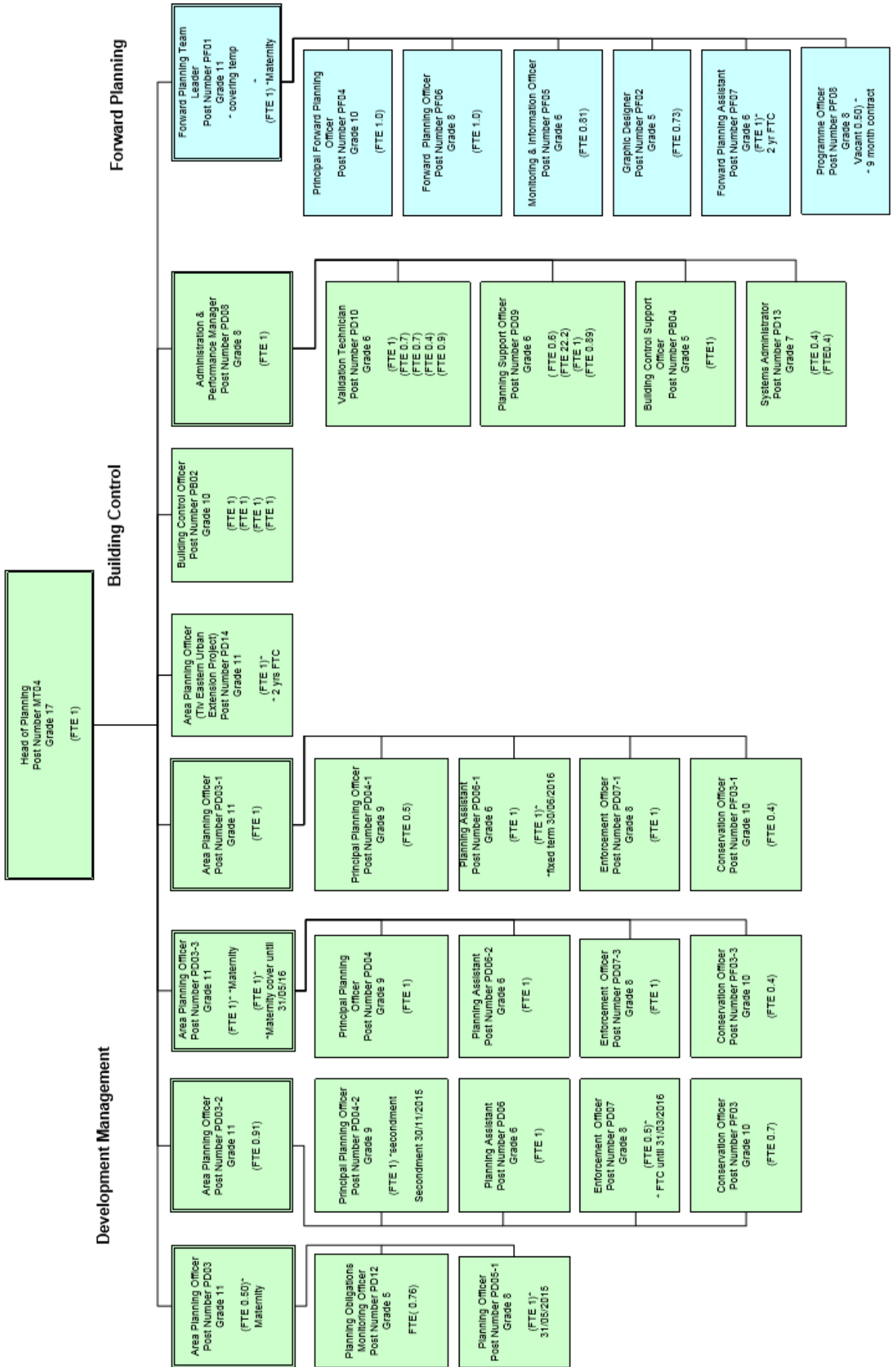
Item 129 of Scrutiny Committee dated 22/02/16 provides the context:

<https://democracy.middevon.gov.uk/ieListDocuments.aspx?CId=131&MId=406&Ver=4>

Planning Committee 11th May 2016 Planning Performance 15/16

<https://democracy.middevon.gov.uk/documents/s5533/Performance%20Report%20201516.pdf>

Planning & Regeneration



Appendix 2

Table P130: District planning authorities¹ - Enforcement action, by local planning authority
 England, Year ending December 2015^P

Planning authority	Enforcement Notices issued	Stop Notices issued	Temporary Stop Notices issued ²	Breach of Condition Notices served	Contravention Notices served	Planning Notices served	Enforcement injunctions granted by High Court or County Court ³	Enforcement injunctions refused by High Court or County Court
England	5,146	148	252	871	5,053	40	-	
Mid Devon	3	-	-	1	24	-	-	
East Devon	4	-	-	2	-	-	-	
Exeter	1	-	1	-	3	-	-	
North Devon	12	-	-	-	24	-	-	
South Hams	2	1	-	5	3	1	-	
Teignbridge	7	-	-	2	10	-	-	
Torrige	14	-	1	-	18	-	-	
West Devon	4	-	-	3	1	-	-	
Plymouth	19	-	-	-	3	-	-	
Torbay	-	-	-	-	3	-	-	

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RECOMMENDATION FROM THE PLANNING COMMITTEE 20/4/16 REGARDING PLANNING COMMITTEE PROCEDURES

It was RECOMMENDED to the Standards Committee that:

- i) That a clear guide to Planning Committee procedures be produced to inform the public and other participants together with a parallel guide on the planning system to address any misinformation and misconceptions.
- ii) That Legal advice for the Council as decision maker was available to assist Planning Committee with legal input as required on a case by case basis and a legal officer be 'on call' to assist in person during the meetings if requested.
- iii) That who speaks, when, the number of speakers, length of speaking and order remain as existing, with the exception of the limitation of Ward Members to 5 minutes each and alteration to the order of speaking so that the supporter speaks after the objector;
- v) That the questioning of speakers for reasons of clarification be allowed through the Chairman and apply to the applicant and objector only;
- vi) That clear written procedures be put in place regarding voting, that the item description, address and proposition be announced, Members clearly indicate their vote, that the vote was counted out loud and the outcome of the vote be announced.
- vii) That full committee and Planning Working Group site visits continue as existing, but that clearer written procedures for both be put in place.
- viii) That the protocol for making decisions that are not in accordance with officer recommendation be amended to apply to situations only when Members wish to refuse permission against officer advice.
- ix) That a video review of planning decisions be trialled and that an annual review of planning decisions be undertaken via Planning Committee site visit and that the Constitution be amended to remove reference to referral of the findings of the review to Scrutiny Committee.

It was further RESOLVED:

3. That it be recommended to Standards Committee that the Local Government Association's 'Probity in Planning for Councillors and Officers' 2013 be adopted as best practice.
4. That final recommendations 2, 4, 5, 7 and 8 relating to venue layout, attendance and advice, agenda format and order, report format and contents and officer presentations be agreed.

4a That final recommendation 6 be amended to read that Planning Case Officer names be included in officer reports (enforcement reports to be excluded) and that where multiple consultation responses are available the most recent and non-superseded are reported.

5. That subject to this service continuing to be offered, the Planning Advisory Service be requested to work with the Council in undertaking a peer review of Planning Committee and a further report be presented to Planning Committee following the receipt of recommendations from the Peer Review. The report to approve an action plan incorporating Planning Committee procedure issues.

Cllr Mrs J Roach had asked that other issues that had not been considered be incorporated into the report. Discussion took place regarding this.

It was RESOLVED that no further detail was required at this stage.

REPORT OF THE HEAD OF PLANNING AND REGENERATION

REVIEW OF PLANNING COMMITTEE PROCEDURES.

Cabinet Holder Cllr R J Chesterton
Responsible Officer Jenny Clifford, Head of Planning and Regeneration

Reason for Report: To review Planning Committee procedures in light of issues that have arisen and following visits to other Local Planning Authorities undertaken in 2012/13.

RECOMMENDATIONS:

1. **That Members note the consultation responses and recommendations of the Working Group.**
2. **That the following be recommended to Standards Committee:**
 - i) **That a clear guide to Planning Committee procedures is produced to inform the public and other participants together with a parallel guide on the planning system to address any misinformation and misconceptions.**
 - ii) **That Legal advice for the Council as decision maker is available to assist Planning Committee with legal input as required on a case by case basis and a legal officer 'on call' to assist in person during the meetings if requested.**
 - iii) **That who speaks, when, the number of speakers, length of speaking and order remain as existing.**
 - iv) **That the same speaking rights be extended to 'implications' reports.**
 - v) **That the questioning of speakers for reasons of clarification be allowed through the Chairman.**
 - vi) **That clear written procedures be put in place regarding voting, that the item description, address and proposition be announced, Members clearly indicate their vote, that the vote is counted out loud and the outcome of the vote be announced.**
 - vii) **That full committee and Planning Working Group site visits continue as existing, but that clearer written procedures for both be put in place.**
 - viii) **That the protocol for making decisions that are not in accordance with officer recommendation remains as existing.**

- ix) That an annual review of planning decisions be undertaken via Planning Committee site visit.
3. That it be recommended to Standards Committee that the Local Government Association's 'Probity in Planning for Councillors and Officers' 2013 be adopted as best practice.
 4. That final recommendations 2, 4, 5, 6 and 7 relating to venue layout, attendance and advice, agenda format and order, report format and contents and officer presentations be agreed.
 5. That subject to this service continuing to be offered, the Planning Advisory Service be requested to work with the Council in undertaking a peer review of Planning Committee and a further report be presented to Planning Committee following the receipt of recommendations from the Peer Review. The report to approve an action plan incorporating Planning Committee procedure issues.

Relationship to Corporate Plan: The operation of the Planning Committee in the determination of planning and other related applications as direct links to all four of the emerging Corporate Plan priorities: economy, community, homes and the environment.

Financial Implications: Increased efficiency will lead to savings. Changes to Planning Committee procedures may also increase costs if further ICT such as an electronic voting system is proposed.

Legal Implications: The existing procedures for Planning Committee at Mid Devon stem from the Constitution. Recommendations from the Planning Committee on changes to their procedures will need to be approved by Council after consideration by the Standards Committee and the Monitoring Officer.

Risk Assessment: Planning decisions involve balancing many competing interests and works best when officers and Members have a clear understanding of their roles and responsibilities together with the context and constraints within they operate. It is important that the decision making process is fair and transparent and procedural matters are set out clearly. All these factors act to reduce the risk of challenge.

1.0 INTRODUCTION

1.1 The review of the operational procedures in connection with Planning Committee was requested by members of that Committee. Members of Committee defined the scope of that review. A report was considered at the meeting of 19th June 2013. A copy of the report is attached as **Appendix 1**. A review was undertaken by a member working group in 2012/13 in conjunction with an officer. This included visits to a range of other councils to compare and contrast planning committee procedures with the aim of identifying best practice. The report identified a series of issues for consideration within the review of Planning Committee procedures. These were endorsed by Planning Committee:

- Information publicising committee procedures.
- Layout of venue.

- Participants.
- Agenda format and order.
- Report format and contents.
- Officer presentations – content, visuals, format and length.
- Speaking – order, number, time.
- Voting.
- Site visit arrangements.

Planning Committee subsequently also asked that ‘implications’ reports written when Members indicate that they are minded to determine an application differently from the officer recommendation are also included in the scope of this report on procedures.

1.2 On 19th June 2013 Planning Committee resolved that a public consultation exercise be undertaken and that a further report incorporating the results of the consultation be brought before the Committee for consideration. A public consultation exercise took place over a five week period between 17th September and 22nd October 2013. In addition to Parish and Town Councils, Elected Members and agents on the Agent’s Forum contact list were written to and given the opportunity to participate. Members of the public were also asked for their views.

1.3 Consultation responses were received from the following:

- 14 Parish and Town Councils
- 2 Agents
- 3 Members of the public (2 of which were from then current or previous Parish Councillors)
- 1 District Councillor
- Members of MDDC Scrutiny Committee

1.4 Consultation responses were generally arranged in response to the topic areas and recommendations set out in the 19th June report. Some additional comments and feedback were also received. The results of the consultation exercise have been summarised and are set out below. A summary of the consultation responses is attached at **Appendix 2**. Background information on each of the issues should also be referred to provide context and is located within the earlier report attached at **Appendix 1**.

1.5 Following receipt of consultation responses, the Working Group held a further meeting in order to consider the representations and make a series of recommendations to Planning Committee. Further meetings have subsequently been held with the Chair of Planning Committee and the Cabinet Member of Planning and Regeneration.

2.0 **GUIDANCE AND ADVICE.**

2.1 The Local Government Association has produced guidance on probity issues arising in planning. A copy is attached at **Appendix 3**. This guidance was reissued in 2013 in order to reflect changes introduced within the Localism Act 2011. The guide seeks to clarify how councillors can get involved in planning decisions on behalf of their communities in a fair, impartial and transparent

way. It also provides the guidance in respect of the following issues relevant to the scope of this exercise:

Officer reports to Committee.

'As a result of decisions made by the courts and ombudsman, officer reports on planning applications must have regard to the following:

- Reports should be accurate and should include the substance of any objections and other responses received to the consultation.*
- Relevant information should include a clear assessment against the relevant development plan policies, relevant parts of the National Planning Policy Framework (NPPF), any local finance considerations, and any other material planning considerations.*
- Reports should have a written recommendation for a decision to be made.*
- Reports should contain technical appraisals which clearly justify the recommendation.*
- If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated. This is not only good practice, but also failure to do so may constitute maladministration or give rise to a Judicial Review challenge on the grounds that the decision was not taken in accordance with the provisions of the development plan and the council's statutory duty under s38A of the Planning and Compensation Act 2004 and s70 of the Town and Country Planning Act 1990.*

Any oral updates or changes to the report should be recorded.'

Public speaking at planning committees.

'Whether to allow public speaking at a planning committee or not is up to each local authority. Most authorities do allow it. As a result, public confidence is generally enhanced and direct lobbying may be reduced. The disadvantage is that it can make the meetings longer and sometimes harder to manage.

Where public speaking is allowed, clear protocols should be established about who is allowed to speak, including provisions for applicants, supporters, ward councillors, parish councils and third party objectors.'

In the interests of equity, the time allowed for presentations for and against the development should be the same, and those speaking should be asked to direct their presentation to reinforcing or amplifying representations already made to the council in writing.

New documents should not be circulated to the committee; councillors may not be able to give proper consideration to the new information and officers may not be able to check for accuracy or provide considered advice on any material considerations arising. This should be made clear to those who intend to speak.

Messages should never be passed to individual committee members, either from other councillors or from the public. This could be seen as seeking to influence that member improperly and will create a perception of bias that will be difficult to overcome.'

Committee site visits.

'National standards and local codes also apply to site visits. Councils should have a clear and consistent approach on when and why to hold a site visit and how to conduct it. This should avoid accusations that visits are arbitrary, unfair or a covert lobbying device. The following points may be helpful:

- Visits should only be used where the benefit is clear and substantial; officers will have visited the site and assessed the scheme against policies and material considerations already.*
- The purpose, format and conduct should be clear at the outset and adhered to throughout the visit.*
- Where a site visit can be 'triggered' by a request from the ward councillor, the 'substantial benefit' test should still apply.*
- Keep a record of the reasons why a site visit is called.*

A site visit is only likely to be necessary if:

- The impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers.*
- The comments of the applicant and objectors cannot be expressed adequately in writing or*
- The proposal is particularly contentious.*

Site visits are for observing the site and gaining a better understanding of the issues. Visits made by committee members, with officer assistance, are normally the most fair and equitable approach. They should not be used as a lobbying opportunity by objectors or supporters. This should be made clear to any members of the public who are there.

Once a councillor becomes aware of a proposal they may be tempted to visit the site alone. In such a situation, a councillor is only entitled to view the site from public vantage points and they have no individual rights to enter private property. Whilst a councillor might be invited to enter the site by the owner, it is not good practice to do so on their own, as this can lead to the perception that the councillor is no longer impartial.'

- 2.2 The Guide goes wider than the scope of this review to date by also addressing the general role and conduct of councillors and officers in planning matters; the registration and disclosure of interests; predisposition, predetermination or bias; development proposals submitted by councillors and officers and council development; lobbying; pre-application discussions; decisions which differ from a recommendation; annual review of decisions; complaints and record keeping.
- 2.3 The review of Planning Committee procedures undertaken to date offers an opportunity for the contents of the Guide to be considered and adopted as best practice. This will need to be recommended to Standards Committee. The guide has previously been distributed to members of Planning Committee.
- 2.4 The Planning Advisory Service currently provides support to Local Planning Authorities in delivering efficient and effective planning services, to drive improvement in those services and to respond to and deliver changes in the planning system. An opportunity has previously been available for a peer

review of the way Planning Committee operates and the quality of decisions made in order to deliver best practice and improvement. However at the time of writing this report the future availability of such a review is in serious doubt due to uncertainties over the funding of the Planning Advisory Service in the next financial year. However subject to funding being secured and a continuation of the offer of peer review, a request for assistance in this areas could be made of the Planning Advisory Service. Previously such reviews have been undertaken by officer and councillor peers with planning experience. It is purely to be used as a guide as the scope and focus for the review is agreed with each individual authority. The cost of the review has to date been covered by the Planning Advisory Service.

- 2.5 The current authority for procedural rules in relation to public speaking and good practice for Councillors in dealing with planning matters is the constitution. Relevant extracts are attached at **Appendix 4**.

3.0 **RESPONSES TO THE CONSULTATION AND RECOMMENDATIONS.**

- 3.1 A total of 24 responses to the consultation have been received. The consultation was formatted around series of key issues and changes recommended by the Working Group made as a result of the visits to see other Authority's Planning Committees in operation. The responses have been organised according to the issue / change suggested and the nature of the responder in **Appendix 2** attached to this report. **Appendix 2** also sets out comments received on a range of other planning and Planning Committee related issues. Recommendations in this section are identified as those initially made by the Working Group prior to the consultation exercise, followed by a final recommendation taking into account comments received. Main outcomes of the consultation process have been summarised. Officer comment has also been added where applicable.

- 3.2 This section of the report has been formatted to collate information on an issue by issue basis.

3.3 **INFORMATION PUBLICISING COMMITTEE PROCEDURES.**

Initial working group recommended change 1: That a clear guide to Planning Committee procedures is produced to inform the public and other participants.

Consultation responses:
Strongly supported.

Following the receipt of consultation responses, the working group was also keen to ensure that the opportunity was also taken guidance to be produced on the planning system and planning decision making in order to address misinformation and lack of knowledge.

Final recommendation 1: That a clear guide to Planning Committee procedures is produced to inform the public and other participants

together with a parallel guide on the planning system to address any misinformation and misconceptions.

3.4 LAYOUT OF VENUE.

Initial working group recommended change 2: That the layout of the venue is amended to a 'U' shape once display screens have been upgraded in the Council Chamber.

Consultation responses:
Generally supported.

The working group wished to bring to the attention of members of committee the need to be seen to be listening to speakers. The layout of the venue allows the speakers to address the whole committee and for them to interact with committee members while speaking.

Officer comment: The initial recommendation of the working group has now been superseded by the upgrading of display equipment in the Town Hall Council Chamber and more recently by the change in venue of the Planning Committee to the Phoenix Chamber in Phoenix House. In the latter location, visual display equipment has been installed with multiple screens together with a removable desk-based microphone system. The tables and microphone system lend themselves to straight lines rather than a curved arrangement. The layout is also limited by the location of floor boxes providing power and connections to the sound system and computer network. The layout is 'U' shaped with the top row comprising the Chairman, Vice Chair and officers. Members of the Committee are located on either side. Angled seating for Ward Members is located off one side and public speaking space is at the open end of the layout, beyond which is located public seating. Members of Committee are either side on or facing the speakers and public speaking. Multiple screens allow all to see presentations.

Planning Committee has only recently been relocated to the Phoenix Chamber. The current layout in the room is therefore still new. Whilst no change to the layout is currently recommended it would be possible to review this.

Final recommendation 2: That no change is made to the layout of the committee at this time.

3.5 PARTICIPANTS.

Initial working group recommended change 3: That Legal advice is available in the preparation of the agenda, pre committee briefing and in person at the meeting itself.

Consultation responses:
Mixed response: Some support, but there was confusion over the function of legal advice – who the advice is intended to benefit. It was not understood by all that legal advice is intended to assist the Council in its decision making rather than other participants. There was some concern over cost and the

implications on legal resources. It was questioned whether a Legal Adviser needs to be present at every meeting.

Officer comment: The working group raised participation in relation to the availability of legal advice. Such advice is of benefit to the Planning Committee in terms of procedural issues, the legal parameters within which decisions are made and risk to the Council. Most other authorities visited had legal representation at Planning Committee meetings meaning that any issues / queries that arise during the meeting are able to be answered during the debate. Legal representation at Planning Committee as a matter of course has not been available for many years due to its resource implications upon the legal team. However, there remains the ability to brief Legal on the contents of the agenda in advance and arrange for a legal officer to be on call if required or to be present for particular items. This is easier with the Phoenix Chamber venue. (It should be noted that there might be occasions where Legal officers with planning knowledge as not available if on leave or sick. The service will endeavour to provide Legal advice on call, but is unable to guarantee it's availability on all occasions).

Final recommendation 3: That Legal advice for the Council as decision maker is available to assist Planning Committee with legal input as required on a case by case basis and a legal officer 'on call' to assist in person during the meetings if requested.

The working group also wished to ensure that in the case of ward member call in of applications to committee, that the ward member attend the meeting. The working group recognised that a statement could be provided instead in exceptional circumstances.

3.6 ATTENDANCE – AVAILABILITY OF ADVICE.

Initial working group recommendation: There is no change proposed.

Consultation responses:

Few received. One respondent agreed. Another felt that other officers should attend only if there is an identified need for them to be there. A request was made for the Cabinet Member for Planning and Economic Regeneration to be present at all Planning Committee meetings to monitor performance.

Officer comment: Planning Committee meetings are in public with press often present. The issue considered by the working group was whether the right level of advice is available to members of Committee to assist in their decision making. More senior planning officers make presentations and are available to answer questions. A lead planning officer also attends (normally the Head of Planning and Regeneration). This is supplemented by other officers from within the Council, together with those from external consultees such as the Highway Authority and Environment Agency if available and required. Your planning officers often anticipate when the presence of a consultee would assist and make arrangements. Planning Committee has the ability to invite the presence of consultees to assist in decision making.

Final recommendation 4: no change.

3.7 AGENDA FORMAT AND ORDER.

Initial working group recommendation: There is no change proposed.

Responses:

Generally agreed, but it was commented that if no members of the public are present to hear an item there is often little discussion of it and full details should be presented and considered for each case.

Officer comment: Planning Committee agendas follow a set order. In accordance with the constitution and other committees of the Council standard agenda items at the beginning of the meeting are apologies and substitute members, public question time, minutes of the previous meeting and Chairman's announcements. These are then followed by the planning related content with the order being:

- Enforcement items,
- Deferrals from the plans list,
- The plans list (where most of the planning and other related applications are considered),
- The delegated list (list of decisions taken under delegated powers),
- Major applications with no decision (to assist in timely decision making and management of major applications. This was introduced to help performance in terms of the speed of major application decision making),
- Appeal decisions (to report on recent appeal decisions received),
- Other agenda items (larger scale applications if not included in the plans list, 'implication' reports, planning performance and service management reports, legislation changes).

Currently at the beginning of consideration of the plans list, the Chairman establishes which items have speakers or the Committee wish to debate. Where neither of these apply, the items is brought forward and voted upon in order to assist the efficiency of the meeting.

The order of planning related content is open to amendment. Other Councils operate variations of this, in part dependent upon the scheme of delegation. Enforcement action is more widely delegated to officers in other Councils. The running order of the agenda seeks to be logical, with the ability of the Committee to pull items forward if required.

Final recommendation 5: no change.

3.8 REPORT FORMAT AND CONTENTS.

Initial working group recommended change 4: That the case officer name be included and in the case of refusals, the reasons for refusal be moved up to the front of the report to follow the recommendation.

Responses:

Generally agreed. Additional comments about the need for accuracy and precision, reports need to be fair and balanced, reports need to be open to

other material considerations beyond the Development Plan policies, reports are too long, information should not be summarised, major decisions should include an executive summary, where policies, case studies or precedents are referred to they should be available. Comment received that members need to read the reports in full before the meeting.

Officer note – Planning Committee reports are produced using a template that pulls through information from the software system. It's ability to accommodate changes to the format, particularly to distinguish report format between those recommended for approval or refusal is limited. At present the recommendation is included at the front of the officer report, with the reason for approval / refusal and conditions are at the end. The intention behind this is that whilst the recommendation is known from the start, the detail and explanation of how it was arrived at is gained from the main body of the report taking into account planning history, policy, consultations, representations and the officer assessment of the material planning considerations. While the recommendation, reason for approval / refusal and conditions can be pulled to the front of the agenda it is not technically possible to vary the running order dependent upon the recommendation. The scope of change available to the Committee report template are limited.

The inclusion of officer names with reports (except enforcement reports) is able to be accommodated. The name of the case officer for applications is already available on the website in public access. It is proposed that this is not extended to enforcement reports due to the nature of their content and legal action that can arise. The availability of enforcement officer names against individual reports that are on the internet is not recommended.

At present all consultation responses are typed in full in the officer report including where multiple responses have been received from the same consultee on the same proposal. Members may wish to consider whether they would like this to continue as existing so that the full response of a consultee over time may be seen, or whether only the latest, most up to date response is shown. This would delate earlier responses where comments / concerns have been subsequently addressed.

Final recommendation 6: That planning case officer name is included in the officer reports (enforcement reports to be excluded). That Members consider whether all multiple consultation responses on a proposal continue to be included in the report or only the most up to date.

3.9 OFFICER PRESENTATIONS

Initial working group recommended change 5: That officers review the length and content of presentations to make them more focused and succinct.

Consultation responses:

Supported. Comment made that they need to be short and not repeat the contents of the report. Comment also that they should not incorporate content not included in the officer report.

Officer comment: Agree that officer presentations should aim to be focused and succinct with a description of the development and its location / context by reference to the plans and photographs together with concentration on the determining issues. It is assumed that the officer report has been read and does not seek to duplicate it.

Consultation comments suggest that officers should not include information in their presentation that is not in their report. However the agenda is issued five working days in advance of the meeting. New information may subsequently have been received that is material to the making of the decision on an application. It is only right that it is brought to Member's attention before the decision is made and will normally be included in the printed update sheet.

Final recommendation 7: That officers review the length and content of presentations to make them more focused and succinct.

Initial working group recommended change 6: That the content of officer presentations be amended to increase the size/ colour of the cursor, the location of photographs be clearly indicated and the title slide be enlarged.

Consultation responses:

Supported. Photos to include date and time also requested. Comment received from a member of the public that the officer photographs were unrepresentative and biased: speakers should be able to present photos too.

Officer comment: Photos are normally labelled with an inset plan showing where they were taken from and a direction of view. Camera time and time recording can be switched on where available. Font size can be reviewed to improve readability. Efforts can be made to increase cursor size in the powerpoint presentation.

Consultation responses requested the ability for other parties to have their photos or other images be shown on the display screens at the meeting. At present such information is more normally circulated to Members in advance of the meeting rather than displayed on the screens. Such requests and associated material would need to be received by a cut off time of not less than 24 hrs in advance, in order for the material to be checked. The Probity in Planning document at **Appendix 3** recommends that no new documents should be circulated at the meeting as Members will not be able to give it due consideration and officers will not have had the opportunity to check of accuracy or provide considered advice on material considerations arising.

Final recommendation 8: That the content of officer presentations be amended to increase the size/ colour of the cursor, the location of photographs be clearly indicated and the title slide be enlarged.

3.10 PUBLIC SPEAKING

Initial working group recommendation: That views be sought on arrangements for speaking at planning committee in terms of who,

when, how many, how long for and the order of speakers. Should the questioning of speakers by Committee Members be included?

3.10.1 When may public speaking take place?

Consultation responses:

An extensive range of views were received on the arrangements for speaking at Planning Committee. These were not all consistent the importance of adequate speaking opportunity was strongly supported. Representation supported the ability to speak to an application at the time of its consideration in the agenda rather than being restricted to speaking up front as part of public question time. This was seen as being disjointed from the consideration of the application itself. Responses wished in the main to see opportunities for public speaking expanded.

Officer comment: The Council's procedure rules allow for public question time, normally at the beginning of the agenda. Whether to allow further opportunity for public speaking is at the Council's discretion, but is good practice and most councils do. Currently public speaking takes place at the point in the agenda when individual applications are considered.

3.10.2 Who is able to speak and the number of speakers.

Consultation responses:

All interested parties in planning decision making wish to have the right to speak at Planning Committee if they so wish. Consultation responses in the main wished to see the number of speakers allowed extended. Many responses suggested that speaking differentiate between major and non-major applications with more speakers and longer speaking allowed for major applications.

3.10.3 How long to allow for speaking.

Consultation responses:

A wide range of suggestions were made over speaking time, but the general theme in responses was that more time should be allowed with opportunity for 'comeback' to respond to points raised by other speakers and arising from Committee Member debate. A number of responses expressed the wish to see speaking time extended to 5 minutes each.

Officer note – Care will be needed to ensure equality and fairness between scheme promoters / supporters and objectors over time allowed to speak. The probity in planning guidance suggests that speakers be asked to direct their presentation to reinforcing or amplifying representations already made in writing. To assist in the running of the Committee, it is also helpful that comments made by earlier speakers are not repeated. The benefits of allowing additional time to speakers will need to be balanced against the potential to add to the overall length of Planning Committee meetings. Information from other Councils in the area indicates speaking time is usually limited to either 3 or 5 minutes each. It does not appear common practice elsewhere for speaking time to vary between major and non-major applications.

3.10.4 When public speaking takes place and the order of speaking.

Consultation responses:

When public speaking takes place: Representations requested more flexibility over speaker numbers to allow all to be heard at the time of the consideration of the application in question rather than up front during public question time.

Order of speaking: Representations received when considered by group (Parish Council, Agent / applicant / Members of the public /individual Parish Councillors) all wished to be able to address the Planning Committee last in order to address 'inaccuracies' arising from earlier speakers. There was therefore no consistency in the running order of speakers suggested within the consultation responses. Time for 'comeback' from speakers was also requested.

Officer note – At present in accordance with procedure rules, one spokesperson in favour of the application and one spokesperson objecting to an application are allowed to speak, as is a Parish or Town Council representative. Each may speak for up to 3 minutes and is taken in the order of supporter, objector, Parish. The Ward Member(s) is then called to speak and is not time limited. On an exceptional basis when there has been a particularly large, significant or controversial application (that would usually warrant holding a special meeting) at the Chairman's discretion additional speakers have been allowed. Were the length of speaking to be extended, this would need for fairness to be extended for both supporters and objectors to a scheme together with the Parish Council. Members will need to conclude whether this will add benefit to their consideration of applications and balance this against the increase in meeting length.

Whatever order of speakers, there will be disappointed parties that would wish to speak last. At appeal, the Planning Inspectorate operate an order of case that allows the applicant final say by going last.

At present public speaking to an 'implications' report is not allowed other than during public question time. Members are asked to clarify their views on this: whether for reasons of consistency this should be allowed as for applications, or left unchanged.

The working group gave consideration to whether Ward Member speaking should be time limited, but did not come to any conclusions other than noting a need for speaking to be focussed and succinct.

3.10.5 Questioning speakers.

Consultation responses:

Generally there was wide-spread support for the questioning of speakers in order to provide clarification of specific points or queries arising from Committee Member debate.

Officer comment: Allowing questions to be asked of speakers may provide helpful clarification for Committee Members. Such a system is in operation

elsewhere is in generally seen as being beneficial. It will need to take place through the Chairman.

Members will need to consider whether to make any changes to public speaking arrangements at Committee.

Public speaking final recommendations:

- 9. That who speaks, when, the number of speakers, length of speaking and order remain as existing.**
- 10. That the same speaking rights be extended to 'implications' reports.**
- 11. That the questioning of speakers for reasons of clarification be allowed through the Chairman.**

3.11 VOTING

Initial working group recommended change 8: A clearer procedure be put in place regarding voting: that the item description, address and proposition be announced, Members clearly indicate their vote, that the vote is counted out loud and the outcome of the vote be announced.

Consultation responses: Supported to aid understanding of proceedings.

Officer note – Many of these recommended changes are now followed and represent best practice. Electronic voting is not currently operated, although the microphone system in the Phoenix Chamber would be compatible with an electronic voting system should one be implemented in the future. Additional equipment would need to be installed to implement this. It was considered recently when specifying requirements for the new Phoenix Chamber system but was dismissed at this time on cost grounds.

Final recommendation 12: That clear written procedures be put in place regarding voting, that the item description, address and proposition be announced, Members clearly indicate their vote, that the vote is counted out loud and the outcome of the vote be announced.

3.12 SITE VISIT ARRANGEMENTS

Initial working group recommended change 9: That the arrangements for site visits be reviewed. Should the Planning Working Group continue or should site visits following a deferral be open to all members of Planning Committee to attend? Clear procedures on the operation of site visit are needed.

Consultation responses:

Respondents considered site visits to be vitally important and favoured them being available as a matter of course to all members of committee to attend together with other interested parties including Parish / Town Councils, objectors, supporters and ward members. It was suggested that they be made mandatory for committee members with concern being expressed in the event of poor attendance. The timing of site visits was raised as an issue, particularly in relation to traffic and parking and availability to attend during the

working day. Some respondents suggested multiple visits at different times of the day.

Officer comment: At present two different forms of site visit take place.

1. Major applications - Members review a list of major applications as part of the agenda and indicate for cases that will be decided by them, which they would like to visit in advance in order to gain familiarity with the proposal, the site and its surroundings. Such site visits are open to Committee members only with an officer present to describe the application and to answer questions. Such pre-committee meeting help with timely decision making on major applications and were introduced as a means to assist committee consider such applications but also to reduce delay.
2. Planning Working Group – Committee may defer an application for a site meeting of the Planning Working Group in order to assess a particular aspect of the site / the application or a particular issue that is identified at time of deferral. It is important that the site visit have a specific purpose. The Planning Working Group comprises the Chairman and 6 other committee members. Ward Members, one representative of each of Parish Councils, applicant / supporter and objector are invited to attend. Members are accompanied by an officer and if specifically requested, a representative of a consultee such as Highway Officer. The officer describes the application and answers questions. Representatives of applicant / supporter, objector and the Parish are asked for their views. The representatives are then asked to withdraw and allowing for a member discussion. Members of the Planning Working Group are asked for their observations when the application is considered at the Planning Committee meeting.

Devon County Council hold a site visit and local meeting at which there is opportunity for the public to attend and ask questions in advance of the final consideration of the application at a separate meeting of the committee. The meeting takes place in a venue local to the application site. Such an arrangement increases public participation in the consideration of the applications, but is resource heavy and takes time to organise. It adds to the cost of considering applications and risks delay. The nature of County Council applications – often waste and mineral proposals together with the lower number of applications is considered more suited to this arrangement. Most Councils some form of site visit arrangements in place.

Members are asked to consider whether any changes should be made to the existing site visit arrangements. It is recognised that clearer procedures need to be put in place.

Final recommendation 13: That full committee and Planning Working Group site visits continue as existing, but that clearer written procedures for both be put in place.

4.0 OTHER ISSUES RAISED WITHIN RESPONSES.

- 4.1 Consultation responses took the opportunity to raise a number of other issues in relation to planning decision making and planning committee. These are listed in **Appendix 2**. Some responses considered that the scope of the consultation to be too narrow with a wider review of planning being required.
- 4.2 It was suggested the planning committee should meet locally to the application (particularly for large scale proposals).
- 4.3 In particular Parish Councils (who made up the majority of respondents) considered that more regard should be had to their comments on applications by officers. They wished less application delegation to officers and therefore more applications to be referred to planning committee. There was a distrust of pre-application meetings between officers and members.
- 4.4 Abstaining from voting by committee members was criticised by the responses. It was even suggested that it should not be allowed and was viewed as ducking out of making a difficult decision.
- 4.5 Several criticisms were made of the enforcement of planning, particularly over condition compliance.
- 4.6 It was suggested that further guidance be given to members over contact with the applicant / objectors, lobbying and the declaration of interests.
- 4.7 It was observed in several responses that those attending the meetings did not feel that they had been listened to. They felt marginalised and that the committee process as a whole did not put the public and community at the heart of decision making. Officers were felt to be too influential in decision making and that committee members should be completely free to make whatever decision they so wish.

Officer comment: A wide range of additional issues were raised within consultation responses. Planning decision making operates within legal constraints which are not always understood by all participants. This can lead to frustration and a lack of understanding of how a decision has been arrived at. This can be improved by incorporating information of planning decision making within guidance. It is important to ensure that procedures for committee allow participation in a meaningful and equitable way that balances different interests so that those participating feel that they have had a chance to have their say. A peer review of the operation of planning committee through the Planning Advisory Service (if it continues to be offered) could provide an external assessment of issues such as public engagement.

5.0 **IMPLICATIONS REPORTS.**

- 5.1 Since work commenced on this review of procedures in relation to Planning Committee, the issue of officer implication reports has also been raised and officers were asked to include it within this report. It was not considered by the working group.

- 5.2 At previous meetings of Planning Committee, a protocol for making handling appeals when the committee decisions not in accordance with officer recommendation and the handling of subsequent appeals was agreed. As agreed at the meeting of 17th July 2013 this protocol states:

In cases where decisions are made which are not in agreement with officer's recommendation, the following protocol will be followed:

The Planning Committee, based on the debate and discussion at the Committee meeting, shall in all cases:

- **Indicate the decision that they are minded to make together with the reasons for doing so and that the item be deferred for the receipt of an officer report at a subsequent meeting setting out the implications for the proposed decision and the reasons given.**
- **Agree the full wording of the reasons for refusal or the conditions to be imposed prior to a decision being taken.**
- **Agree their reasoned justification for reaching the particular decision, which will be set out in the minutes. (Which can be sent with the Committee Report when the initial appeal papers are sent.)**
- **Agree which Members (a minimum of 3) will:**
 1. **Prepare any written statement for written representation appeals, informal hearings or public inquiries.**
 2. **Attend pre appeal meetings with officers, legal advisors and consultants, when necessary.**
 3. **Appear at any Informal Hearing or Public Inquiry to present the Council's case.**
 - **As an appeal proceeds and the form and type of appeal is known consider appointing external planning consultants where necessary. This will only be considered for the more complex Public Inquiry cases).**

Officers will:

- **Provide Members with professional and guidance in preparing cases and statements.**
- **Ensure relevant documents are dispatched and timetables are adhered to.**
- **Arrange venues and all notification documentation and publicity.**
- **Provide support at informal hearings / public inquiries in procedural matters and defend any application for costs.**
- **(Officers will not give evidence or comment on the merits of cases at informal hearings / public inquiries).**
- **Appoint consultants when required and assist the consultants in preparing the Council's case.**
- **Attend site inspections.**

- 5.3 Whilst not at that time specifically requested, some consultation responses referred to this protocol. The deferral of an application when committee is minded to decision it is a way that is not in accordance with officer recommendation was not supported and seen as being undemocratic by giving the applicant a second opportunity. The comments presupposed circumstances only where committee wished to refuse permission rather than approve contrary to officer recommendation. Consultation responses wished

the original decision to reject to be accepted as binding. However Scrutiny Committee commented that there had been occasions where the Council had been vulnerable as Planning Committee were unable to provide reasons for the decision.

- 5.4 The approach within the protocol allows for a more considered assessment of prospective reasons for refusal, including policy context as planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. This is important as there is a right of appeal against the decisions of the local planning authority in the case of refusals, conditions or arising from non-determination. Local planning authorities are expected to be able to justify their decisions, behave reasonably and if not found to have done so, are at risk of a cost award against them at appeal. It is your officer's advice that the approach to decision making as set out above where members are minded to make a decision contrary to officers is retained in order to ensure robust and defensible planning decision making. The alternative is to formulate full reasons for refusal together with policy references relied upon 'on the hoof'.
- 5.5 It is clear that such 'implications' reports must be approached with care – balancing the need to clearly advise members of potential implications of the proposed decision, yet not being seen as undermining the position that members are minded to take in the event that an appeal is lodged. This is a difficult balance to achieve, as officer advice might need to reflect on the likely strength of a reason for refusal and the sufficiency of evidence to support it. Pages 13 and 14 of the Probity in Planning Guidance (**Appendix 3**) apply and refer to either adjourning for potential reasons of difference with officers to be discussed or where there is concern over the validity of reasons, considering deferring to another meeting to have the putative reasons tested and discussed. The guide refers to detailed reasons being required with Councillors being prepared to explain in full their planning reasons for not agreeing with officers. It states that officers should be given opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome and chances of a successful award of costs against the council, should one be made. Officer advice is of course professional advice and delivered in accordance with the code of practice of the Royal Town Planning Institute – officers cannot be expected to change their recommendation or views based on the approach that members wish to take. However whilst still retaining their professional view, they are able to continue to advise members.
- 5.6 It has been suggested by some members that the implications report should always be written by a different officer to the case officer. This is possible, but it needs to be understood that this will have a resource implication as the second officer will need knowledge of the application and site in order to write the report.

Recommendation: That the protocol for making decisions that are not in accordance with officer recommendation remains as existing.

6.0 ANNUAL REVIEW OF DECISIONS.

- 6.1 Both the constitution and the probity in planning guidance refer to reviewing planning decision making via annual visit to a sample of implemented planning permissions in order to assess the quality of decision making and that of the development. The guide advises that the essential purpose of such a review is to assist planning committee members to refine their understanding of the impact of their decisions.
- 6.2 Such a review normally takes place via a day of site inspections in early summer. However it is dependent upon committee members being fully engaged in the review. The last was held in 2014, when only 5 Members attended.
- 6.3 Committee site visits can also be arranged on an ad hoc basis outside the District as required to see examples of particular application types. The intention is to further Committee's knowledge and decision making. This previously took place in relation to large wind turbines. Members are requested to flag up any such requests with officers.

Recommendation: That procedures remain unchanged with the need for an annual review of decisions to be undertaken by Planning Committee Members via visits to a sample of sites.

7.0 CONCLUSIONS.

- 7.1 Members of the working group welcomed the opportunity to visit other Planning Committee meetings in order to identify best practice and issues for consideration at Mid Devon. The main finding of the working group was the high degree of consistency between Councils in relation to the overall operation of Planning Committees within the local area. However several differences, particularly in public speaking arrangements were found. Detail of the operation of Planning Committee and its associated procedures have been the subject of a public consultation exercise. A range of responses were received, although mainly from Parish and Town Councils. Few comments from applicants, agents, objectors or the wider public were received.
- 7.2 It is clear that the existing written procedures derived from the constitution for the working of this Committee are not clear in several areas and need to be overhauled. The production of clear written procedures is welcomed by all and will be prepared once consideration of these recommendations has been completed including ultimately by Council. This review and associated consultation has taken place with the aim of achieving fair and consistent processes that are easily understood by all present, allowing participation at Planning Committee meetings. Historically, feedback was sought from the public present at meetings via a questionnaire. Although the number of questionnaires completed was small, this approach can be resurrected in order to get an understanding of the experience of the public and how it might be improved.

Contact for any more information	Head of Planning and Regeneration (Mrs Jenny Clifford) 01884 234346
Background Papers	Planning Committee October 2010 (officer reports), 19 th June 2013 Consultation responses Probity in Planning for councillors and officers – Local Government Association and the Planning Advisory Service November 2013 Mid Devon District Council Constitution
File Reference	None.
Circulation of the Report	Members of Planning Committee, Cllr Richard Chesterton.

**PLANNING COMMITTEE
19 JUNE**

AGENDA ITEM: 9

REVIEW OF PLANNING COMMITTEE PROCEDURES

Portfolio Holder Cllr R J Chesterton
Responsible Officer Head of Planning and Regeneration

Reason for Report: To review Planning Committee procedures in light of issues that have arisen and following visits to other Local Planning Authorities.

RECOMMENDATION: That Members approve:

1. That a public consultation exercise be undertaken.
2. That a further report be brought before Planning Committee for consideration incorporating the results of the consultation.

Relationship to Corporate Plan: Links to corporate target of empowering our communities via public participation at Planning Committee meetings.

Financial Implications: Increased efficiency will lead to savings. Changes to Planning Committee procedures may also increase Council costs if further ICT such as an electronic voting system are proposed. Detailed financial implications are not known at this stage, but will become clearer in the proposed follow up report.

Legal Implications: The existing procedures for Planning Committee at Mid Devon stem from the Constitution. Recommendations from the Planning Committee on changes to their procedures will need to be approved by Council after consideration by the Standards Committee and the Monitoring Officer. Prior to this, recommendations for change will also need to be considered by the proposed Constitution Working Group.

Risk Assessment: None.

1.0 INTRODUCTION

- 1.1 Over a 3 month period in late 2011 – early 2012, a working group of 3 members of the Planning Committee including the then Chairman, together with the Professional Services Manager visited 6 other councils. The purpose of these visits was to compare and contrast planning committee procedures and identify best practice. These visits were also to form the basis for a review of planning committee procedures at Mid Devon and to make recommendations.
- 1.2 The Councils visited were Torbay, Teignbridge, Plymouth City, Taunton Deane, East Devon and Dartmoor National Park.
- 1.3 Issues for consideration within the review arising as a result of the visits to other councils are as follows:
 - Information publicising committee procedures.
 - Layout of venue.
 - Participants.
 - Agenda format and order.

- Report format and contents.
- Officer presentations – content, visuals, format and length.
- Speaking – order, number, time.
- Voting.
- Site visit arrangements.

2.0 INFORMATION PUBLICISING COMMITTEE PROCEDURES.

- 2.1 Many of the councils visited produce either a guide to Planning Committee (including how members of the public can speak) or include a section at the beginning of the agenda. At present a generic guide to participation at all Mid Devon's committee meetings is available on the website together with information on how the plans list is considered. However neither provide a full guide to Planning Committee including associated site visits. Given the amount of queries currently arising from both the public and Parish Councils regarding Committee procedures, the working group consider that there is a need to produce a comprehensive guide. A copy of the guide produced by East Devon is attached as **Appendix 1**. This approach is favoured over including information at the beginning of the agenda as it can be placed on the website and paper copies made available at the meeting.
- 2.2 The working group proposes that the guide also include clear directions to the venue with a map and identify available parking in the vicinity.

Recommended change 1: That a clear guide to Planning Committee procedures is produced to inform the public and other participants.

3.0 LAYOUT OF VENUE.

- 3.1 The layout of the committee venue needs to ensure that all attending can understand the proceedings, hear the debate and clearly see visual material. Those speaking should be visible to the public and members of the Planning Committee should be able to be identified by members of the public. On attending a range of other Planning Committees, it was not always readily apparent who was sitting where, their role in the proceedings nor who was speaking.
- 3.2 The working group favour a 'U' shaped seating arrangement for committee members with the screen located at the top of the 'U'. This change may need to be timed to coincide with proposed upgrading of the visual display screens in the Council Chamber. Members and Officers should be able to be identified by name plates. Speakers are invited to come forward to signed positions. The screens should be located and sized to be readable by all present. The sound system should ensure that all can clearly hear the proceedings. The working group also favour information signs within the venue covering such issues as recording the meeting and phones to be turned off.

Recommended change 2: That the layout of the venue is amended to a 'U' shape once display screens have been upgraded in the Council Chamber.

4.0 PARTICIPANTS

4.1 Within recent years a Legal Officer has not attended Planning Committee at Mid Devon as a matter of course, although is available to attend by prior arrangement depending on the content of the agenda. On the day, a Legal Officer is also available by phone. The working group noted that in the other councils visited, a Legal Officer attended as a matter of course and gave legal advice during the proceedings. The working group considered that Mid Devon would benefit from a similar arrangement and that legal input was needed in the preparation of the agenda, pre committee briefing and at the meeting itself.

Recommended change 3: That Legal advice is available in the preparation of the agenda, pre committee briefing and in person at the meeting itself.

4.2 Members of the working group noted that committee attendance by other officers of the councils visited varied widely with some reliant upon Senior Planning Officers present, whilst in other authorities this was supplemented by officers from other areas of the council and consultees as needed. Examples of attendance included representatives from Environmental Health and the Highway Authority. The working group considers that the attendance of other officers should be arranged via advance request in order to address specific issues/questions raised in relation to items on the agenda. This is already the practice at Mid Devon. **There is no change proposed in this respect.**

5.0 AGENDA FORMAT AND ORDER

5.1 Agenda formats between the different planning authorities visited were very similar, with generally only small variations between them. The working group considered that the existing Mid Devon practice of dealing with enforcement items in advance of planning applications and dealing with member interests item by item rather than in a block up front should be retained.

5.2 The format used at Mid Devon considers planning and other applications first (via an itemised list approach) then a range of performance, management and briefing type reports which are later in the agenda (referred to as agenda reports). In that manner the items likely to attract the most public attendance are considered earlier in the proceedings.

5.3 During the meeting, the itemised list of applications is reviewed by Committee members before their individual consideration. Where there are members of the public, Parish / Town Councils, Members or Officers that wish to speak to that item, they are reserved for individual consideration by the Committee. All other applications (those with no speakers) are determined in accordance with the recommendation contained within the reports by a single motion for each item moved by the Chairman and subsequent vote. This takes place in advance of the consideration of individual applications where there are speakers. This arrangement allows the meeting to focus on applications where

members specifically wish to have a debate on the issues or where there are speakers who wish to bring particular issues to their attention.

The working group proposes no change in this respect.

6.0 REPORT FORMAT AND CONTENTS

6.1 The format, content and in particular length of officer reports on planning applications has been considered on several previous occasions, most recently in October 2010 as which time it was resolved that no changes be made to the reports being presented to the Planning Committee.

6.2 It is important that consideration of planning applications is open and transparent with reports containing all necessary information to allow for fair and robust determination of applications. Planning matters can also be controversial and subject to challenge via appeal, ombudsman and judicial review. The length of planning reports needs to achieve a careful balance in order to provide sufficient detail in order to ensure robust decision making that takes into account relevant material considerations, consultations and representations but not being over detailed and repetitive.

6.3 Previous legal advice on the content of officer reports was as follows:

- *‘There are no specific legal requirements as to what the report to the committee ought to contain and it may be oral rather than written or a combination of part written and part oral. It is the usual practice that all written reports are supplemented by oral advice and explanation at the committee meeting. It is usual for the report to contain the following; a description of the application, the relevant planning history and policies and will summarise the representations received from statutory and other consultees. It is common to refer to matters that are not material planning considerations and to state why these are not material however this could be done orally at the meeting.*
- *It is important that the officer’s report, whether written or oral, is as accurate as possible regarding both the facts and the law and be fair to both the applicants and any objectors. The report will usually contain a recommendation to grant or refuse planning permission, to state any conditions on which permission is granted including whether a legal obligation is required.*
- *The advantage about setting out all relevant matters in a report is that there is clear evidence, in the event of either an appeal or a judicial review application to the High Court, of what matters were considered by the planning committee in arriving at their decision. If parts of the report are given orally then the minutes would need to reflect this and this would present a higher risk that the evidence would be discounted or given less weight by a Planning Inspector or the Court.*
- *It is unusual for costs to be awarded in a planning appeal unless one party has, for example, acted unreasonably. Costs could however be*

awarded against the Council so it is important that the Council presents its evidence clearly, fully and preferably in written form. It is noted that Planning is one of the most contentious areas of the Council's functions, appeals are common and the Council does occasionally face judicial review proceedings.

- *The length of reports will to a large part, depend on the complexity of the application.*

6.4 From the attendance at other planning committees, the working group has concluded that the content of officer reports at other authorities are broadly similar to those produced at Mid Devon. Three issues of detail arose from viewing the reports from other authorities:

- Whether the conditions and reasons / reason(s) for refusal be moved up to the front of the report immediately after the recommendation? However this could be confusing in this position in the report as conditions deal with matters of detail arising from the content of the material considerations section. However in the event of a refusal, members may wish to see the reasons for refusal immediately after the recommendation at the front of the report.
- The inclusion of the name of the case officer to allow members to easily identify the officer to contact in the event of any questions on the application or content of the report in advance of the meeting.
- Whether an executive summary is needed at the front of the report? However, all approvals of planning permission are required to contain a reason for the grant of that permission. This reason already acts as a summary and is included in the report where approval is recommended. For refusals, reasons for refusal are needed and succinctly act to summarise why the proposal is considered unacceptable when considered against relevant policies. Accordingly this is not a recommended change.

Members of the working group were satisfied with the balance of information in the reports.

Recommended change 4: That in the case of refusals, the reasons for refusal be moved up to the front of the report to follow the recommendation and the case officer name be included.

7.0 OFFICER PRESENTATIONS

7.1 Officer presentations should assist those present in their understanding of the site, its surroundings and the determining planning issues. The presentation should support the written report within the agenda, but not repeat it. It should not act as a substitute thereby discouraging the reading of the report in advance of the meeting. Presentations need to be focussed and not overly long. They should act as a tool to assist robust decision making.

- 7.2 The officer presentations currently use powerpoint with plans of the proposal including its location, together with photographs and a summary slide of the determining material considerations. Other local authorities use a variety of methods to achieve the same purpose: video, google maps and streetview, photos and plans. Members of the working group did not consider the format of the officer presentations needed to substantially change, but that more clarity was needed over some matters of detail in terms of clearly marking the location of any photographs, enlarging both the title slide and cursor. Should the site photos come before the detailed application plans?

Recommended change 5: That officers review the length and content of presentations to make them more focussed and succinct.

Recommended change 6: That the content of officer presentations be amended to increase the size/ colour of the cursor, the location of photographs be clearly indicated and the title slide be enlarged.

8.0 PUBLIC SPEAKING

- 8.1 The circumstances under which public speaking takes place at Planning Committee is perhaps the most controversial area of procedure in terms of who is able to speak, when they speak, the number of people able to speak for or against proposals, how long is allowed and the order in which speakers are called. All councils visited offered the opportunity of public speaking at Planning Committee, but great differences were apparent between them.
- 8.2 **When may public speaking take place?** Public speaking is currently accommodated at two points in the agenda; firstly, at public question time of up to 30 minutes at the beginning and secondly, later in the running order in relation to individual planning applications. Speaking to agenda items needs to be clarified and it is suggested that it could take place when the item is dealt with rather than up front during public question time. This could take place for all agenda items, except perhaps those included for information such as the list of major applications or the list of delegated decisions.
- 8.3 **Who is able to speak and the number of speakers.** All Councils visited allowed objector(s), supporter(s) or the applicant / agent, a representative of the Parish or Town Council and the Ward Member to speak. A range of procedures were evident over the number allowed to speak on each application. Some Councils allowed only a single objector and a single supporter or the applicant / agent to speak, one allowed up to 2 of each and others did not limit the number of speakers. Issues to consider on this include the need to give opportunity for a fair, balanced hearing for the different parties whilst avoiding repetition of the same views and allowing the meetings to proceed in a timely manner. The current limit on one speaker for and one against an application is cause for applicant and particularly public frustration. This has been shown by the increasing number of questions being asked at the beginning of planning committee that

relate to individual applications. **The current restriction of the number of speakers should therefore be reviewed and form part of the consultation exercise. This should be considered in conjunction with the amount of time given per speaker.**

- 8.4 Members may wish to consider allowing more speakers, either in all instances or perhaps on major applications only. In the event that more speakers are allowed, Members will also need to consider the length of speaking for each person. For example:

Major applications

1 speaker for and 1 against	5 minutes each	(10 mins)
2 speakers for and 2 against	3 minutes each	(12 mins)
3 speakers for and 3 against	2 minutes each	(12 mins)
+ Parish + Ward Member		

Non major applications

1 speaker for and 1 against	3 minutes each	(6 mins)
2 speakers for and 2 against	2 minutes each	(8 mins)
3 speakers for and 3 against	2 minutes each	(12 mins)
+ Parish + Ward Member		

- 8.5 **How long to allow for speaking.** Most other Council's visited limited the time given for individual speakers to 3 minutes as is currently the case at Mid Devon with the exception of Ward Members who are not time limited. However it was noted that in a few instances this was extended to 5 minutes in the case of major applications. In some other Councils time limits on speaking length applied equally to both Parish Councils and Ward Members. The working group asks that these too be considered. The length given for each speaker should be considered in conjunction with the number of speakers.

- 8.6 **When public speaking takes place and the order of speaking.** Speaking currently takes place in the following order:

- i) Officer report
- ii) Supporter /applicant or agent
- iii) Objector
- iv) Parish or Town Council
- v) Ward Member

Feedback from the Planning Service's Agent's Forum is that agents / applicants request the ability to speak last in order to address comments or to correct any perceived inaccuracies made by others. Feedback from those that have objected to applications and also from Parish and Town Councils is that they too would wish to speak after the agent or the applicant for the same reasons. One party will inevitably be disappointed. When considering this issue one precedent for the order of speaking is that used by the Planning Inspectorate when considering planning appeals. The applicant is given the opportunity to speak last.

It is helpful for those wishing to speak advise Member Services in advance and 'register'. Individuals speaking either for or against an application are registered on a first come, first served basis.

- 8.7 **Questioning speakers.** In several Councils members of the Planning Committee asked questions of the speakers – either directly or through the Chairman. This is favoured by those attending the Agent's Forum and has advantages as a means to clarify issues as they arise. The working group suggest that this too form part of the consultation exercise to see if this change to current procedure has wider support.

Recommendation 7: That views be sought on arrangements for speaking at planning committee in terms of who, when, how many, how long for and the order of speakers. Should the questioning of speakers by Committee Members be included?

9.0 VOTING

- 9.1 At Mid Devon Members currently indicate their vote by a raising a hand. The count is taken out loud by the Member Services Officer. At other councils a range of methods were employed including an electronic system recording the vote from each member. The key in all cases is that it is clearly understood by all present which item is being determined, what the proposition is being voted on and that the result of the vote is clearly announced. This was not all always the case in other councils visited.

- 9.2 The working group considers that there needs to be a clearer procedure for the taking and announcing of votes at planning committee.

Recommended change 8: A clearer procedure be put in place regarding voting: that the item description, address and proposition be announced, Members clearly indicate their vote, that the vote is counted out loud and the outcome of the vote be announced.

10.0 SITE VISIT ARRANGEMENTS

- 10.1 Planning Committee site visits currently take place in two ways: as a visit by the whole of Planning Committee in advance of the meeting (normally on the morning of the meeting) when the application is a major or as a meeting of the Planning Working Group following the deferment of the application.

- 10.2 Normal meetings of Planning Committee (non specials) include a list of up and coming major planning applications. In order to identify such items early and timescale their consideration members are asked to indicate which they wish to visit. This involves all Committee members and takes the form of fact finding in preparation for the meeting. Members are accompanied by a Planning Officer who explains the scheme, points out specific features of the site and its surroundings and answers questions. The merits of the application are not debated and no decision is made during this visit. No other party attends.

- 10.3 Site visits may also take place by the Planning Working Group, a smaller subgroup of Planning Committee Members. This occurs when the application is deferred for a site visit by Planning Committee. Clear reasons for the site visit help members to focus on particular issues that can be seen during the visit. These may then be reported back at the next Planning Committee meeting at which time the application is normally determined. The applicant or the agent, an objector, the Parish or Town Council and the Ward Member are invited to attend and present their views on the application. There is also the opportunity for them to ask / answer questions. Speaking is controlled by the Chairman. The order of speaking is the same as outlined above. Once this has taken place, they are asked to leave. Members of the Planning Working Group then reflect on what they have heard and what they can see on site. No decision is taken. Summarised notes of the meeting are taken and reported back to Planning Committee with the agenda.
- 10.4 Members need to consider whether the Council continues to operate different site visit arrangements for members, particularly in light of recent poor attendance. Should the Planning Working Group be disbanded with deferrals for site visits being open for attendance by all members of Planning Committee? Would video presentation be beneficial and act as a substitute?
- 10.5 **Recommendation : That the arrangements for site visits be reviewed. Should the Planning Working Group continue or should site visits following a deferral be open to all members of Planning committee to attend? Clear procedures on the operation of site visit are needed.**

11.0 CONCLUSIONS

- 11.1 Members of the working group welcomed the opportunity to visit other Planning Committee meetings in order to identify best practice and issues for consideration at Mid Devon. The main finding of the working group was the high degree of consistency between Councils over the operation of Planning Committees. However several differences, particularly in public speaking arrangements were found that need to be considered. Detail of the operation of Planning Committee and its associated procedures are overdue an open and transparent review that takes into account the results of a public consultation exercise. The existing written procedures for the working of this Committee are not clear and need to be overhauled as part of this process. The Government has recently commented that the public needs to be brought back into the planning system and feel able to fully participate. This review and associated consultation will assist in this and will also aid robust, yet fair decision making that is clearly understood by all present.

Contact for Information: Jenny Clifford, Professional Services Manager
01884 234346

Circulation of the Report: Cabinet Member
Planning Committee

List of Background Papers: Sample planning committee agendas and
guidance from the Council's visited (on their
websites)
Report to Planning Committee October 2010 on
officer reports

Development & Management and Planning Inspection Committees How they work

Page 57

A guide for anyone who would like to:

- understand how the committee process works
- attend a committee meeting
- speak about an application at a committee meeting

Introduction

This guide is intended to help you to understand how planning applications are decided by the Development Management and the Planning Inspection Committees.

Only about 10% of planning applications come to the Development Management Committee for a decision. Most planning applications are decided by the Head of Planning and Countryside Services, in consultation with the Chairman or Vice Chairman because there is general agreement on the decisions. These applications are decided under delegated powers agreed by the Council.

The role of the two Committees

- The Development Management Committee decides those applications where:
 1. The Ward Member(s) disagrees with the Head of Planning's recommendation and has offered planning grounds to support his/her case. For the smallest scale of planning application the Chairman must agree to the request for the Committee to consider the case

2. It is an application submitted by the Council itself for development of its own land or property
 3. It is an application submitted by a Councillor, or employee or a family member of either
 4. The Head of Planning asks the Committee to decide – usually very large scale or controversial applications
 5. The Head of Planning is recommending approval, against adopted policies
 - If the Development Management Committee cannot agree and believes that a site visit should take place before a decision is reached, the matter is referred to the Planning Inspection Committee.
- The site visit is informal and private, but is followed by the Committee members returning to the Council offices and in a formal committee meeting, deciding the application.

When and where do the Committees meet?

Both planning Committees normally meet in the Council Chamber at Knowle, in Sidmouth. The doors open 15 minutes before the meeting starts.

Very occasionally, a meeting will be held on another day or elsewhere within the District.

This may be for a Special meeting of the Committee and advance notice is always given.

The Development Management Committee usually takes place every four weeks, on a Tuesday, starting at 2.00pm.

The Planning Inspection Committee normally meets 10 days after the Development Management Committee, on a Friday, to consider any applications referred to it.

For a list of meeting dates please visit our website at www.eastdevon.gov.uk or contact our Democratic Services Officers on 01395 517546.

Who is on the Committee?

The Development Management Committee is made up of 16 District Councillors representing the whole of East Devon. Local Ward Members not on the Committee may attend and speak on applications within their ward. These Members do not have a vote.

The Planning Inspection Committee is made up of eight Members drawn

from the Development Management Committee. In the event that a Member of the Committee cannot attend, their place will be taken by an appointed substitute. Ward Members may also address this Committee, but again may not vote.

The names of the Chairman and Vice Chairman along with other members of the committees and their contact details can be found on the Council's website or from the Democratic Services team.

Which Council Officers support the Committee?

The lead officer is either the Chief Executive, or in his absence, a Corporate Director or the Senior Council lawyer. He or she will advise the Chairman on the Committee procedure.

A Democratic Services Officer will also be present to take a record of the meeting. They will also manage the list of anyone wishing to speak at the meeting. For information on how to speak at the Committees, please see the end of this guide.

The Head of Planning and/or the Development Manager will usually be the planning advisor to the Committee –

presenting reports and answering any questions the Chairman refers to them. Other Planning Officers sometimes attend to present specific reports.

Occasionally other officers attend to give specialist advice, such as an Environmental Health Officer on noise, or a County Council Highway Officer on road safety.

There is a diagram at the end of this document setting out the layout of the Committee Chamber and showing who sits where.

Who may attend the meetings?

Any member of the public can attend Committee meetings and listen to the debate. They are not public meetings because the Committee Members don't debate with those present. They are Committee meetings which are held in public and at which public speaking is allowed, subject to rules which are explained later in this guide.

There may be times when the Committee needs to discuss private matters – usually financial information, legal challenges or appeals. This will normally take place at the end of the meeting and the press and public will be asked to leave.

How the Committee meetings work

Both Development Management and Planning Inspection Committee meetings can seem very complicated. It is necessary however for these particular Committees to be formal in their approach as they are often dealing with complex matters.

Although Officers will make a recommendation, the committee has the right to make any decision it chooses as long as it is legally correct.

You may not agree with the end decision, but provided it has been reached taking into account all the relevant planning matters and having dismissed irrelevant points, it is unlikely that the decision can be successfully challenged.

If you wish to have more information on what are and are not material planning grounds please contact the Development Management Team on 01395 516551 or access the Planning section of the Council's website.

Agendas are published 10 days before the meeting takes place. Members are encouraged to look at sites before the meeting.

The agenda is also available on the Council's website, at the District Council Offices in Sidmouth and at Council Information Points. All Town and Parish Councils receive reports for applications in their area.

The Chairman will open the meeting by signing the minutes of the last meeting as a true record of that meeting, take apologies for absent Councillors and hear declarations of interest from Councillors if they relate to the cases to be decided that day. The Committee will also consider if there are to be any private matters which Officers recommend should be dealt with in private (known as Part B items).

This is followed by any urgent items the Chairman has allowed to be presented – usually cases where there is a deadline that has to be met which does not allow the case to await the next meeting.

Reports on planning policy, Government consultation documents, procedural matters and information items are dealt with next, followed by items submitted for information on delegated planning decisions made during the month and any planning or enforcement appeals submitted or decided.

The Chairman will then turn to the individual planning application reports.

Each report will be dealt with as follows:

- The planning Officer will be invited give a verbal update on the report with any late items received since it was written. In more complex cases they may also summarise the key issues.
- Members of the public, the applicant and any Town or Parish Council representative, who have indicated on arrival at the meeting, that they wish to speak, will be invited by the Chairman to do so. There may be questions from the Committee members.
- The Ward Member(s) will make their contribution at the beginning of the debate and are invited to comment again before a vote is taken.
- The Chairman will open the debate to the Committee Members.

When a Member makes a recommendation (known as a Motion or Proposition) the Chairman will ask Members to debate it. When, in the Chairman's view, there has been sufficient discussion, the Member who moved the motion will be given the chance to reply. There will then be a vote.

It is often the case that during a debate on a motion another Member will suggest that it should be altered in some way (an "amendment"). If this happens the meeting will also have to discuss this amendment. Only one amendment can be dealt with at a time.

An amendment cannot be the direct opposite of the original motion. The Proposer of the original motion also has the right of reply before the summing up of the amendment proposer.

If an amendment is agreed it then becomes the substantive motion (the original motion is considered to have been defeated). If the amendment is not agreed and there are no further amendments, then the meeting will vote on the original proposal. Decisions can be reached by agreement or by a formal show of hands. In the event of a tied vote, the Chairman has, if he wishes to use it, a second or 'casting' vote.

This becomes the formal decision of the Committee and is recorded in the minutes.

- The voting process may appear confusing especially where Members are voting in favour of a refusal, or where there are various motions or amendments being

raised. However the Chairman and the lead officer of the Committee will ensure that the vote is accurate and the Chairman will confirm the final decision before moving on to the next case.

- Planning applications are either:
 1. approved
 2. approved with conditions and sometimes a Section 106 legal agreement)
 3. deferred with delegated authority (being given to the Head of Planning) to approve in consultation with the Chairman and Ward Member(s)
 4. refused (on specific grounds)
 5. referred to the Planning Inspection Committee for a site visit and final decision
 6. or are Deferred for more information (to come back to a later Committee meeting when the final decision will be made).

Minutes

The minutes of the Committee meetings are available on the Councils website and/or available for inspection at the Council Offices, Knowle, Sidmouth. For these committees the minutes are not a description of the debate, but are a record of the decisions taken and any key action points that may arise.

Public speaking procedure

If you wish to speak:

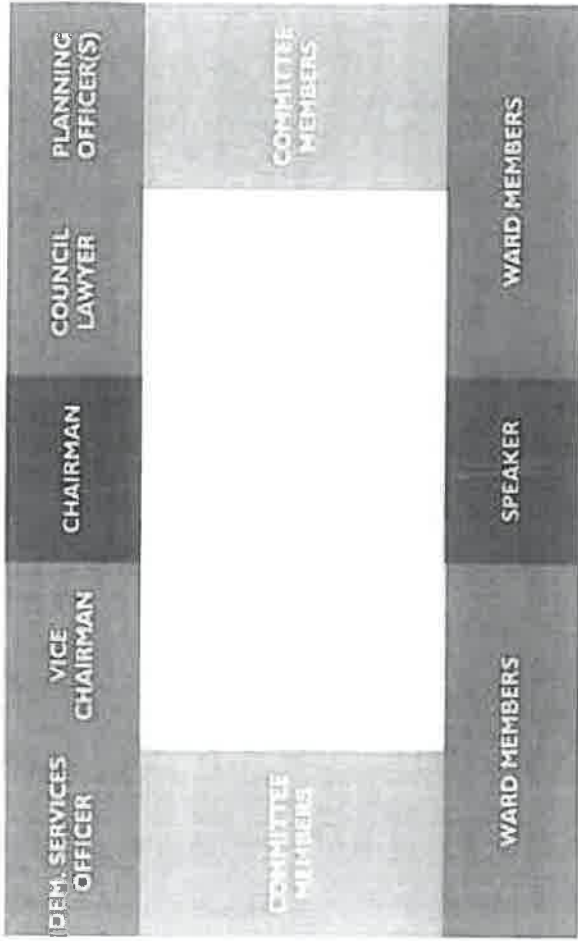
- When you arrive at the meeting please enter your name on the sheet for the application you are interested in.
- When a matter is discussed the relevant Officer will introduce and outline the item to be discussed. The public will then be able to speak on that matter only.
- All individual speakers will be limited to a period of three minutes – where there is an interested group of objectors or supporters, a spokesperson should be appointed to speak on behalf of the group.

Extra papers and/or handouts cannot be circulated at the meeting.

- There is a timing clock to assist you.
- Speakers should restrict their comments to planning matters only.
- The Chairman has the right to control speaking to avoid disruption, repetition and to make best use of the meeting time.
- There may be occasions at certain meetings when at the Chairman's discretion, the time allowed for each speaker is appropriately adjusted.

- Speakers are asked not to come to the microphone if their points have already been covered.
- After the public speaking period has finished the debate will begin and the public will take no further part in the meeting.
- All attendees at the meeting are asked to offer speakers the courtesy of listening to others' points of view, even if they do not agree with it.
- The Chairman will not tolerate any interruptions from the public and is entitled to exclude people from the meeting if the business of the committee cannot be carried out effectively.
- Members of the public must not pass notes to the Committee Members during the meeting.

Committee seating plan



PUBLIC SEATING AREA

How to get in touch

-  **Post**
East Devon District Council
Knowle
Sidmouth
EX10 8HL
-  **Telephone**
01395 517546
-  **Email**
memberservices@eastdevon.gov.uk

www.eastdevon.gov.uk

APPENDIX 3: SUMMARY OF CONSULTATION RESPONSES

INFORMATION PUBLICISING COMMITTEE PROCEDURES.

Total responses:

Parish / Town Council: 14

Agent / applicant: 2

Members of the public and individual Parish / Town Councillors: 5

MDDC elected members: 2

MDDC Scrutiny Committee

(NB: Reference to initial working group recommended changes as identified formed the basis for the consultation exercise).

Initial working group recommended change 1: That a clear guide to Planning Committee procedures is produced to inform the public and other participants.

Parish / Town Council responses:

1. Strongly agreed.
2. An advocate service should be available to assist the layman in the presentation of their arguments.
3. This should set out the stages of an application, the responses requested, who decides and actions available if the decision is unacceptable to respondents.

Agent / applicant responses:

1. Support – will improve procedures.

Members of the public and individual Parish / Town Councillor responses:

1. Agree regarding information.
2. Support. Suggest copies are widely publicised, circulated and their existence made known to all Parish Councils.

LAYOUT OF VENUE.

Initial working group recommended change 2: That the layout of the venue is amended to a 'U' shape once display screens have been upgraded in the Council Chamber.

Parish / Town Council responses:

1. Agreed.
2. Strongly support. Before the start of the meeting the Chairman should explain the proceedings and who is who.
3. The room layout has already been altered to make it more inclusive and presentational material more visible to all. Appears to be mostly implemented.
4. Introduce lapel badges in addition to name plates to enable the public to identify everyone involved.
5. If amended as proposed, suggest everything be turned through 90 degrees with a large screen behind the Chairman. This will ensure all can see and be more inclusive.

Agent / applicant responses:

1. Support – will improve procedures.

Members of the public and individual Parish / Town Councillor responses:

1. Speakers are only able to address the Chairman. It would be better to be able to address the Chairman and members rather than the side of their heads and see if they are listening.
2. Great if everything was turned through 90 degrees with a large screen behind the Chairman. The current end to end of room makes the public feel more remote and excluded.
3. Just go ahead with this.

PARTICIPANTS

Initial working group recommended change 3: That Legal advice is available in the preparation of the agenda, pre committee briefing and in person at the meeting itself.

Parish / Town Council responses:

1. Agreed provided that this advice is available on both sides of the argument.
2. Concern over cost and time. Any legal pitfalls should have been researched before this stage.
3. Support – the cost of attendance would be saved in the long run by having answers on tap rather than a delay.
4. Legal attendance at meetings is imperative.
5. Do not object, but concern of performance of legal officers thinking on the hoof (he got it wrong). Support legal input into the preparation of the agenda and pre briefing. Do not see the need for an officer to be there every meeting, but only if there was an identified need. If a legal matter came up during discussion it is more appropriate for the decision to be deferred in order that a legal point can be given proper consideration and if necessary researched, rather than make a rushed and possibly flawed response.

Agent / applicant responses:

1. Support – will improve procedures.

Members of the public and individual Parish / Town Councillor responses:

1. Is this to look after the interests of the /Council and due to fear of being sued?
2. Is Legal Opinion to be made available to all parties? It could aid public transparency.
3. What is the cost and how is it justified?

ATTENDANCE

There is no change proposed.

Parish / Town Council responses:

1. We see no need for other officers to be there unless there is an identified need as their time could be better used. We strongly argue that the Cabinet Member holding the Planning Portfolio be present at most, if not all meetings to monitor performance of committee and officers.

Members of the public and individual Parish / Town Councillor responses:

1. Agreed.

AGENDA FORMAT AND ORDER

The working group proposes no change in this respect.

Members of the public and individual Parish / Town Councillor responses:

1. Agreed.
2. We suggest that enforcement be dealt with after applications as less public are likely to be involved. We support the procedure set out in para 5.3 of the report (Review the list of applications before their individual consideration. Where there are none that wish to speak to an application or debate it, they are the subject of a single motion from the Chair in advance of the individual consideration of applications where there are speakers or a debate is requested by Members of committee).
3. There is no discussion of items where no member of the public is there to oppose. It is assumed each Councillor has fully read and understood all the documents. This is unlikely with so many for each meeting. They will therefore only be guided by the outcome expected from them. Full details should be presented for every case.

REPORT FORMAT AND CONTENTS

Initial working group recommended change 4: That the case officer name be included and in the case of refusals, the reasons for refusal be moved up to the front of the report to follow the recommendation.

Parish / Town Council responses:

1. Agreed.
2. The length and content of reports is a matter for members of Planning Committee and what they feel is needed to help them reach a conclusion. Reports need to be correct in detail and contain reference to all relevant information - not be selective or summarised, thereby not giving the full information intended by the contributor. Some reports and their content currently leave a feeling of bias. We agree with the comments at 6.3 of the report (previous legal advice on the content of officer reports).
3. There are two issues from the legal advice on the content of officer reports that we feel are not regularly observed by officers: firstly, that it is fair to both the applicant and any objectors and secondly, if parts of the report are given orally the minutes need to reflect this and this would present a higher risk that the evidence would be discounted or given less weight by a Planning Inspector or the Court.

Agent / applicant responses:

1. Support – will improve procedures.
2. Reports are too long. The issues should be capable of being summarise rather than including all comments from consultees.
3. I accept that most local authority planning officers consider that their prime responsibility in terms of development control matters is to protect the integrity

of the policies within the Development Plan currently in force. I do detect in the approach of some officers in their reports to Committee a reluctance to fully set out all other material considerations and the weight which could be applied to those matters.

Members of the public and individual Parish / Town Councillor responses:

1. Agreed.
2. Officer recommendations let Councillors off the hook to listen or have a view. It relieves members from more than a cursory reading of the application before the meeting.
3. All the public need from the planning officers is consistent, fair and transparent planning decisions.
4. All planning policies, strategies, decision making criteria should be documented in an easily understood format and held in an online database for instant access by interested members of the public. This will free up the planning officers to focus on their priorities.
5. Where precedence or case studies are used to support a decision they should be should be easily available for public reference and scrutiny.
6. A report template will ensure contents are produced in a consistent manner and designed to reflect quantitative and qualitative needs of Planning Committee.
7. Vital officer name is on each report.
8. Major decisions should be in an executive summary at the front of the report template.
9. The more systemised the process becomes, the more efficient, consistent, fairer, transparent and faster planning decisions may be made with the potential to lower caseload for officers and Committee members.

OFFICER PRESENTATIONS

Initial working group recommended change 5: That officers review the length and content of presentations to make them more focussed and succinct.

Parish / Town Council responses:

1. Agreed. Reduce reference to previous documents and jargon. Should be no longer than 15 mins but discretion applied to larger developments.
2. Be succinct.
3. Improve clarity and ease of comprehension.
4. Agree that presentation should not act as a substitute to or repeat the report thereby discouraging it from being read in advance. Agree presentations need to be focussed and not over long. Verbal presentations have been found to contain information or suggestions which have not been seen in the written report or documents on the website thereby preventing objectors presenting an alternative view. Changes have also been suggested on the hoof during the discussions of Planning Committee for which there is no presented evidential base.

Agent / applicant responses:

1. Support – will improve procedures.
2. MDDC Officers present cases clearly and concisely.

Members of the public and individual Parish / Town Councillor responses:

1. Just go ahead.
2. Supply officers with a standard presentation format / template that they and committee agree to.

Initial working group recommended change 6: That the content of officer presentations be amended to increase the size/ colour of the cursor, the location of photographs be clearly indicated and the title slide be enlarged.

Parish / Town Council responses:

1. Agreed.

Agent / applicant responses:

1. Support – will improve procedures.

Members of the public and individual Parish / Town Councillor responses:

1. Photos should have date and time taken to ensure they are a genuine representation. At the meeting I attended officer photographs were biased and not representative. I circulated photographs myself prior to the meeting other wise members would not have seen a realistic view of the area. Speakers should be able to present photographs too.

PUBLIC SPEAKING

Recommendation 7: That views be sought on arrangements for speaking at planning committee in terms of who, when, how many, how long for and the order of speakers. Should the questioning of speakers by Committee Members be included?

When may public speaking take place?

Who is able to speak and the number of speakers.

How long to allow for speaking.

When public speaking takes place and the order of speaking.

Questioning speakers.

Parish / Town Council responses:

1. Committee should be allowed to question speakers to aid clarity, but that it not be a cross-examination.
2. Agree with questioning of speakers.
3. The Chairman should make a summary statement.
4. The applicant or their agent should be able to speak last.
5. Parishes should have chance to speak last or near the end as they represent all people of the area and usually carry their objections.
6. Objectors should be able to speak last. Statements by applicants / developers may not be accurate. Local knowledge is needed to correct these.

7. There should be more interaction between the Committee members and speakers.
8. Whilst a time limit for public speakers is set, it should be flexible to allow more contributors, if adding value, within the time constraint.
9. Clarification should be given of time allowed for speakers.
10. Time for 'comeback' should be allowed for applicants, supporters / objectors and Parish Councils to respond to possible inaccuracies. Particularly useful for the party that is first in the order of speaking.
11. Speakers should have 5 minutes each.
12. The time allowed to speak should be in proportion to the size of the application.
13. Allow the applicant and public speakers to speak during the individual planning application stage rather than up front in public question time.
14. Suggest: Major applications 2 speakers and 2 against with 3 minutes each. This will allow cases for and against to be made. Minor applications: 2 speakers and 2 against with 2 minutes each.
15. Very important Committee can clarify points with speakers.
16. Our Council involve the applicant in a question and answer session prior to the application being tabled. This is not through the Chairman, but as an open forum. It aids application understanding and the reasons for it.
17. Public speaking at the beginning of the meeting indicates frustration at not being able to speak when the application is considered.
18. It would be better to have speaking to agenda items when the item is dealt with rather than up front in public question time. It would then be relevant to the item being discussed. Currently the question could be asked over 2 hours before the matters is discussed and Committee could then forget the relevance. The recorded answers in the minutes are not in chronological order.
19. The number of people speaking for or against an application will always be contentious. Note a suggested difference between major and non major applications. Surely the reason why it is before Committee in the first place is because it is major. If non major it has probably been called to Committee by the Ward Member as it is controversial and so to those involved it becomes major.
20. Three minutes is very tight – anything less would not be considered viable. If public question time at the beginning of the meeting was restricted to no application questions and public questions taken with the relevant application, the questions could be better managed and restricted to 2 minutes per question. Five minutes could be permitted per speaker: 1 for, 1 against + Parish / Town representative + Ward members, 6 minutes for each.
21. Objectors should speak last as the applicant has had the opportunity to put forward papers in support of the application, has had meetings with officers to put their case and if recommended for approval, even more of the applicant's case is put forward. Objectors and Parish / Town Councils feel disadvantaged by this so need the balance of speaking last. When it gets before an Inspector, the applicant / appellant is on the other side and rightly should have the last word.
22. Support the practice now in place for registering speakers and the order of speaking.
23. Support increasing the number of people being able to have their say when an application is discussed.

24. Support a time restriction for Ward Members and that it be the same as for other speakers.
25. Give applicants the opportunity to speak at the end of this period, following statements by others.
26. Parish Councils should be given 5 minutes to speak as they represent large numbers of people.
27. Ward Members speaking should be restricted to 5 minutes each with a collective time of 15 minutes when more than 1 attends. Ward Members should be able to ask questions at the Chairman's discretion.
28. The length of Parish Council speaking is influenced by whether the Committee participants have read and understood the response of the Parish to the application and how much discussion there is between the case officer and members of Planning Committee in advance of the meeting.
29. If the original documentation and response have been understood there should not be a need for repetition and speeches can be kept short. The key is whether speakers believe Committee members have understood the issues. A summary (perhaps from the Ward Member) would clarify this understanding. Proceedings will shorten if speakers are able to comment on the summary. This is an issue when Committee members make observations during their discussion that do not match local awareness and there is no opportunity for comment or for correction, particularly over factual inaccuracies. If the Ward Member provides an initial summary, an adjustment to interpretation could be offered by them before a vote is taken.
30. Time allocations for speaking should be extended to five minutes for Town and larger Parish Councillors to speak, as they represent large numbers of people.

Agent / applicant responses:

1. Support – will improve procedures.
2. Allowing questions from Members is a good thing and will engage with the issues. A more reasoned debate may result from interaction between the Committee and speakers. The impression currently is that I am going through the motions and what is said will have no effect on member's views whatsoever.

MDDC Councillor responses:

1. There should be a right of reply when inaccurate statements are made by Planning Committee members during their debate. A spokesperson either for or against the application should be given the opportunity to correct this. Fairer decisions will result.
2. Restrictions on Ward Member speaking are too onerous and more speaking time should be given as they represent their constituents.
3. Ward Members that are also on Planning Committee have an unfair advantage as their input is not restricted. In some other authorities Committee members have the same restrictions as non Committee members.
4. I am aware of a Local Authority that prevents a Ward Member on Planning Committee from voting on an application in their ward.

MDDC Scrutiny Committee's response:

1. Members of Planning Committee would like the opportunity to ask questions of speakers to clarify issues. This takes place at some other councils.

Members of the public and individual Parish / Town Councillor responses:

1. The order of speakers is not well thought out. There is no opportunity to correct wrong statements or to address committee members directly to respond to their comments or questions. Only officers and DCC can do so.
2. Issues were discussed out of context, misdirecting the discussion. Several facts were used to push the application through that were in contrast to MDDC own data i.e car use in Devon.
3. Two members of the public should be allowed to speak for and against – one is not enough.
4. Time allowed for each speaker is long enough.
5. Officers are allowed to speak for too long. The content is lost in a mass of slides and paperwork. Their time should be cut to allow further public representation and real discussion amongst all involved –not just members and officers.
6. Speakers should be allowed to ask questions and to answer them.
7. Public questions should be immediately in front of the relevant items otherwise they are lost in the Committee's minds by the time of the relevant item.
8. Need to remove the ruling that questions cannot directly mention policies but must relate to them by the nature of the question. Most questions are a waste of time as Committee members don't know what they relate to unless they are fully conversant with all policies.
9. Who decides what is a major application – this is arrogant. In many cases an application may have major implications for someone's life. It's not about application size. All applications should have a right to a hearing.
10. The number of speakers and timing is difficult – Majors: 4 minutes is not enough, 5 minutes is too long. 2 public speakers, each with 3 minutes would be more democratic and allow for different points of view and that not all objectors may want to get together. Additional opportunity for the Parish and Ward members should be given. Non-majors: 1 speaker each at 3 minutes.
11. Allowing the planning officer to respond to questions last with no recourse to address inaccuracies is wrong and undemocratic. Opportunity should be given for public response.
12. One supporter, one objector, the Town / Parish Council and the Ward Member should be allowed to speak, each having 3 minutes.
13. Questioning of speakers should be allowed.
14. For both major and non major applications 3 speakers for and 3 against should be the norm with 3 minute allowed for each.
15. Major applications – the applicant is normally a professional, articulate, presents arguments succinctly and convincing in a very short time. Objectors are unused to such situations, anxious, emotional and find it harder to present arguments concisely. The process favours or seems to favour the applicant.
16. Non majors – 3 speakers for each side are unlikely and could be limited to 2 speakers. Who decides what is a major application as non major issues may generate strong feelings for and against.
17. Propose questions be taken at the point of presentation of individual applications with an immediate response discussion. Follow with up to 3 speakers for and against limited to 3 minutes each. Any open session at the beginning should be limited to general issues, not individual plans.
18. If time is a huge constraint, drop public question time at the beginning. These are frustrating as answers are not given immediately. The questioner is not

allowed a discussion if they feel their question has not been properly answered.

19. Attempts to constrain time to speak, cross examination and questioning undermine the planning process and may be considered undemocratic. Is the reason to manage or constrain the amount of discussion or the time availability of committee members?
20. More productive to proactively improve public engagement and information availability and attempt to reduce the need to question in the first place than attempt to restrict public interaction.
21. Consider separating appeals from applications an minor from major applications. Allocate each application category an appropriate amount of time and resource rather than applying the same rules across all applications.
22. Improve communication, community engagement and transparency to keep the number of items referred to committee to a minimum (apart from major applications).
23. Committee should be able to question all speakers, but most information should be gathered by committee prior to the meeting.

VOTING

Initial working group recommended change 8: A clearer procedure be put in place regarding voting: that the item description, address and proposition be announced, Members clearly indicate their vote, that the vote is counted out loud and the outcome of the vote be announced.

Parish / Town Council responses:

1. Agreed.
2. Voting needs to be more visible and accountable to the general public.
3. The vote should be counted aloud.
4. The results of the vote must be clearly announced.
5. The application should be summarised before the vote.
6. Funds permitting, use an electronic voting system as mistakes can be made on a hand count.
7. The vote should be made after clear description of item, address and proposal. The vote taking should continue as now by the raising of hands as it can be seen clearly which way each member votes.

Agent / applicant responses:

1. Support – will improve procedures.

Members of the public and individual Parish / Town Councillor responses:

1. Agreed.
2. Abstaining is a cop out unless there are legitimate (non-political) reasons. Each member should be obliged to vote. If they abstain, the reason must be given. If they wish to hide behind an abstention, they should not be on the committee.
3. Disagree with electronic voting on grounds of cost and members need the exercise to wake them up.
4. The public need to see who is voting which way and that they be under the pressure of public scrutiny to vote honestly and with a conscience.

5. No need to consult on this – go ahead. A record of an individual members vote history should be maintained in the interests of transparency and consistency.

SITE VISIT ARRANGEMENTS

Recommendation 9: That the arrangements for site visits be reviewed. Should the Planning Working Group continue or should site visits following a deferral be open to all members of Planning Committee to attend? Clear procedures on the operation of site visit are needed.

Parish / Town Council responses:

1. Agreed – All members of Committee should be able to attend the site visit together with Ward Members and Parish representative.
2. Parish Council requests for a Committee site visit should be honoured to which Parish Clerks should be invited.
3. No strong feelings on the number of attendees.
4. The relevance of the second visit should be made clear.
5. At least two Parish or Town Councillors should be allowed.
6. There should be opportunity for Parish Council representatives to attend, to reduce the total number of visits.
7. At Committee meetings Officer reports are often read verbatim. This is unnecessary and waste time. Councillors should have read these already and accept officers have based their reports on policies and reasons.
8. It would be helpful for Parish Council to know if a site visit has taken place initially by the case officer and later by Committee members and the findings.
9. An opportunity for Parish Council attendance at a site visit would help understanding and should be an automatic option.
10. Site visits should take place prior to the meeting by all members where the application is major or considered complicated as they will then understand the location and site layout when listening to representations and carrying out their own discussions. These site visits would be with the Committee members and case officer. It is apparent from some meetings that councillors have little idea of the location let alone any other detail. Referrals for site visits would be reduced – our experience of these are not good and these types of visits should be the exception rather than the rule. The format could be as now.

Agent / applicant responses:

1. Support – will improve procedures.
2. I am often told that it is not possible to persuade Councillors to visit. Often a site visit is critically important to the understanding of project context, especially for Councillors who do not know the site. I was previously a Councillor for a different authority. There was a rota system requiring Councillors to attend site inspection panel visits. If they failed to attend, they were removed from the Committee.

Members of the public and individual Parish / Town Councillor responses:

1. Date and time should be agreed with the Town Council and people making representations so the problem under scrutiny is seen.

2. In this case the visit was held mid-morning on a Wednesday. Research from the officer would have informed her that the doctor's surgery was closed and pre-school traffic finished. (Was this why this time and day was chosen?). one members visited outside this time and experienced chaos rather than the quiet lane portrayed by the officer trying to push the application through.
3. All members should attend a site visit if one is needed. A visit on 2 occasions would give a balanced perspective on traffic.
4. Planning Working Group visits – Non-committee speakers / attendees should not be asked to leave after speaking, but should stay in the wings in case other queries arise.
5. Video presentation is not a substitute for a site visit.
6. All committee members should be asked to attend site visits – all will vote so they should all see the site.
7. All site visits should include an invitation to the applicant and one objector. These people will be directly affected by the decision and have close, detailed knowledge of the area. The people who will be affected by the outcome are the only ones able to affectively point this out.
8. Site visits need to see the real situation – morning visits may present a different picture from an evening / night visit.
9. Concerned at reference to poor recent attendance. Committee members should address the need for site visits otherwise the fairness of the planning process is undermined. Members should regularly commit and guarantee their future available time on a regular basis.
10. Why is it left up to Members to decide which to visit? Known number of planning officers, committee members and site visits required to be processed within a particular time frame. Put a process in place where the appropriate quorum is mandated to attend site visits.
11. Planning officers are allocated cases geographically. Also allocate cases to individual committee members who are transparently responsible and accountable for assisting and supporting the planning officer to ensure that together they handle all aspects of their case load up to the final committee meeting.
12. Planning committee needs to allocate the correct level of resources in order to complete the workload to an agreed standard. Case load should be shared equitably between all council members. The methodology should be public and used to measure performance.

OTHER COMMENTS RECEIVED

Parish / Town Council responses:

1. Disappointed and concerned that the consultation has been restricted to Planning Committee procedures when the PC has raised issues with the Chief Executive and Head of Planning and Regeneration over the performance, actions and procedures of the planning department and some of its officers. There was an understanding that we would be involved in any discussions from an early stage (reinforced by the District Councillor and Cabinet Portfolio for Planning). Much of this has not materialised to date. A few concerns have been addressed, but the main ones have not. It has taken so long for the consultation to take place gives concern to the veracity of assurance given to the Parish Council. Facts can be given to support the

- concerns –all have been made known to the above Councillor and officer over the past years.
2. The review is welcomed – the operation of the Committee has been source of public concern.
 3. If the application is for a large project the Planning Committee should meet in the town or village hall closest to that project if requested.
 4. A Parish Council representative should be invited to pre-meetings with applicants.
 5. Parish Council sometimes reach a decision (recommendation) subject to proviso or concerns expressed. Officer Reports should explain or detail this. If not, the Parish Council do not feel their voluntary time and effort has been valued. On major submissions with multiple points it would be time consuming to go into detail, but a 'noted' is too casual a reply. Planning guidelines may overrule local comments or wishes, but the principle could be established.
 6. Too much power is delegated to Planning Officer, potentially leaving them in a vulnerable position. More power should be with the elected members on the Planning Committee.
 7. Voting abstentions should not be allowed. Abstaining Councillors should make room for those who wish to vote. It is a waste of time being on a Committee if abstaining.
 8. There is a lack of dimensions on plans making it difficult to know the size.
 9. Fixed meeting dates of Parish Councils should be factored in when setting the timetable for an application through the planning process (especially for major applications).
 10. When Committee decide to refuse an application against officer recommendation it should not go back to the Officer for clarification of policy and reasoning. The original decision to reject should be accepted as binding. To do otherwise is undemocratic. Once the Committee has made their decision it is for Officers to implement it. Follow up reports should only be required when the officer recommendation is for approval and the Committee decides to refuse. Over-turn decisions from refusal to approval will not be appealed.
 11. Conditions on planning approvals are not followed up. A register is required to record conditions and ties to be policed by the Planning Enforcement Officers.
 12. The detail of an application is important and any conditions arising. Who has responsibility to make sure conditions are met? Is the Parish Council, being local, expected to oversee the conditions are applied or is there a formal review by the case officer?
 13. Lack of consultation with Parish Council when details of an original application are changed or amended before a final decision is made.
 14. Closing dates for public comment set from the date of registration and not when published in press or on site (it sometimes becomes flexible).
 15. Relevant application pages on website not containing all documents or documents referring to other applications.
 16. Planning officers making prior decisions which should rightly be made later by Committee Chair or elected councillors.
 17. Meetings take place between the applicant and officers which the Parish are prevented from attending where their input could prevent or reduce potential conflict of misunderstanding.
 18. Notes of such meetings are not passed to Parish Council or placed in the public domain leading to suspicions of questionable procedures.

19. After approvals are given or enforcement notices issued by committee conditions are amended or changed completely without reference to Parish Councils, local objectors or the Planning Committee.
20. Instances of misinformation given where certain actions are not challenged and no evidence produced to support or verify information or actions.
21. Information presented to Committee by officers during the hearing which has not been made openly available and no evidence placed in the public domain subsequently to support such information.
22. Concerned at proposal by Planning Department to do all paperwork by email. This would cause great difficulty to small Parish Meetings without access to large, coloured photocopy systems. I hope it is dropped for small parishes.

Agent / applicant responses:

1. At times it appears that Councillors are not fully briefed in their training to understand that a balanced decision has to be reached, taking account of both policies in the Development Plan and **all** other material considerations.
2. There is a troubling impression given by Committee members that they can get out of voting as a result of someone locally mentioning the application to them. Further clarity should be provided to Councillors in training as to what constitutes a conflict of interest. It appears that local objectors who have discussed the matter with their ward councillor suffer a disadvantage later in the process because the councillor is frightened to vote on it.

MDDC Councillor responses:

1. Concerned about the number of special meetings. I avoid being unavailable for scheduled meetings and plan ahead at the start of the year. You should either make provision to the start to meetings in the morning or identify dates that might be needed for extra meetings. Special meetings are more of a problem for members who are the only representative of their patch.

MDDC Scrutiny Committee's response:

1. When the Committee goes against officer recommendation, applications are often deferred. They come back to Committee at a later date giving the applicant a second chance to have their application heard.
2. Where Planning Committee is minded to determine an application against officer advice it is deferred for an officer implications report. On occasion the Committee had been unable to provide reasons for the proposed decision which related to planning policy. This has left the planning authority in a vulnerable position should an appeal take place subsequently.
3. There is a concern over the validity of information provided by applicants and what checks are undertaken.
4. Concern over the enforcement function of planning. Statistics of cases to be provided to Scrutiny Committee members.

Members of the public and individual Parish / Town Councillor responses:

1. I have attended one Planning Committee meeting as a Town Councillor. The impression was not good. The procedure was largely lip service and decisions had been made already.
2. Members (including the Chairman) need to listen to speakers. There was a lack of common decency in not doing this that was appealing behaviour and unacceptable in a formal meeting.

3. Committee members are given advice on how they should vote on an application based on officer's direction and pressure. This makes a mockery of the democratic process. The Committee should be free to make their own informed decision based on balanced, not biased facts.
4. Where a vote is taken and result not desired by the Chair, on no account should members be asked to reconsider without genuine need agreed.
5. Members are advised to be subservient to planning officer recommendations.
6. Minutes should be a proper record of what has occurred. Verbatim records should be available or recording.
7. Support recording and sharing of committee meetings in the interest of transparency and engagement.
8. A Councillor has been denied participation for nearly a year and faced court proceeding for something said in a committee. Councillors must be free to make honest and transparent input.
9. The consultation skates over the surface and avoids the minutia of the proceedings.
10. There is the impression of a very relaxed, cosy relationship between developers and planners.
11. The issues being experienced should be elaborated on and why is the review limited to the committee processes only? Many aspects of the planning process go on outside the committee. How was the subject list arrived at?
12. If community engagement is addressed thoroughly, the number of appeals, arbitrations and workload of the committee may be reduced.
13. Planning Committee's customer and stakeholder is the community. It should move its attention away from attempting to solve internal issues towards becoming an outward (community) facing service capable of delivering added value and efficiencies to all parties.
14. Planning Committee serves the public and has statutory obligations regarding their work – it cannot afford to be found short in any aspect of service provision.
15. In order to improve, there needs to be willingness to consider changing current working methods: where is the Planning Committee today in terms of performance and efficiency? Where does it want to be in the future? – a clear set of statements to define how a new and improved committee could perform.
16. It is difficult to make reliable informed decisions on detailed management aspects without first addressing issues arising from the bigger picture.
17. Proven processes and systems should be used to assist process improvement. (Agree strategic goals that link to objectives, that link to measurements that link to individual goals, budgets and targets. Without a clear Strategy, - how to agree objectives?, without quantifiable objectives, - how to measure performance?, if unable to measure performance, how is it possible to drive improvement?). These are informed by external community engagement (how we perform and look at our community), internal business processes (what should be focus on to improve satisfy our objectives), learning and growth (what does the planning committee need to do to improve performance and service?), investments (what investments are needed to achieve the objectives?)
18. Parish Councils feel marginalised in the planning process (especially with the presumption to approve). Their opinions and those of their parishioners are ignored or overlooked. There is good will and enthusiasm in the Parishes.

Rather than risk alienating them, explore ways how MDDC may utilise the pool or resource.

19. If MDDC are short of resources, consider co-opting Parish Councillors into the Planning Process.
20. Much time is spent scrutinising and querying applications that are either not accurate or up to a basic minimum standard. Simple changes to the process could ensure a competent qualified officer checks and approves the documents for accuracy prior to being released to the public.

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Probity in planning

for councillors and officers



Contents

Foreword	4
Introduction	4
Background	4
The general role and conduct of councillors and officers	5
Registration and disclosure of interests	7
Predisposition, predetermination, or bias	8
Development proposals submitted by councillors and officers, and council development	9
Lobbying of and by councillors	9
Pre-application discussions	11
Officer reports to committee	12
Public speaking at planning committees	13
Decisions which differ from a recommendation	13
Committee site visits	15
Annual review of decisions	15
Complaints and record keeping	16
List of references	16
Flowchart	17



This publication was prepared by Trevor Roberts Associates for the Planning Advisory Service. It also includes contributions from officers from various councils.

April 2013

Foreword

This 2013 update to the 2009 version of the Local Government Association's Probity in Planning guide reflects changes introduced by the Localism Act 2011. It clarifies how councillors can get involved in planning discussions on plan making and on applications, on behalf of their communities in a fair, impartial and transparent way.

This guide has been written for officers and councillors involved in planning. Councillors should also be familiar with their own codes of conduct and guidance.

This guide is not intended to nor does it constitute legal advice. Councillors and officers will need to obtain their own legal advice on any matters of a legal nature concerning matters of probity.

Introduction

Planning has a positive and proactive role to play at the heart of local government. It helps councils to stimulate growth whilst looking after important environmental areas. It can help to translate goals into action. It balances social, economic and environmental needs to achieve sustainable development.

The planning system works best when officers and councillors involved in planning understand their roles and responsibilities, and the context and constraints in which they operate.

Planning decisions involve balancing many competing interests. In doing this, decision makers need an ethos of decision-making in the wider public interest on what can be controversial proposals.

It is recommended that councillors should receive regular training on code of conduct issues, interests and predetermination, as well as on planning matters.

Background

In 1997, the Third Report of the Committee on Standards in Public Life (known as the Nolan Report) resulted in pressures on councillors to avoid contact with developers in the interests of ensuring probity. In today's place-shaping context, early councillor engagement is encouraged to ensure that proposals for sustainable development can be harnessed to produce the settlements that communities need.

This guidance is intended to reinforce councillors' community engagement roles whilst maintaining good standards of probity that minimizes the risk of legal challenges.

Planning decisions are based on balancing competing interests and making an informed judgement against a local and national policy framework.

Decisions can be controversial. The risk of controversy and conflict are heightened by the openness of a system which invites public opinion before taking decisions and the legal nature of the development plan and decision notices. Nevertheless, it is important that the decision-making process is open and transparent.

One of the key aims of the planning system is to balance private interests in the development of land against the wider public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. Opposing views are often strongly held by those involved.

Whilst councillors must take account of these views, they should not favour any person, company, group or locality, nor put themselves in a position where they may appear to be doing so. It is important, therefore, that planning authorities make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons.

The process should leave no grounds for suggesting that those participating in the decision were biased or that the decision itself was unlawful, irrational or procedurally improper.

This guidance is not intended to be prescriptive. Local circumstances may provide reasons for local variations of policy and practice. Every council should regularly review the way in which it conducts its planning business.

This guidance refers mainly to the actions of a local authority planning committee as the principal decision-making forum on planning matters. It is recognised, however, that authorities have a range of forms of decision-making: officer delegations; area committees; planning boards, and full council.

This guidance applies equally to these alternative forms of decision-making. Indeed, it becomes very important if the full council is determining planning applications referred to it, or adopting local plans and other policy documents, that councillors taking those decisions understand the importance of this guidance. The guidance also applies to councillor involvement in planning enforcement cases or the making of compulsory purchase orders.

The general role and conduct of councillors and officers

Councillors and officers have different but complementary roles. Both serve the public but councillors are responsible to the electorate, whilst officers are responsible to the council as a whole. Officers advise councillors and the council and carry out the council's work. They are employed by the council, not by individual councillors. A successful relationship between councillors and officers will be based upon mutual trust, understanding and respect of each other's positions.

Both councillors and officers are guided by codes of conduct. The 2011 Act sets out a duty for each local authority to promote and maintain high standards of conduct by councillors and to adopt a local code of conduct. All councils had to adopt a local code by August 2012.

The adopted code should be consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

It should embrace the standards central to the preservation of an ethical approach to council business, including the need to register and disclose interests, as well as appropriate relationships with other councillors, staff, and the public. Many local authorities have adopted their own, separate codes relating specifically to planning although these should be cross referenced with the substantive code of conduct for the council.

Staff who are chartered town planners are subject to the Royal Town Planning Institute (RTPI) Code of Professional Conduct, breaches of which may be subject to disciplinary action by the Institute. Many authorities will have adopted a code of conduct for employees and incorporated those or equivalent rules of conduct into the contracts of employment of employees.

In addition to these codes, a council's standing orders set down rules which govern the conduct of council business.

Councillors and officers should be cautious about accepting gifts and hospitality and should exercise their discretion. Any councillor or officer receiving any such offers over and above an agreed nominal value should let the council's monitoring officer know, in writing, and seek advice as to whether they should be accepted or declined. Guidance on these issues for both councillors and officers should be included in the local code of conduct

Employees must always act impartially and in a politically neutral manner. The Local Government and Housing Act 1989 enables restrictions to be set on the outside activities of senior officers, such as membership of political parties and serving on another council. Councils should carefully consider which of their officers are subject to such restrictions and review this regularly.

Officers and serving councillors must not act as agents for people pursuing planning matters within their authority even if they are not involved in the decision making on it.

Whilst the determination of a planning application is not a 'quasi-judicial' process (unlike, say, certain licensing functions carried out by the local authority), it is a formal administrative process involving the application of national and local policies, reference to legislation and case law as well as rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly. All involved should remember the possibility that an aggrieved party may seek a Judicial Review and/or complain to the Ombudsman on grounds of maladministration or a breach of the authority's code.

Finally, as planning can sometimes appear to be complex and as there are currently many changes in planning taking place, the LGA endorses the good practice of many councils which ensures that their councillors receive training on planning when first appointed to the planning committee or local plan steering group, and regularly thereafter. The Planning Advisory Service (PAS) can provide training to councillors (contact pas@local.gov.uk).

Registration and disclosure of interests

Chapter 7 of the 2011 Act places requirements on councillors regarding the registration and disclosure of their pecuniary interests and the consequences for a councillor taking part in consideration of an issue in the light of those interests. The definitions of disclosable pecuniary interests are set out in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. A failure to register a disclosable pecuniary interest within 28 days of election or co-option or the provision of false or misleading information on registration, or participation in discussion or voting in a meeting on a matter in which a councillor or co-opted member has a disclosable pecuniary interest, are criminal offences.

For full guidance on interests, see *Openness and transparency on personal interests: guidance for councillors*, Department for Communities and Local Government, March 2013. (This guidance note does not seek to replicate the detailed information contained within the DCLG note). Advice should always be sought from the council's monitoring officer. Ultimately, responsibility for fulfilling the requirements rests with each councillor.

The provisions of the Act seek to separate interests arising from the personal and private interests of the councillor from those arising from the councillor's wider public life. Councillors should think about how a reasonable member of the public, with full knowledge of all the relevant facts, would view the matter when considering whether the councillor's involvement would be appropriate.

Each council's code of conduct should establish what interests need to be disclosed. All disclosable interests should be registered and a register maintained by the council's monitoring officer and made available to the public. Councillors should also disclose that interest orally at the committee meeting when it relates to an item under discussion.

A councillor must provide the monitoring officer with written details of relevant interests within 28 days of their election or appointment to office. Any changes to those interests must similarly be notified within 28 days of the councillor becoming aware of such changes.

A disclosable pecuniary interest relating to an item under discussion requires the withdrawal of the councillor from the committee. In certain circumstances, a dispensation can be sought from the appropriate body or officer to take part in that particular item of business.

If a councillor has a (non-pecuniary) personal interest, he or she should disclose that interest, but then may speak and vote on that particular item. This includes being a member of an outside body; mere membership of another body does not constitute an interest requiring such a prohibition.

It is always best to identify a potential interest early on. If a councillor thinks that they may have an interest in a particular matter to be discussed at planning committee he or she should raise this with their monitoring officer as soon as possible.

See Appendix for a flowchart of how councillors' interests should be handled.

Predisposition, predetermination, or bias

Members of a planning committee, Local Plan steering group (or full Council when the local plan is being considered) need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application or on planning policies.

The courts have sought to distinguish between situations which involve predetermination or bias on the one hand and predisposition on the other. The former is indicative of a 'closed mind' approach and likely to leave the committee's decision susceptible to challenge by Judicial Review.

Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a councillor makes it clear they are willing to listen to all the considerations presented at the committee before deciding on how to vote (predisposition). The latter is alright, the former is not and may result in a Court quashing such planning decisions.

Section 25 of the Act also provides that a councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter.

This reflects the common law position that a councillor may be predisposed on a matter before it comes to Committee, provided they remain open to listening to all the arguments and changing their mind in light of all the information presented at the meeting. Nevertheless, a councillor in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the councillor was biased.

For example, a councillor who states "Windfarms are blots on the landscape and I will oppose each and every windfarm application that comes before the committee" will be perceived very differently from a councillor who states: "Many people find windfarms ugly and noisy and I will need a lot of persuading that any more windfarms should be allowed in our area."

If a councillor has predetermined their position, they should withdraw from being a member of the decision-making body for that matter.

This would apply to any member of the planning committee who wanted to speak for or against a proposal, as a campaigner (for example on a proposal within their ward). If the Council rules allow substitutes to the meeting, this could be an appropriate option.

Authorities will usually have a cabinet/ executive member responsible for development and planning. This councillor is able to be a member of the planning committee. Leading members of a local authority, who have participated in the development of planning policies and proposals, need not and should not, on that ground and in the interests of the good conduct of business, normally exclude themselves from decision making committees.

Development proposals submitted by councillors and officers, and council development

Proposals submitted by serving and former councillors, officers and their close associates and relatives can easily give rise to suspicions of impropriety. Proposals could be planning applications or local plan proposals.

Such proposals must be handled in a way that gives no grounds for accusations of favouritism. Any local planning protocol or code of good practice should address the following points in relation to proposals submitted by councillors and planning officers:

- if they submit their own proposal to their authority they should play no part in its consideration
- a system should be devised to identify and manage such proposals
- the council's monitoring officer should be informed of such proposals
- such proposals should be reported to the planning committee and not dealt with by officers under delegated powers.

A councillor would undoubtedly have a disclosable pecuniary interest in their own application and should not participate in its consideration. They do have the same rights as any applicant in seeking to explain their proposal to an officer, but the councillor, as applicant, should also not seek to improperly influence the decision.

Proposals for a council's own development should be treated with the same transparency and impartiality as those of private developers.

Lobbying of and by councillors

Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, a site allocation in a development plan or an emerging policy, will often seek to influence it through an approach to their ward member or to a member of the planning committee.

As the Nolan Committee's 1997 report stated: "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 local elected representatives, the councillors themselves".

Lobbying, however, can lead to the impartiality and integrity of a councillor being called into question, unless care and common sense is exercised by all the parties involved.

As noted earlier in this guidance note, the common law permits predisposition but nevertheless it remains good practice that, when being lobbied, councillors (members of the planning committee in particular) should try to take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments.

In such situations, they could restrict themselves to giving advice about the process and what can and can't be taken into account.

Councillors can raise issues which have been raised by their constituents, with officers. If councillors do express an opinion to objectors or supporters, it is good practice that they make it clear that they will only be in a position to take a final decision after having heard all the relevant arguments and taken into account all relevant material and planning considerations at committee.

If any councillor, whether or not a committee member, speaks on behalf of a lobby group at the decision-making committee, they would be well advised to withdraw once any public or ward member speaking opportunities had been completed in order to counter any suggestion that members of the committee may have been influenced by their continuing presence. This should be set out in the authority's code of conduct for planning matters.

It is very difficult to find a form of words which conveys every nuance of these situations and which gets the balance right between the duty to be an active local representative and the requirement when taking decisions on planning matters to take account of all arguments in an open-minded way. It cannot be stressed too strongly, however, that the striking of this balance is, ultimately, the responsibility of the individual councillor.

A local code on planning should also address the following more specific issues about lobbying:

- Planning decisions cannot be made on a party political basis in response to lobbying; the use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration.
- Planning committee or local plan steering group members should in general avoid organising support for or against a planning application, and avoid lobbying other councillors.
- Councillors should not put pressure on officers for a particular recommendation or decision, and should not do anything which compromises, or is likely to compromise, the officers' impartiality or professional integrity.
- Call-in procedures, whereby councillors can require a proposal that would normally be determined under the delegated authority to be called in for determination by the planning committee, should require the reasons for call-in to be recorded in writing and to refer solely to matters of material planning concern.

As previously outlined, councillors must always be mindful of their responsibilities and duties under their local codes of conduct. These responsibilities and duties apply equally to matters of lobbying as they do to the other issues of probity explored elsewhere in this guidance.

Pre-application discussions

Pre-application discussions between a potential applicant and a council can benefit both parties and are encouraged. However, it would be easy for such discussions to become, or be seen by objectors to become, part of a lobbying process on the part of the applicant.

Some councils have been concerned about probity issues raised by involving councillors in pre-application discussions, worried that councillors would be accused of predetermination when the subsequent application came in for consideration. Now, through the Localism Act and previously the Audit Commission, the LGA and PAS recognise that councillors have an important role to play in pre-application discussions, bringing their local knowledge and expertise, along with an understanding of community views. Involving councillors can help identify issues early on, helps councillors lead on community issues and helps to make sure that issues don't come to light for the first time at committee. PAS recommends a 'no shocks' approach.

The Localism Act, particularly S25, by endorsing this approach, has given councillors much more freedom to engage in pre-application discussions. Nevertheless, in order to avoid perceptions that councillors might have fettered their discretion, such discussions should take place within clear, published guidelines.

Although the term 'pre-application' has been used, the same considerations should apply to any discussions which occur before a decision is taken. In addition to any specific local circumstances, guidelines should include the following:

- Clarity at the outset that the discussions will not bind a council to making a particular decision and that any views expressed are personal and provisional. By the very nature of such meetings not all relevant information may be at hand, nor will formal consultations with interested parties have taken place.
- An acknowledgement that consistent advice should be given by officers based upon the development plan and material planning considerations.
- Officers should be present with councillors in pre-application meetings. Councillors should avoid giving separate advice on the development plan or material considerations as they may not be aware of all the issues at an early stage. Neither should they become drawn into any negotiations, which should be done by officers (keeping interested councillors up to date) to ensure that the authority's position is co-ordinated.

- Confirmation that a written note should be made of all meetings. An officer should make the arrangements for such meetings, attend and write notes. A note should also be taken of any phone conversations, and relevant emails recorded for the file. Notes should record issues raised and advice given. The note(s) should be placed on the file as a public record. If there is a legitimate reason for confidentiality regarding a proposal, a note of the non-confidential issues raised or advice given can still normally be placed on the file to reassure others not party to the discussion.
- A commitment that care will be taken to ensure that advice is impartial, otherwise the subsequent report or recommendation to committee could appear to be advocacy.
- The scale of proposals to which these guidelines would apply. Councillors talk regularly to constituents to gauge their views on matters of local concern. The Nolan Committee argued that keeping a register of these conversations would be impractical and unnecessary. Authorities should think about when, however, discussions should be registered and notes written.

Authorities have other mechanisms to involve councillors in pre-application discussions including:

- committee information reports by officers of discussions to enable councillors to raise issues, identify items of interest and seek further information
- developer presentations to committees which have the advantage of transparency if held in public as a committee would normally be (with notes taken)
- ward councillor briefing by officers on pre-application discussions.

Similar arrangements can also be used when authorities are looking at new policy documents and particularly when making new site allocations in emerging development plans and wish to engage with different parties, including councillors, at an early stage in the process.

The Statement of Community Involvement will set out the council's approach to involving communities and other consultees in pre-application discussions. Some authorities have public planning forums to explore major pre-application proposals with the developer outlining their ideas and invited speakers to represent differing interests and consultees. As well as being transparent, these forums allow councillors and consultees to seek information and identify important issues for the proposal to address, although still bearing in mind the need to avoid pre-determination.

Officer reports to committee

As a result of decisions made by the courts and ombudsman, officer reports on planning applications must have regard to the following:

- Reports should be accurate and should include the substance of any objections and other responses received to the consultation.
- Relevant information should include a clear assessment against the relevant development plan policies, relevant parts of the National Planning Policy Framework (NPPF), any local finance considerations, and any other material planning considerations.

- Reports should have a written recommendation for a decision to be made.
- Reports should contain technical appraisals which clearly justify the recommendation.
- If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated. This is not only good practice, but also failure to do so may constitute maladministration or give rise to a Judicial Review challenge on the grounds that the decision was not taken in accordance with the provisions of the development plan and the council's statutory duty under s38A of the Planning and Compensation Act 2004 and s70 of the Town and Country Planning Act 1990.

Any oral updates or changes to the report should be recorded.

Public speaking at planning committees

Whether to allow public speaking at a planning committee or not is up to each local authority. Most authorities do allow it. As a result, public confidence is generally enhanced and direct lobbying may be reduced. The disadvantage is that it can make the meetings longer and sometimes harder to manage.

Where public speaking is allowed, clear protocols should be established about who is allowed to speak, including provisions for applicants, supporters, ward councillors, parish councils and third party objectors.

In the interests of equity, the time allowed for presentations for and against the development should be the same, and those speaking should be asked to direct their presentation to reinforcing or amplifying representations already made to the council in writing.

New documents should not be circulated to the committee; councillors may not be able to give proper consideration to the new information and officers may not be able to check for accuracy or provide considered advice on any material considerations arising. This should be made clear to those who intend to speak.

Messages should never be passed to individual committee members, either from other councillors or from the public. This could be seen as seeking to influence that member improperly and will create a perception of bias that will be difficult to overcome.

Decisions which differ from a recommendation

The law requires that decisions should be taken in accordance with the development plan, unless material considerations (which specifically include the NPPF) indicate otherwise (s38A Planning & Compensation Act 2004 and s70 of the Town and Country Planning Act 1990).

This applies to all planning decisions. Any reasons for refusal must be justified against the development plan and other material considerations.

The courts have expressed the view that the committee's reasons should be clear and convincing. The personal circumstances of an applicant or any other material or non-material planning considerations which might cause local controversy will rarely satisfy the relevant tests.

Planning committees can, and often do, make a decision which is different from the officer recommendation. Sometimes this will relate to conditions or terms of a S106 obligation. Sometimes it will change the outcome, from an approval to a refusal or vice versa. This will usually reflect a difference in the assessment of how a policy has been complied with, or different weight ascribed to material considerations.

Planning committees are advised to take the following steps before making a decision which differs from the officer recommendation:

- if a councillor is concerned about an officer recommendation they should discuss their areas of difference and the reasons for that with officers in advance of the committee meeting
- recording the detailed reasons as part of the mover's motion
- adjourning for a few minutes for those reasons to be discussed and then agreed by the committee
- where there is concern about the validity of reasons, considering deferring to another meeting to have the putative reasons tested and discussed.

If the planning committee makes a decision contrary to the officers' recommendation (whether for approval or refusal or changes to conditions or S106 obligations), a detailed minute of the committee's reasons should be made and a copy placed on the application file. Councillors should be prepared to explain in full their planning reasons for not agreeing with the officer's recommendation. Pressure should never be put on officers to 'go away and sort out the planning reasons'.

The officer should also be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome, and chances of a successful award of costs against the council, should one be made.

All applications that are clearly contrary to the development plan must be advertised as such, and are known as 'departure' applications. If it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and how these considerations justify overriding the development plan must be clearly demonstrated.

The application may then have to be referred to the relevant secretary of state, depending upon the type and scale of the development proposed (s77 of the Town and Country Planning Act 1990). If the officers' report recommends approval of such a departure, the justification for this should be included, in full, in that report.

Committee site visits

National standards and local codes also apply to site visits. Councils should have a clear and consistent approach on when and why to hold a site visit and how to conduct it. This should avoid accusations that visits are arbitrary, unfair or a covert lobbying device. The following points may be helpful:

- visits should only be used where the benefit is clear and substantial; officers will have visited the site and assessed the scheme against policies and material considerations already
- the purpose, format and conduct should be clear at the outset and adhered to throughout the visit
- where a site visit can be 'triggered' by a request from the ward councillor, the 'substantial benefit' test should still apply.
- keep a record of the reasons why a site visit is called.

A site visit is only likely to be necessary if:

- the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers
- the comments of the applicant and objectors cannot be expressed adequately in writing or
- the proposal is particularly contentious.

Site visits are for observing the site and gaining a better understanding of the issues. Visits made by committee members, with officer assistance, are normally the most fair and equitable approach. They should not be used as a lobbying opportunity by objectors or supporters.

This should be made clear to any members of the public who are there.

Once a councillor becomes aware of a proposal they may be tempted to visit the site alone. In such a situation, a councillor is only entitled to view the site from public vantage points and they have no individual rights to enter private property. Whilst a councillor might be invited to enter the site by the owner, it is not good practice to do so on their own, as this can lead to the perception that the councillor is no longer impartial.

Annual review of decisions

It is good practice for councillors to visit a sample of implemented planning permissions to assess the quality of the decisions and the development. This should improve the quality and consistency of decision-making, strengthen public confidence in the planning system, and can help with reviews of planning policy.

Reviews should include visits to a range of developments such as major and minor schemes; upheld appeals; listed building works and enforcement cases. Briefing notes should be prepared on each case. The planning committee should formally consider the review and decide whether it gives rise to the need to reconsider any policies or practices.

Scrutiny or standards committees may be able to assist in this process but the essential purpose of these reviews is to assist planning committee members to refine their understanding of the impact of their decisions. Planning committee members should be fully engaged in such reviews.

Complaints and record keeping

All councils should have a complaints procedure which may apply to all council activities. A council should also consider how planning-related complaints will be handled, in relation to the code of conduct adopted by the authority.

So that complaints may be fully investigated and as general good practice, record keeping should be complete and accurate. Every planning application file should contain an accurate account of events throughout its life. It should be possible for someone not involved in that application to understand what the decision was, and why and how it had been reached. This applies to decisions taken by committee and under delegated powers, and to applications, enforcement and development plan matters.

List of references

Probity in planning: the role of councillors and officers – revised guidance note on good planning practice for councillors and officers dealing with planning matters
Local Government Association, May 2009
http://www.local.gov.uk/web/guest/publications/-/journal_content/56/10171/3378249/PUBLICATION-TEMPLATE

The Localism Act 2011
<http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted>

National Planning Policy Framework
Department for Communities and Local Government, March 2012
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

Committee on Standards in Public Life (1997) Third Report: Standards of Conduct in Local Government in England, Scotland and Wales, Volume 1 Report Cm 3702-1:
<http://www.public-standards.gov.uk/our-work/inquiries/previous-reports/third-report-standards-of-conduct-of-local-government-in-england-scotland-and-wales/>

Royal Town Planning Institute Code of Professional Conduct:
<http://www.rtpi.org.uk/membership/professional-standards/>

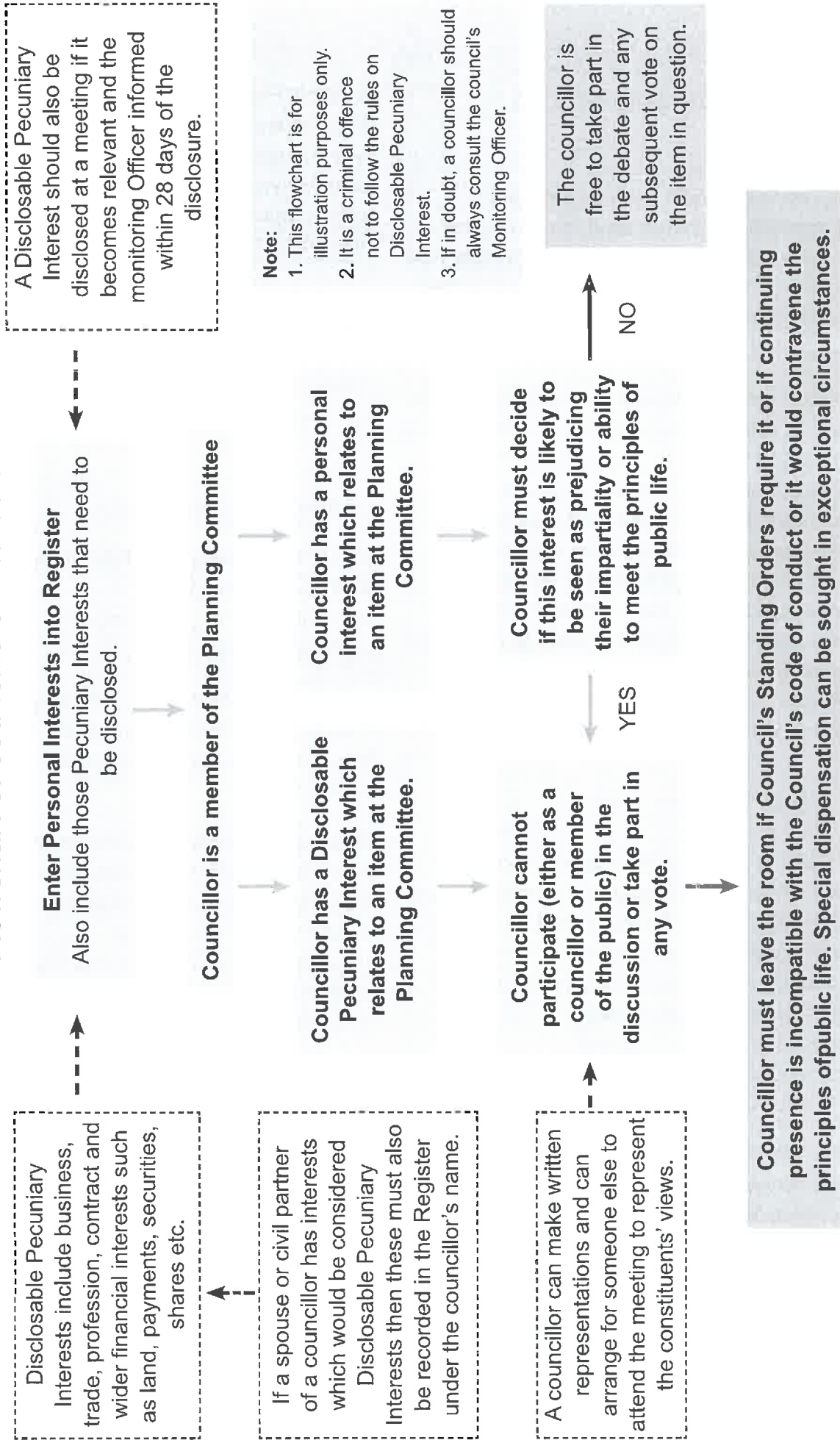
The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012
<http://www.legislation.gov.uk/uksi/2012/1464/contents/made>

Openness and transparency on personal interests: guidance for councillors,
Department for Communities and Local Government, March 2013
<https://www.gov.uk/government/publications/openness-and-transparency-on-personal-interests-guidance-for-councillors>

The Planning System – matching expectations to capacity
Audit Commission, February 2006
http://archive.audit-commission.gov.uk/auditcommission/sitecollectiondocuments/AuditCommissionReports/NationalStudies/Planning_FINAL.pdf

'Standards Matter' Kelly Committee Jan 2013
<http://www.official-documents.gov.uk/document/cm85/8519/8519.pdf>

Flowchart of councillors' interests





Local Government Association

Local Government House
Smith Square
London SW1P 3HZ

Telephone 020 7664 3000

Fax 020 7664 3030

Email info@local.gov.uk

www.local.gov.uk

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Extracts from the Constitution

Rules of Procedure

11. Questions by the Public

11.1 General

- (a) Public Question Time shall apply at all public meetings of the Council with the exception of the Licencing Sub Committee, Licensing Regulatory Sub-committee and Standards Sub Committee.
- (b) Public Question Time shall normally be dealt with at the beginning of the Agenda (i.e. as part of the formal meeting) unless a Committee/Group shall determine otherwise;
- (c) The total time allocated for questions by the public is limited to 30 minutes. In the event that there are no questions, or no further questions, the Chairman shall have the discretion to proceed with the Agenda prior to the expiry of that period. The Chairman also has discretion to extend the time for public questions if he/she deems it to be appropriate
- (d) Residents, electors or business rate payers of the District shall be entitled to ask questions

11.2 Asking a question at the meeting

Ideally persons submitting questions should be present at the meeting. It is preferable that notice is given of the question to be asked at the meeting

However, if a questioner who has submitted a question is unable to be present, they may ask the Chairman to put the question on their behalf.

- (a) Questions will be asked in the order they have been received
- (b) Written questions will be dealt with first
- (c) Questions may be verbal or, preferably written
- (d) A question shall not exceed 3 minutes
- (e) Questions must be relevant to an item on the Agenda for that meeting

- (f) The Chairman, following advice from either the Chief Executive, Monitoring Officer or Member Services Manager, shall have the discretion to reject a question, giving reasons if it:
- Is not about a matter for which the Council has a responsibility or which affects the District
 - Is in his/her opinion scurrilous, improper, capricious, irrelevant or otherwise objectionable
 - Is substantially the same as a question which has been put at a meeting of the Council in the past six months;
 - requires the disclosure of confidential or exempt information.

11.3 Supplementary question

At the discretion of the Chairman of that meeting, questioners may ask one supplementary question

11.4 Answers to questions

The chairman of the meeting, or at meetings of the Council the appropriate committee chairman, shall respond to all questions.

Replies to questions may be verbal, or at the discretion of the Chairman, in writing, or by reference to a published document. Written replies shall be reported to the next meeting of the Committee and published alongside the draft minutes when available. Responses will also be sent to all Councillors.

Protocol of Good Practice for Councillors in Dealing with Planning Matters

1.0 Introduction: The Need For Guidance

1.1 This Guidance has been written to inform all parties of Mid Devon District Council's standards in its operation of the town and country planning system within the district. The Guidance applies to all Mid Devon District Councillors and staff involved in operating the planning system within Mid Devon

1.2 The successful operation of the planning system in Mid Devon depends upon the Council always acting in a way that is seen to be fair and impartial. This relies upon a shared understanding of the respective roles of Councillors and officers, and upon trust between them. The following quotation from the Local Government Association serves to illustrate the point:-

"The role of an elected member on a planning committee involves balancing representing the needs and interests of individual constituents and the community,

with the need to maintain an ethic of impartial decision-making on what can be highly controversial proposals. It is this dual role which, can give rise to great tensions”.
(Source: Probity in Planning, Local Government Association, 2002).

- 1.3 The Local Government Association has advised local planning authorities, such as Mid Devon, to set out clearly their practices and procedures on handling planning matters in a local code of good practice. Much of the guidance set out in this document is derived from the Probity in Planning (Update) issued by the Local Government Association in 2002. Councillors and staff should read this Guidance thoroughly and apply it consistently. Failure to do so without good reason could be taken into account in investigating allegations of breaches of the Members and Officers Codes of Conduct or maladministration.

This Guidance does not form part of the Members or Officers Codes of Conduct- it is a local protocol that compliments those Codes. However, there is an expectation that all members and officers who deal with planning matters in Mid Devon will comply with this Guidance and failure to do so could result in a referral to the Standards Committee (members) or disciplinary action (officers)- see paragraph 12

- 1.4 It is intended to review the Guidance regularly to keep it up-to-date and relevant. If there are points which are unclear or which need review, please contact the Head of Legal and Democratic Services (Council’s Monitoring Officer) or the Head of Legal and Democratic Services (Council’s Deputy Monitoring Officer) as soon as possible. They will be pleased to help you.

2.0 General Role and Conduct of Councillors and Officers

- 2.1 Councillors and officers have different, but complementary, roles. Both serve the public but Councillors are responsible to the electorate, while officers are responsible to the Council as a whole. A successful relationship between Councillors and officers can only be based upon mutual trust and understanding of each other’s position. This relationship, and the trust that underpins it, must not be abused or compromised.
- 2.2 Legislation emphasises the overriding requirement that the public are entitled to expect the highest standards of conduct and probity by all persons holding public office. While this Guidance deals primarily with planning applications, its principles apply equally to consideration of Structure Plans, Local Plans, Development Briefs, enforcement cases and all other planning matters.
- 2.3 An overriding principle is that when local authorities are dealing with planning matters, they should take into account **only material planning considerations**. Section 54A of the Town and Country Planning Act 1990 established a plan-led system whereby all planning applications are determined by primary reference to the Development Plan. Thus, if the Development Plan is material to the application, then the statutory requirement is that the application should be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 2.4 Officers involved in the processing and determination of Planning matters must also act in accordance with the Council’s Procedure Rules, the Officer Code of Conduct and (for officers who are Chartered Town Planners) with the relevant sections of the

Royal Town Planning Institute's Code of Professional Conduct. This Guidance supplements the provisions referred to above and provides further specific advice and guidance for Councillors and officers involved in planning matters. A key principle is that Councillors should represent their constituents as a body and vote in the interests of the District as a whole. Councillors should take account of all views expressed; they should not be biased towards any person, company, group or locality.

- 2.5 A further key principle is that local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless that opposition or support is based upon valid planning reasons which can be substantiated.
- 2.6 Councillors and officers should not accept gifts, nor should they accept hospitality. However, it is acknowledged that in certain circumstances the acceptance of a small degree of hospitality, (e.g. receipt of tea, coffee or other light refreshments) may be unavoidable without giving offence.
- 2.7 Officers must always act impartially. They should consider carefully whether any private work or interest that they wish to take up causes an actual or perceived conflict with the Council's interests.
- 2.8 Training will be provided for Councillors to assist them to carry out their planning roles. Only those members who have received training in planning matters will be allowed to sit as members or as substitutes for members on the planning committee.

3.0 *Declaration and Registration of Interests*

3.1 Councillors

The rules concerning the declaration of interests are contained in the Code Of Conduct. Councillors will need to make themselves familiar with the Code and understand the distinction between personal interests which must be declared but which do not lead to the councillor having to withdraw and prejudicial interests that require withdrawal.

3.2 Officers

Where Council Officers become aware that they have a pecuniary, or non-pecuniary interest, in a planning application or other planning matter, they should declare their interest in writing to the Head of Planning and Regeneration immediately. This written record will then be retained on the relevant file. An officer declaring such an interest should subsequently play no part in processing an application, or considering the planning matter, nor in any decision making on it. In determining whether an interest should be declared, officers should use the same tests as Councillors. Examples of interest that should be declared are relatives or friends submitting applications; belonging to a church, club or other social group who has submitted an application; or living in proximity to a site that is at issue.

4.0 Development Applications Submitted By Councillors, Officers and The Council

- 4.1 Serving Councillors who are members of the planning committee and officers involved with the planning process should never act as agents for individuals (including a company, group or body) pursuing a planning matter. This includes not only pursuing development proposals, but also works under related legislation such as works to protected trees. If Councillors or officers (or close family or friends) submit a planning application to the Council, they should take no part in processing the application, nor take part in the decision-making. The Head of Planning and Regeneration should be informed of all such proposals as soon as they become aware that such an application has been submitted.
- 4.2 Proposals submitted by Councillors and officers should be reported to the Planning Committee as written reports and not dealt with by officers under delegated powers. They should never seek improperly to influence a decision about the matter.
- 4.3 Proposals for the Council's own development (or development involving the Council and another party) should be treated strictly on planning merits and without regard to any financial or other gain that may accrue to the Council if the development is permitted. It is important that the Council is seen to be treating all such applications on an equal footing with all other applications, as well as actually doing so.
- 5.0 **Lobbying of and by Councillors, and Attendance at Public Meetings by Officers and Councillors**
- 5.1 When Councillors undertake their constituency roles, it is inevitable that they will be subject to lobbying by interested parties and the public on planning matters and specific planning applications. When Councillors are lobbied, they need to exercise great care to maintain the Council's, and their own integrity, and to uphold the public perception of the town and country planning process.
- 5.2 Councillors who find themselves being lobbied (either in person, over the phone, or by post, fax or e-mail) should take active steps to explain that, whilst they can listen to what is said, it would prejudice their impartiality if they expressed a conclusive point of view or any fixed intention to vote one way or another.
- 5.3 Councillors involved in the determination of planning matters should listen to all points of view about planning proposals and are advised to refer persons who require planning or procedural advice to planning officers. Councillors should not indicate conclusive support or opposition to a proposal, or declare their voting intention before the meeting at which a decision is to be taken. Nor should Councillors advise other parties that permission will be granted or refused for a particular development or that land will, or will not, be allocated for development in a Local Plan. To do so without all relevant information and views, would be unfair, prejudicial and could make the decision open to challenge. Taking account of the need to make decisions impartially, Councillors must weigh up all the material considerations reported at each Committee meeting. They should not be biased towards any person, company, group or locality.
- 5.4 By law, the District Council has to seek comments from the Town/Parish Councils on planning applications and other planning matters so that their comments can be taken into account when the District Council makes planning decisions. Some District Councillors are also Town/Parish Councillors and they take part in Town/Parish

Council debates about planning applications and other planning matters. Merely taking part in Town/Parish Council debates on planning matters does not automatically debar District Councillors from decision-making at the Planning Committee. However, *with few exceptions* Town/Parish Councils do not have professional planning advice or complete information on the application and other planning matters when they make their recommendations to the District Council. Therefore, District Councillors who are also Town/Parish Councillors should be careful not to state that they have reached a conclusive decision when they consider planning issues at their Town/Parish Council meeting. Nor should they declare to the Town/Parish Council what their future voting intention will be when the matter is considered at the District Council.

- 5.5 While Councillors involved in making decisions on planning applications will begin to form a view as more information and options become available, a decision can only be taken at the Planning Committee when all available information is to hand and has been considered. Any relevant papers (including letters, photographs, drawings, petitions etc) passed only to Councillors by applicants or objectors prior to a committee meeting should be notified to officers (preferably the case officer) and reported to the Committee.
- 5.6 Individual Councillors should reach their own conclusions on an application or other planning matter rather than follow the lead of another councillor. In this regard, any political group meetings prior to Committee meetings should not be used to decide how Councillors should vote on planning matters. Decisions can only be taken after full consideration of the officers' report and information and discussion at the Committee.
- 5.7 A Planning Committee member who represents a ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If the councillor responds to lobbying by deciding to go public in support of a particular outcome - or even campaign actively for it - it will be very difficult for that councillor to argue convincingly when the Committee comes to take its decision that he/she has carefully weighed the evidence and arguments presented at Committee. A councillor should avoid organising support for or against a planning application if he or she intends to participate in its determination at Committee. However, it should be possible for a councillor to say that they will make the views of the public known at the Committee whilst themselves waiting until the Committee and hearing all the evidence before making a final decision upon how to vote.
- 5.8 Councillors should not lobby other Councillors on proposals in a way that could lead to their failing to make an impartial judgement on the planning merits of these cases when making decisions at Council Committees. Nor should Councillors put undue pressure on officers for a particular recommendation nor do anything which compromises, or is likely to compromise the impartiality of officers
- 5.9 Officers who are wholly or partly involved in the processing or determination of planning matters should not attend public meetings in connection with pre-application development proposals or submitted planning applications unless their attendance has been agreed by their Head of Service. To do so could lead to allegations of prejudice

or bias to a particular point of view. If put in such a position, officers should avoid prejudicing the Committee's decision.

- 5.10 When attending public meetings, Councillors should take great care to maintain their impartial role, listen to all the points of view expressed by the speakers and public and not state a conclusive decision on any pre-application proposals and submitted planning applications.

6.0 Discussions With Applicants

- 6.1 It is generally recognised that discussions between potential applicants or applicants and the Council prior to the submission of an application can be of considerable benefit to both parties. Discussions can take place for a variety of reasons, for example to establish whether an application can be improved in design, or to overcome planning objections or to meet relevant neighbour concerns. Such discussions will normally take place at District Council offices.
- 6.2 Councillors involved in any discussions should maintain an independent position and avoid committing themselves to either supporting or opposing the application at committee. Planning committee members should not attend meetings on major applications in the absence of a planning officer. If a Councillor feels that they are being put under pressure to support or oppose an application they should suggest to the applicant/objector that they put their views to the planning officer. Planning officers should always make clear at the outset of discussions that they cannot bind the Council to make a particular decision, and that any views expressed are their professional opinions only based upon the information available at that time. Advice given by planning officers will aim to be consistent and based upon the Development Plan (Structure and Local Plan) and other material considerations. Senior officers will make every effort to ensure that there are no significant differences of interpretation of planning policies between planning officers.
- 6.3 Planning officers will ensure that their advice and reports, in the sense that they should not favour any particular applicant or objector, are impartial. This is because a consequent report must not be seen as advocacy for a particular point of view. A written note should be made of pre-application discussions and important telephone conversations and placed on the file. Officers will note the involvement of Councillors in such discussions as a written file record. A follow-up letter should be sent, particularly when material has been left with the Council by the applicant or agent for comment.
- 6.4 Councillors who also serve on Town & Parish Councils should make clear their separate roles in each Council regarding Mid Devon District planning policies. The councillor and other interested parties should be clear at all times when the Councillors are acting as a Town or Parish Councillor, and when they are acting in their role as a District Councillor.

7.0 Reports By Officers To Committees

- 7.1 Many planning applications are determined by the Head of Planning and Regeneration. These are the smaller and less controversial applications. Where

decisions on applications fall to be made by the Planning Committee they will be the subject of full written reports.

- 7.2 Reports on planning matters aim to be accurate and will contain a description of the development proposed in the application (including dimensions and areas). They will refer to the provisions of the Development Plan and all other planning considerations including a full description of the site, any relevant planning history, and the substance of objections and other views received. All reports requiring a decision will have a written recommendation and will normally be the subject of an oral presentation to committee before the debate begins. Other oral reporting (other than to update an existing report) will only be used on rare occasions and carefully minuted when this does occur. All reports will contain a technical appraisal that clearly justifies the stated recommendation. All reasons for refusal and conditions to be attached to permissions must be clear and unambiguous.
- 7.3 Any additional information which is material to a planning decision, and which is received after publication of agendas, will be reported to the meeting provided that such information is received by the Head of Planning and Regeneration not less than 24 hours prior to the commencement of the committee at which the matter will be considered. Late information will only be reported to Planning Committee at the discretion of the Chairman. Applicants and objectors should be aware that the provision of late information may lead to a matter being deferred to a later committee so the information can be properly assessed by members by incorporating it into the written report.

8.0 The Decision Making Process and Decisions Contrary To Officer Recommendations and/or The Development Plan

- 8.1 The law requires that, where the Development Plan is relevant, planning decisions must be made in accordance with it unless other material considerations indicate otherwise (Section 54A of the Town and Country Planning Act 1990). The relevant Development Plan, and other material considerations, will be identified in officers' reports. Material considerations will vary from case to case. In arriving at a decision, it is a matter of judgement for the Planning Committee as to the weight to be attached to the various material considerations.
- 8.2 In discussing, and determining a planning application or other planning matter, Councillors should confine themselves to the planning merits of the case. The reasons for making a final decision should be clear, convincing and supported by material considerations and the planning merits.
- 8.3 Councillors should consider the advice of the officers but ultimately they are free to vote as they choose. If Councillors wish to determine an application contrary to officer advice, or to impose additional conditions to a permission, an officer should explain the implications of such action. The Councillors' grounds for any contrary determination, or for wishing to impose additional conditions, must be clearly stated at the time the propositions are made and votes taken at the meeting. The personal circumstances of an applicant will rarely provide such grounds.

- 8.4 If a resolution is passed which is contrary to a recommendation of the Head of Planning (whether for approval or refusal) planning reasons should be given. A record of the Committee's reasons will be made, a copy placed on the application file and recorded in the minutes. If the report of the Head of Planning and Regeneration recommends approval of a departure from the Development Plan, the full justification for this recommended departure should be included in the report.
- 8.5 Senior planning officers (and legal officers as necessary) should attend meetings of the Planning Committee to ensure that procedures are properly followed and planning issues properly addressed.
- 8.6 It is important that Councillors who determine planning applications do so only after having considered all material planning considerations. They must take all relevant matters into account and they must disregard irrelevant considerations. It is important that they are seen to do this. For this reason, it is important that Councillors only participate in the debate and vote on a planning application if they have been present throughout the whole of the officers' presentation and the subsequent committee debate. Councillors who arrive at a meeting part-way through consideration of an application or who are absent from the meeting for any part of that consideration may not be aware of all the relevant considerations. In any event, their participation can be seen to be unfair – it could amount to maladministration as well as giving rise to a legal challenge that the decision-making process was flawed.

9.0 Site Visits By Councillors

The need for site visits

- 9.1 It is important for the Planning Committee to have a clear rationale for undertaking organised site visits in connection with planning applications and that any visits are conducted properly and consistently. The purpose of a site visit is for Councillors to gain knowledge of the development proposal, the application site and its surroundings. A decision by a Planning Committee to carry out a site inspection should normally only be taken where the impact of the proposed development is difficult to assess from the plans and any supporting information submitted by the applicant, or additional material provided by officers. Site visits cause delay and additional costs, and should only be carried out where Councillors believe a site visit is necessary to make such an assessment. Reasons should be given for the decision to make a site visit.

Who visits?

- 9.2 Site visits are usually undertaken by the Planning Working Group consisting of the Chair and Vice Chair of the Planning Committee together with 6 members of the Planning Committee. Ward Members, one Parish Council representative, one applicant and one representative from the objectors to the application will be invited to attend the Planning Working Group. Exceptionally the Committee may undertake a site visit. If the site visit is open to all members of the committee then those members who are not able to attend should carefully consider whether they will be in receipt of all relevant facts when the matter comes back before Committee for determination. Technical/professional consultees may exceptionally be asked to

attend a site visit where it is anticipated that their presence on site will assist the Working Group or Committee gain knowledge of the proposal. If technical/professional consultees are requested to attend then reasons for that decision should be recorded.

Procedure on Site

- 9.3 A detailed explanation of the proposals, and a summary of the officers' report and recommendations, will be made by the planning officer. Councillors will then be given the opportunity to ask questions and to view the site and surroundings from all relevant vantage points.
- 9.4 Site visits will normally involve Planning Committee members and officers, except for any consultee whose attendance has been specifically requested by the Planning Committee (e.g. the County Highway Authority or an Environmental Health Officer) to assist their understanding of the proposals.
- 9.5 Councillors should keep together during site visits and not allow themselves to be addressed separately. No decisions are made at site visits although observations may be made to the Committee. An officer will be present to take a written note of the key planning issues and information obtained from the site visit, to be reported to the subsequent meeting of the Planning Committee.
- 9.6 The Head of Planning and Regeneration and the Member Services Manager will ensure that all correspondence in relation to site visits clearly identifies the purpose of a site inspection together with the format and conduct of the inspection, so that applicants/agents and interested parties are aware of it.

Informal Site Visits

- 9.7 There are advantages in Councillors making their own individual site visits to gain knowledge of the development proposal, the application site and its surroundings. In doing so, Councillors should observe sites from public vantage points (highways, rights of way or public open space) and should not enter onto private land without permission. Whilst on individual site visits, Councillors should as far as possible avoid engaging in discussion with applicants, objectors or other interested parties. This can lead to accusations of partiality if the views of one party only are heard. Where application sites are not visible without entering onto private land – for example, rear extensions or country houses in larger plots – officers will make an additional effort to provide appropriate visual information at Committee.

10.0 Review of Planning Decisions

- 10.1 Arrangements will be made for Councillors to visit a sample of implemented planning permissions annually, so that a regular review of the quality of planning decisions can be undertaken. This will include examples from a broad range of categories such as major and minor development, permitted departures, upheld appeals etc.

10.2 The outcome of this review will be reported to the Planning Committee and to the Scrutiny Committee and may lead to identification of possible amendments to existing policies or practice

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SCRUTINY
23RD MAY 2016

AGENDA ITEM:

REPORT OF JENNY CLIFFORD, HEAD OF PLANNING AND REGENERATION FIVE YEAR HOUSING LAND SUPPLY

Cabinet Member
Responsible Officer

Cllr Richard Chesterton
Head of Planning and Regeneration, Jenny Clifford

Reason for Report: To respond to Scrutiny Committee's request for a report on the Council's 5 year housing land supply, specifically: The report shows that we have failed to achieve our 5 year land supply, despite taking action to bring forward new sites earmarked in the yet to be published in the Local Plan. The intention is to find out why this has happened and what remedial action should be taken as soon as possible to stop aggressive development until the Local Plan is published.

RECOMMENDATIONS: That the report be noted.

Relationship to Corporate Plan: Priorities within the emerging 2016 – 2020 Corporate Plan are economy, homes, community and environment.

Financial Implications: Limited, but potential beneficial impact on staff resources by deterring major housing appeals.

Legal Implications: The Council is required to have a 5 year land supply of deliverable housing sites together with a buffer of either 5% or 20%, the latter being applied where there has been persistent undersupply of housing.

Risk Assessment: The risks are set out in the main body of the report.

1.0 BACKGROUND.

1.1 In respect of housing supply, the National Planning Policy Framework (NPPF) requires local planning authorities at paragraph 47 to:

- identify and update annually a supply of specific deliverable sites sufficient to provide five year's worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land;

1.2 In order to be considered deliverable, The NPPF advises that sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.

1.3 The NPPF also advises that where a five year land supply of deliverable housing sites cannot be demonstrated, policies on housing supply should not be considered up to date. In effect, therefore, unless the Council can identify a five year supply of

housing land the existing Local Plan policies relating to the supply of housing (including, crucially, the definition of settlement limits identifying areas which are open countryside and those which are within defined settlements) may not be supported by Inspectors at appeal in the face of the short term need for housing in the area. Housing applications are then considered in the context of sustainable development.

2.0 PREVIOUS MEASURES TO BOLSTER SUPPLY - BRINGING SITES FORWARD.

2.1 Cabinet considered a report on five year housing land supply at the meeting of 7th August 2015. This report assessed our deliverable housing land supply requirements at that time as being met, but recommended emerging local plan allocations (see below) and one contingency site at Pedlars Pool, Crediton be brought forward for development from later in the plan period in order to add to the supply by accounting for 151 dwelling completions over the next 5 years. The emerging local plan allocations that this would apply to were listed as:

Barn Park, Crediton
Old Abattoir, Copplestone
Linhay Close, Culmstock
Hunters Hill, Culmstock
Court Orchard, Newton St Cyres,
South of Broadlands, Thorverton

2.2 Some of these sites are now at pre-application stage, most notably Pedlarspool site, Crediton. However no planning application has yet been received.

3.0 THE RECENT APPEAL DECISION.

3.1 On 11th April 2016, an appeal was allowed for outline planning permission for 60 houses on approximately 3.5 hectares of agricultural land outside the defined settlement boundary of the Uffculme which is not allocated for development. The main issue in determination of the appeal is whether, having regard to the development plan, the National Planning Policy Framework (NPPF), the housing land supply of the Council and the scale and location of the development, the appeal scheme would constitute a sustainable form of development.

3.2 In summary the Inspector concluded:

- Mid Devon has a deliverable housing land supply of approximately 4 - 4.5 years as compared with a requirement for 5 years.
- Average annual housing completion rates (356) have under-delivered against targets (COR3 target of 390 and the full objectively assessed need (FOAN) of 370), therefore,
- There has been a persistent under delivery of housing (he acknowledged that this reflects the economic position nationally) and a buffer of 20% should be applied. (Therefore equivalent of 6 year housing land supply needed in total).
- The supply of housing policies in the Core Strategy are inconsistent with the National Planning Policy Framework as they were adopted before the framework was published in 2012. These policies are therefore not up to date and should be given limited weight.
- The emerging Local Plan Review carries very little weight in respect of key housing issues, as there are significant unresolved objections to proposed housing policy.
- The development in question would deliver social benefits through market and affordable dwellings, promote economic activity and no environmental harm was identified. The development is sustainable and the appeal should be allowed.
- The Inspector considered in some detail on a site by site basis whether they were deliverable and if so, when they would be likely to contribute to supply.

4.0 REFLECTIONS ON THE APPEAL DECISION.

4.1 The Council has only within the last year or so started to receive serious challenge by developers and site promoters over 5 year housing land supply. This is thought to be unique within the majority of Devon and in part due to the speed with which the Council has adopted local plans, including that currently adopted and has therefore been able to demonstrate a robust supply of deliverable housing sites that met requirements. A recent appeal decision (27th April 2016) in Topsham has just found that Exeter City also does not currently have a 5 year housing land supply. The increase in challenge over housing land supply within the past year leading to the recent appeal decision is a result of several factors as set out below.

4.2 Delivery.

4.2.1 Demonstrating supply is not just about housing numbers. Deliverability is key. To be considered deliverable, sites should be available, be a suitable location for development, be achievable (ie with a realistic prospect that housing will be delivered within five years) and in particular that development is viable. Delivery is also important in the context of the record of delivering allocations in years prior to the point of appeal.

4.2.2 The existing local plan meets much of housing requirements by allocating land for development within two urban extension sites: east of Tiverton and at north west Cullompton. Whilst both sites now have adopted masterplans in place, neither have completed the planning application process despite efforts by the Planning Service to deliver these sites. Planning applications have not yet been received for NW Cullompton, but are expected in the next few months. The rate of housing delivery set out in the Allocations and Infrastructure Development Plan Document 2011 anticipated the delivery of the first houses on each of these sites to take place in 14/15. By the end of 15/16 it was expected that 200 houses would have been delivered upon them. Delivery of our strategic sites has therefore lagged behind this trajectory.

4.2.3 One of the ways that a local planning authority can seek to maintain a supply of deliverable sites is through granting planning permission. The number of planning permissions in the District is currently standing at it's highest figure since 2002/03 and 1427 dwellings with planning permission (Monitoring Report 2015 Summary 31st March 2015). Whilst strategic sites have been slower to come forward than expected, this has been offset by the higher number of planning permissions granted overall. Despite this, the average annual housing completion rate of 356 has not met the policy COR3 target of 390 or the FOAN target of 370. This lower rate of housing completion is to a large extent a result of factors outside the control of the Council such as the economy, the local housing market, the availability of mortgage funding and the commercial decisions by particularly national housebuilders over permission implementation and build out rates. The Inspector acknowledged a recent dip in completions was a likely result of economic recession and reflects the position nationally together with efforts to bring forward the urban extensions. Nevertheless, his judgement was still informed by past delivery rates.

4.2.4 There will always be a time lag between the grant of planning permission and the completion of those houses. Accordingly the release of further sites for housing will not show in expected housing completion figures for several years, especially on largescale sites that require masterplanning or the delivery of infrastructure.

4.2.5 The Inspector considered in some detail the extent to which individual development sites could reasonably contribute to the deliverable housing land supply. This involved an analysis of factors such as the planning status, whether there were any potential delays in the site coming forward from the timescale expected and whether a developer was in control of the land and ready to deliver houses. The Inspector considered that several sites would come forward later than thought or that was uncertainty over their delivery. He discounted them from contributing to the supply with the consequence that our deliverable housing numbers were less than anticipated.

4.3 **Evidence base.**

4.3.1 A Strategic Housing Market Assessment reviews the whole housing market area within which Mid Devon is located and informs housing policies and strategies by identifying the future quantity of housing needed including breakdown by type, tenure and size. This is considered up to date and was accepted by the Inspector as being the best available evidence at the appeal and the basis upon which to assess housing need. It proposed a higher housing figures from 2013 onwards of 370 dwellings per annum compared with the Core Strategy of 290 dwellings per annum from 2016 onwards. In setting this higher requirement, an equivalent supply is needed. Our deliverable supply fell short of this.

4.3.2 A Strategic Housing Land Availability Assessment identifies specific, deliverable sites for housing that are ready for development. Dated February 2015 it is also considered up to date.

4.4 **Rate of plan production.**

4.4.1 Work stated on preparing the Local Plan Review in 2013 and early estimates were of plan adoption quarter 1 or 2 of 2015/16. The Local Development Scheme 2015 estimates plan adoption January 2017 assuming submission June 2016.

4.4.2 The Cabinet report of 22nd October 2015 on the Local Development Scheme provided an update on plan preparation that took account of the need to commission additional technical assessment work in relation to junction 28 of the M5. The detailed flood modelling and highway /junction design work has been commissioned and is currently underway. The delay in order to accommodate this further investigation work was necessary as the Environment Agency wished to understand in more detail the implications of any highway improvement scheme crossing the floodplain at Cullompton in terms of the floodplain and flood flows. In the absence of this additional work, there was a risk that the plan would be found unsound. The need for this level of detail at this stage was not anticipated as it would normally be required at masterplan stage and necessitated a delay of approximately 8 months. Other technical work needed to inform the submission document together with consideration of changes to Government requirements, particularly over certain housing types, is also currently under consideration. Assuming no major modification, it is likely that plan submission will take place in August following Cabinet and Council meetings that month. This would lead to adoption March 2017.

4.4 **Methodology and assumptions.**

4.5.1 Calculating deliverable housing land supply, the housing requirement and the appropriate rate of delivery involves applying a series of assumptions and a complicated working methodology. The position on these differed between the Council and the applicant with the latter taking a more pessimistic stance on delivery and using a housing requirement calculation that resulted in more housing be needed within the early years of the current plan period. Differences between a Council and

developers over such matters is common and resulted in each party going into the appeal with a different understanding of land supply available. It is common practice during appeal hearings for applicants to assess each site individually and to argue that a number of them are not genuinely deliverable and to seek to reduce the allowance for windfall sites. The Inspector has clarified elements of methodology and assumptions which will be of assistance to the Council going forward.

5.0 RISK ASSESSMENT.

- 5.1 Until the Council can demonstrate a 5 year land supply (with 20% buffer) there will be vulnerability to housing applications coming forward on sites that have not been planned for development. This is often dubbed 'planning by appeal'. Appeal losses can result in unbalanced distribution of piecemeal development, development in areas considered unsuitable by the Council, a lower level of funding for affordable housing, community facilities and service infrastructure and additional costs to be borne by the Council. Decision making is also taken out of local control. Houses can now legitimately be provided by developers on sites not planned for until supply figures are next tested and a new Local Plan is adopted. However Inspector's will continue to assess the sustainability of housing sites coming forward and the extent to which any material harm will result. It is therefore not a free for all on any site.
- 5.2 The Planning Service has estimated what would be needed to regain a sufficient land supply taking into account the Inspector's conclusions that a 20% buffer should be applied due to persistent under delivery. The amount of additional dwellings over and above the supply from existing allocations and known windfall sites that would need to be permitted and completed between 2016 – 2021 is dependent upon assumptions made about the level of delivery. A realistic figure is considered to be 460. This is the amount of vulnerability. (Note this is based on interim figures)
- 5.3 The Inspector gave little weight to the emerging Local Plan Review at this stage due to significant unresolved objections on key housing issues. In light of this, the Local Plan Review is not expected to be of substantial assistance to the Council's 5 year land supply until adoption (rather than at point of submission) or until the Inspector has heard the housing evidence and presented his findings. The period of vulnerability to the Council in terms of unplanned sites coming forward for housing is considered to be between now and plan adoption or when the Inspector's findings on housing matters are known.
- 5.4 The Council can anticipate further tests of land supply at appeal. This will involve a reassessment of the deliverability and timescale of sites being developed at that point in time. It will assist the Council's position to continue to grant planning permissions for appropriate schemes and to work both at a pre-application stage to get applications submitted and post-application to see the sites delivered. Acceleration of delivery will assist the Council's position.

6.0 MITIGATION MEASURES.

1. **Advance the Local Plan Review to adoption.** However this would need to be in conjunction with being able to demonstrate an up-to-date deliverable five year housing land supply.
2. **Bring forward further sites for housing development.** However this does not overcome the immediate shortfall in completed dwellings that can contribute towards the first few years of the 5 year housing land supply. This is due to the inherent lead in time to prepare applications and go through the planning process together with construction. An assessment of sites that could be brought forward is underway, but are unlikely to make the housing completion contribution needed

within the required timescale due to this lead in time and due to infrastructure capacity issues that will need to be resolved. Encouraging planning applications on further sites in the emerging plan prior to the plan examination and Inspector's decision letter would also be a risk as they are subject to unresolved objections.

3. **Bring forward contingency sites at Tidcombe Hall, Tiverton and Colebrook, Cullompton.** However based on Devon County Council advice, it is proposed in the emerging plan that the Colbrook site should not come forward, even on a contingency basis until the new road from Tiverton Road to Willand Road has been completed. The Tidcombe Hall site has less strong policy support than the released Pedlarspool site in Crediton, but pre-application discussions to assess it could be commenced.
4. **Continue efforts to deliver allocated or appropriate windfall sites, especially the urban extensions at Tiverton and NW Cullompton.** Since September 2015 the Council has had an officer dedicated to the Tiverton Eastern Urban Extension project in order to progress delivery. A design guide is due to be adopted in May and work has been commissioned by the Council to inform the further masterplan required for Area B. (These are all externally funded). The NW Cullompton masterplan has recently been adopted and applications are being prepared. The delivery of housing on other allocated and windfall sites is also important to assist supply. The Planning Service will seek to accelerate delivery on planned for housing sites wherever possible.
5. **Enter into pre-application discussions on land not planned for housing to date** where approached by developers in order to understand wider issues of suitability and sustainability.
6. **Update the 5 year supply figures by completing the 2015/16 monitoring year assessment** as soon as possible. This is well advanced, with final figures likely to be available within 3-4 weeks. The estimate of housing numbers is needed to demonstrate a compliant supply. This report is based on an interim position. Subject to available resources, consideration will also be given to producing 5 year supply figures more than once per year.

Contact for more Information: Mrs Jenny Clifford, Head of Planning and Regeneration (01884) 234346

Circulation of the Report: Councillors Richard Chesterton

List of Background Papers:

National Planning Policy Framework

<http://planningguidance.communities.gov.uk/blog/policy/>

Cabinet report 7th August 2015

Monitoring Report 2015 Summary Leaflet 1st April 2014 – 31st March 2015

<https://new.middevon.gov.uk/media/205669/annual-monitoring-report-summary-leaflet-2015.pdf>

SCRUTINY
23 MAY 2016:

AGENDA ITEM:

PERFORMANCE AND RISK OUT-TURN REPORT FOR 2015-16

Cabinet Member Cllr Clive Eginton, Leader of the Council
Responsible Officer Amy Tregellas, Head of Communities & Governance

Reason for Report: To provide Members with an update on performance against the corporate plan and local service targets for 2015-16 as well as providing an update on the key business risks.

RECOMMENDATION: That the Committee reviews the Performance Indicators and Risks that are outlined in this report and feeds back any areas of concern to Cabinet.

Relationship to Corporate Plan: Corporate Plan priorities and targets are effectively maintained through the use of appropriate performance indicators and regular monitoring.

Financial Implications: None identified

Legal Implications: None

Risk Assessment: If performance is not monitored we may fail to meet our corporate and local service plan targets or to take appropriate corrective action where necessary. If key business risks are not identified and monitored they cannot be mitigated effectively.

1.0 Introduction

- 1.1 Appendices 1-6 provide Members with details of performance against the Corporate Plan and local service targets for the 2015-16 financial year.
- 1.2 Appendix 7 shows the higher impact risks from the Corporate Risk Register. This includes operational and Health and Safety risks where the score meets the criteria for inclusion
- 1.3 All appendices are produced from SPAR, the Corporate Service Performance and Risk Management system.
- 1.4 When benchmarking information is available it is included.

2.0 Performance

Managing the Environment Portfolio - Appendix 1

- 2.1 The chargeable **garden waste** scheme ended the year well above target; so far 7,021 bin permits have been sold.

- 2.2 Most of the Performance Indicators (PIs) are above target with only 3 showing below target: To reduce the **carbon footprint** of our offices and public buildings by 2% pre adjustment, this is not necessarily due to poor energy management; more detail has been added as a note to Appendix 1.
- 2.3 The other PIs below target were the **missed collections (recycling)** and Household waste **reused, recycled and composted %**. For all of these the performance in Q4 was an improvement on Q3 as the impact of the introduction of new scheme and inevitable teething problems had been overcome.

Decent and affordable Homes Portfolio - Appendix 2

- 2.4 Although we have not met the target for bringing **Empty Homes** back into use for the last 2 years, since we started recording the figure 6 years ago, 89 homes have been brought back into use, therefore overall we are only 1 down on the target for the previous corporate plan.
- 2.5 For **Gas safety** – At the end of the financial year, we had 3 properties without a valid gas certificate. Legal Services are dealing with two of instances, trying to gain access to the properties, and the remaining instance is due to an absent tenant.

Community Well Being Portfolio - Appendix 3

- 2.6 The number of **empty shops** in all 3 towns (Tiverton, Cullompton and Crediton) is well above target.
- 2.7 The **% of food premises** inspected is much improved from last year but still below target. An Environmental Health Officer has been recruited which has helped to reduce the backlog and increase the actual figure achieved this year.
- 2.8 The **Leisure** PIs are below target; more detail has been added as a note to Appendix 3.

Planning and Regeneration Portfolio - Appendix 4

- 2.9 The performance for the year 2015/16 shows that in the majority of instances targets are being met or exceeded. During 15/16 the Planning Service determined 1008 planning applications including 26 majors, 127 prior notifications, 85 certificates of lawful use and 49 notifications. Work in addition to this included pre-application advice requests as well as general advice and queries.
- 2.10 The 53% statistic for major applications determined within 13 weeks reported above includes all major applications and does not take into account any extensions of time agreed with the applicant or planning performance agreements (PPAs) that have been entered into. Government instructions to Councils over this performance target remove reporting applications with

extensions of time or PPAs from this target as they are reported separately. Once these have been removed 87% of major applications were determined within 13 weeks compared with the target 60%. This performance target has therefore been met.

2.11 **Building regulations applications** remained below target throughout, it is hoped the partnership working with North Devon Building Control will soon address this.

2.12 **Listed Building** and Conservation area consents is also below target.

Working Environment Portfolio - Appendix 5

2.13 The **sickness** figures were below target for 2015/16. This has been the source of some considerable concern to Members and is being looked at by Scrutiny Committee.

2.14 As previously reported the figures for **complaints** cannot be relied upon. Work to verify the true figures will be done by the Head of Service for the annual report on Complaints, comments and complements.

2.15 The **Freedom of Information (FOI)** figure is 'well below target' for 2015/16. There are a number of reasons for not achieving the target; the main one being a period when there was no resource for this work, this was resolved by moving the service into Customer First. Staff training and recruitment was required which resulted in a backlog of enquiries for a short period of time. There has been the odd occasion of services exceeding the deadline for response.

Finance Portfolio - Appendix 6

2.16 **Council Tax** collected was below target but, to put this in context, the following should be noted: A conscious decision was made for 2015/16 to make the target more challenging, see the note on appendix 6. The team exceeded not only last year's actual (97.8%) but also the target (98.0%) which is a very good achievement.

2.17 **NDR** collected and the other PIs reported have all achieved their targets for 2015/16 which is pleasing.

3.0 Risk

3.1 The Corporate risk register is reviewed by Management Team (MT) and updated, risk reports to committees include risks with a total score of 15 or more and all those with an impact score of 5. (Appendix 7)

3.2 Service and Corporate Business risks will be reviewed now the Corporate Plan for 2016-20 has been published.

3.3 The profile of these risks for this quarter is:

Impact	5	13	2	1		
	4					
	3					
	2					
	1					
		1	2	3	4	5
		Likelihood				

4.0 Conclusion and Recommendation

4.1 That the Committee reviews the performance indicators and any risks that are outlined in this report and feeds back any areas of concern to Cabinet.

Contact for more Information: Amy Tregellas, Head of Communities & Governance ext 4246

Circulation of the Report: Management Team and Cabinet Member

MTE PDG Performance Report - Appendix 1

Quarterly report for 2015-2016

No headings

For Environment - Cllr Neal Davey Portfolio

For MDDC - Services

Filtered by Performance Status: Exclude PI Status: Data not due, Not calculable

Key to Performance Status:

Performance Indicators:	No Data	Well below target	Below target	On target	Above target	Well above target
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MTE PDG Performance Report - Appendix 1

Performance Indicators								
Status	Title	Prev Year End	Annual Target	Current Target	Q1 Act	Q2 Act	Q3 Act	Q4 Act
Well below target	<u>Reduce the carbon footprint of our offices and public buildings by 2% pre adjustment</u>	+28.2	+2.0	+2.0	n/a	n/a	n/a	-0.5
<p><u>Management Notes:</u> (2015 - 2016)</p> <p>Increases in the leisure properties do not necessarily mean this is a negative indication of poor energy management ie more people coming through the door using more electricity/gas. Also, this can be further explained in the annual EEVS (independent energy report). Electricity isnt degree day corrected.</p> <p>(SK)</p>								
Well above target	<u>Reduce the carbon footprint of our offices and public buildings by 0.5% post adjustment</u>	21.7%	0.5%	0.5%	n/a	n/a	n/a	3.4%
<p><u>Management Notes:</u> (2015 - 2016)</p> <p>Last years reduction was following the installation of the energy saving project and high investment therefore, 2015/16 is showing at a much lower % reduction.</p> <p>(SK)</p>								
No Target	<u>Number of Fixed Penalty Notices (FPNs) Issued (Environment)</u>	16	No target - for information only.	No target - for information only.	2	8	16	21
<p><u>Management Notes:</u></p>								
Above target	<u>Residual household waste per head (measured in Kilograms)</u>	462.6	455.00	455.00	117.44	225.63	329.42	426.82
<p><u>Management Notes:</u> (Quarter 1 - 4)</p> <p>The large diversion of waste (nearly 10%) from residual collections to recycling and a reduction in overall total tonnage of waste collected is very encouraging and will relate to the new recycling scheme introduced. Figures yet to be verified by DCC</p> <p>(SK)</p>								
Below target	<u>% of Household Waste Reuse, Recycled and Composted</u>	48.2%	52.0%	52.0%	50.2%	52.2%	50.9%	50.6%
<p><u>Management Notes:</u> (Quarter 4)</p> <p>The recycling rate has increased in all quarters compared to the same quarters in the previous year. The recycling rate in the second half of the year rose by between 4% and 5% following the launch of the new scheme. Figures yet to be verified by DCC</p> <p>(SK)</p>								
Well	<u>Number of Households</u>	n/a	15%	15%	0%	0%	18%	20%

MTE PDG Performance Report - Appendix 1

Performance Indicators								
Status	Title	Prev Year End	Annual Target	Current Target	Q1 Act	Q2 Act	Q3 Act	Q4 Act
above target	<u>on Chargeable Garden Waste</u>							
Management Notes: (Quarter 4) There were 7,021 customers at the end of the financial year which is above the target set. Numbers continue to grow in April and move toward the final target of 10,000. (SK)								
Well above target	<u>% of missed collections reported per Quarter (refuse and organic waste)</u>	0.10%	0.03%	0.03%	0.02%	0.02%	0.02%	0.02%
Management Notes:								
Well below target	<u>% of Missed Collections logged per Quarter (recycling)</u>	0.13%	0.03%	0.03%	0.05%	0.08%	0.13%	0.12%
Management Notes: (Quarter 4) Missed collections were up in the year due to two round reschedules for both phases of the roll out of the new scheme. The second phase of roll out in Q3 involved changing collections cycles and rounds to match refuse rounds. Perm staff were used for deliveries and agency staff used on rounds leading to reduced route knowledge. Missed collections began to reduce again in Q4 and were down to 66 (0.04%) in March as rounds became established and route knowledge grew. (SK)								
Well above target	<u>Number of Missed Collections reported per Quarter (refuse and organic waste)</u>	1,797	540	540	99	203	354	472
Management Notes:								
Well below target	<u>Number of Missed Collections reported per Quarter (Recycling)</u>	1,162	270	270	126	380	895	1,294
Management Notes: (Quarter 4) Missed collections were up in the year due to two round reschedules for both phases of the roll out of the new scheme. The second phase of roll out in Q3 involved changing collections cycles and rounds to match refuse rounds. Perm staff were used for deliveries and agency staff used on rounds leading to reduced route knowledge. Missed collections began to reduce again in Q4 and were down to 66 (0.04%) in March as rounds became established and route knowledge grew. (SK)								

DAH PDG Performance Report - Appendix 2

Quarterly report for 2015-2016

No headings

For Decent and Affordable Homes - Cllr Ray Stanley Portfolio

For MDDC - Services

Filtered by Performance Status: Exclude PI Status: Data not due, Not calculable

Key to Performance Status:

Performance Indicators:	No Data	Well below target	Below target	On target	Above target	Well above target
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DAH PDG Performance Report - Appendix 2

Performance Indicators								
Status	Title	Prev Year End	Annual Target	Current Target	Q1 Act	Q2 Act	Q3 Act	Q4 Act
Well below target	Deliver 15 homes per year by bringing Empty Houses into use	12	15	15	1	4	5	8
Management Notes: (Quarter 4)								
2 year fixed term arrangement with Exeter CC for provision of an Empty Homes Officer working 2 days per week for MDDC.								
(HS)								
Well below target	Number of affordable homes delivered (gross)	58	80	80	0	14	19	27
Management Notes: (Quarter 1 - 4)								
The original target of 80 new homes for the year has not been met as there has been some delays on various sites so these completions will roll over into the new financial year.								
(AH)								
On target	% Emergency Repairs Completed on Time	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Management Notes:								
Below target	% Urgent Repairs Completed on Time	99.94%	100.0%	100.0%	100.0%	100.0%	100.0%	99.8%
Management Notes: (March)								
Throughout the year we completed 1270 jobs and 1268 of these were completed on time. Just two jobs were failed to be completed on time.								
(AH)								
On target	% Routine Repairs Completed on Time	99.98%	100.0%	100.0%	100.0%	100.0%	99.9%	100.0%
Management Notes:								
Below target	% Repairs Completed at First Visit	99.87%	100.00%	100.00%	98.28%	98.30%	97.75%	97.63%
Management Notes: (March)								
Throughout the year we completed 6,546 jobs and out of these 6,391 were completed during the first visit. Therefore, there were 155 jobs which were not completed on our first visit to the property. The reason for the majority of these is that we have had to leave site to order specific material such as glass, doors, heating parts etc.								
(AH)								

DAH PDG Performance Report - Appendix 2

Performance Indicators								
Status	Title	Prev Year End	Annual Target	Current Target	Q1 Act	Q2 Act	Q3 Act	Q4 Act
Above target	<u>Ratio of expenditure between planned and responsive repairs</u>	81.19	70.30	70.30	29.71	55.45	69.31	73.27
Management Notes:								
Below target	<u>Rent Collected as a Proportion of Rent Owed</u>	100.09%	100.75%	100.75%	97.16%	99.04%	99.36%	99.74%
Management Notes: (March)								
Although outside target, performance here was good. As Universal Credit is being rolled out in Mid Devon rent arrears may go up. Performance is closely monitored so we can review procedures if collection levels begin to fall.								
(AH)								
Well above target	<u>Rent Arrears as a Proportion of Annual Rent Debit</u>	0.60%	1.00%	1.00%	0.94%	1.05%	0.81%	0.66%
Management Notes:								
On target	<u>% Decent Council Homes</u>	100.00%	100.00%	100.00%	99.38%	99.28%	99.45%	100.00%
Management Notes:								
Below target	<u>% Properties With a Valid Gas Safety Certificate</u>	99.86%	100.00%	100.00%	99.72%	99.72%	99.91%	99.86%
Management Notes: (March)								
At the end of the financial year we had three properties without a valid gas certificate. Legal services are dealing with two of the instances, trying to gain access to the properties, and the remaining instance is due to an absent tenant.								
(AH)								
Above target	<u>Average Days to Re-Let Local Authority Housing</u>	14.9days	17.0days	17.0days	15.2days	15.5days	16.1days	16.3days
Management Notes:								
No Target	<u>Dwelling rent lost due to voids</u>	n/a	no target - for information only	no target - for information only	0.73%	0.64%	0.68%	0.75%
Management Notes:								

CWB PDG Performance Report - Appendix 3

Quarterly report for 2015-2016

No headings

For Community Well-Being - Cllr Colin Slade Portfolio

For MDDC - Services

Filtered by Performance Status: Exclude PI Status: Data not due, Not calculable

Key to Performance Status:

Performance Indicators:	No Data	Well below target	Below target	On target	Above target	Well above target
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CWB PDG Performance Report - Appendix 3

Performance Indicators

Status	Definition	Prev Year End	Annual Target	Current Target	Q1 Act	Q2 Act	Q3 Act	Q4 Act
Well above target	<u>The number of Empty Shops. (TIVERTON)</u>	12	20	20	17	16	16	16

Management Notes:

(Quarter 4)

Empty shop count January 2016 = 16 empty shops out of 249

(ZL)

Well above target	<u>The number of Empty Shops. (CREDITON)</u>	10	10	10	9	9	6	7
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Management Notes:

(Quarter 4)

Empty shop count in January 2016 = 7 empty shops out of 118

(ZL)

Well above target	<u>The number of Empty Shops (CULLOMPTON)</u>	11	14	14	12	10	7	8
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Management Notes:

(Quarter 4)

Empty shop count in January 2016 = 8 empty shops out of 94

(ZL)

Well below target	<u>Percentage of food premises inspections that should have been carried out that were carried out for A & B (High Risk) premises</u>	46%	100%	100%	n/a	n/a	n/a	75%
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Management Notes:

(2015 - 2016)

There has been reduced resource in food, an Environmental Health Officer has now been recruited. This has helped to reduce the backlog of inspections which has improved the figure achieved this year.

(SK)

Below target	<u>The percentage of Leisure's operational expenditure recovered through customer receipts</u>	88.16%	88.50%	88.50%	79.19%	83.76%	84.36%	85.15%
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Management Notes:

(Quarter 4)

There were a number of reasons why the operational recovery rate was slightly under target for the quarter, but the main areas of underperformance

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CWB PDG Performance Report - Appendix 3

Performance Indicators

Status	Definition	Prev Year End	Annual Target	Current Target	Q1 Act	Q2 Act	Q3 Act	Q4 Act
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were Health & Fitness and Westside. However, Front of House exceeded its target due to cash sales of advanced zest membership.

Going forward, the service will be monitored by business area which will give a clearer indication of performance.

(NC)

Below target	<u>% of Leisure members retained from month beginning to month end.</u>	95.33%	96.50%	96.50%	96.87%	95.46%	95.65%	96.13%
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Management Notes:

(Quarter 4)

The performance for the final quarter for retention has recovered significantly since a dip in mid 2015/16.

We will be changing the way we record this to 'attrition rate' for 2016/17 in line with UK Active Benchmarking.

The national average for attrition across the sector is 5% (source UK Active data 2014/15) and as we have been performing at above 95% **retention** for all of 2015/16, our attrition rate is performing well against the national average, as it was less than 5%.

(NC)

Above target	<u>Issue of TENS within 3 working days</u>	n/a	97%	97%	94%	97%	98%	99%
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Management Notes:

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AGENDA ITEM

PLANNING COMMITTEE

DATE: 11TH MAY 2016

REPORT OF JENNY CLIFFORD, THE HEAD OF PLANNING AND REGENERATION

PLANNING PERFORMANCE 2015/16

RECOMMENDATION:

For information and discussion.

REASON FOR REPORT:

To provide the Committee with information on the performance of Planning Services for the quarter 4 and the full 2015-16 financial year

MATTERS FOR CONSIDERATION:

Performance against targets, Government proposals to implement further changes to the planning system and resources within the Planning Service.

RELATIONSHIP TO CORPORATE PLAN:

The Planning Service is central to achieving priorities in the Corporate Plan.

FINANCIAL IMPLICATIONS: Planning performance has the potential for significant financial implications in the event that applications are not determined within 26 weeks or an extension of time negotiated. In that instance the planning fee is returned. Through the issue of planning permissions for new dwellings the Service enables the award of New Homes Bonus money to the Council.

LEGAL IMPLICATIONS: The Government monitors planning performance in terms of speed and quality of decision making. In the event minimum standards are not met, an authority may be designated as underperforming with special measures applied that allow applicants for major development to apply for permission direct from the Planning Inspectorate and bypassing local decision making. The speed measure is the number of major applications determined within 13 weeks as measured over a 2 year period. The new target of more than 50% has been met. The quality measure is the percentage of major applications determined over a two year period that have been overturned at appeal. The less than 20% target has been met (10%). However the Government proposes to tighten performance requirements.

RISK ASSESSMENT: Financial risk as a result of fee return and the designation of planning authorities in special measures for underperformance is referred to above. These aspects are actively monitored, to allow priorities to be adjusted as required to reduce the risk. However this risk is increasing with the Government having identified through the Autumn Statement and subsequent technical consultation on planning changes the intention to tighten existing measures and introduce new ones.

1.0 PLANNING PERFORMANCE

Set out below are the Planning Service performance figures for quarter 4 from 1st January – 31st March 2016 together with the performance figures for the whole of the 15/16 financial year.

Performance data is published quarterly on the Council's website at <https://new.middevon.gov.uk/planning/performance-standards/>

Performance by year and quarter is set out below and expressed as a percentage unless marked otherwise and reports against a mix of Government and local performance targets.

Planning Service Performance	Target	2014/15	2015/16				2015/16
			Q1	Q2	Q3	Q4	
Major applications determined within 13 weeks	60%	64	*57	*50	*75	*33	47%
Minor applications determined within 8 weeks	65%	67	68	73	74	64	68%
Other applications determined within 8 weeks	80%	78	91	85	75	89	86%
Householder applications determined in 8 weeks	85%	90	92	97	95	88	93%
Listed Building Consents	80%	70	70	67	85	70	71%
Enforcement site visits undertaken within 15 days of complaint receipt	87%	94	100	94	89	91	89%
Delegated decisions	90%	95	94	93	94	94	94%
No of applications over 13 weeks old without a decision	Less than 45 applications	36	25	26	36	40	40
Major applications determined within 13 weeks (over last 2 years)	More than 50%	50	51	58	56	53	53%
Major applications overturned at appeal as % of all major decisions in last 2 years	Less than 20%	14%					10%
Determine all applications within 26 weeks or with an extension of time (per annum –Government planning guarantee)	100%	95	97	96	94	99	99%
Building Regulations Applications examined within 3 weeks	95%	74	70	70	76	67	72%
Building Regulation Full Plan applications determined in 2 months	95%	98	99	98	97	87	97%

*Important note on major application statistic reporting: The 53% statistic for major applications determined within 13 weeks reported above includes all major applications and does not take into account any extensions of time agreed with the applicant or planning performance agreements (PPAs) that have been entered into. Government instructions to Councils over this performance target remove reporting applications with extensions of time or PPAs from this target as they are reported separately. Once these have been removed 87% of major applications were determined within 13 weeks compared with the target 60%. This performance target has therefore been met.

Application processing- Development Management.

The Government sets a range of additional performance targets for planning authorities in order to drive performance. Those for major planning application decision making are

currently used by the Government as indicators of performance in terms of both speed and quality of decision making as follows:

Speed: More than 50% of major applications determined within 13 weeks. MDDC 15/16 85% excluding those with extensions of time (see note * above).

Quality: Of major applications determined over a 2 year period, no more than 20% of decisions to be overturned at appeal. MDDC currently 10%.

Authorities not meeting these targets risk being designated as underperforming, resulting in the application of special measures. Some of these are set out in more detail in the accompanying report on appeal performance for 45/16.

The Autumn Statement and 'Technical consultation on implementation of planning changes' issued by the Department for Communities and Local Government in February 2016 indicate that it is the intention of the Government to tighten these performance measures and add to them. Through the Housing and Planning Bill this performance approach is to be extended for applications for non-major development. The Government is consulting on tightening the quality of decision making target to no more than 10% of major applications determined over a 2 year period to be overturned at appeal.

New non-major application performance targets currently being consulted upon are more than 60-70% of such applications to be determined within the required time including any agreed extension of time. Furthermore that as a quality of decision indicator there be no more than 10 – 20% of decisions on non-major applications overturned at appeal.

During 15/16 the Planning Service determined 1008 planning applications including 26 majors, 127 prior notifications, 85 certificates of lawful use and 49 notifications. Work in addition to this included pre-application advice requests as well as general advice and queries.

Planning enforcement.

Activity within the enforcement part of the Planning Service by quarter is as follows:

Enforcement 2015/16	Qu 1	Qu 2	Qu 3	Qu 4
New enforcement cases registered	14	71	54	To follow
Enforcement cases closed	47	53	39	To follow
Committee authorisations sought	3	2	1	2
Planning contravention notices served	Data available from Qu 2	9	5	10
Breach of condition notices served	0	1	0	0
Enforcement notices served	2	1	0	3

Statistics for the number of enforcement cases closed are an indication of there either not being a breach of control, or that the breach was resolved without formal action. Resolution of breaches may take significant work that is by its nature not clearly reflected in statistics. A report will shortly come before Scrutiny Committee with the results of benchmarking performance in enforcement against other authorities in the area. This benchmarking is currently underway. In addition, the establishment of more meaningful and measurable performance indicators for the planning enforcement is being progressed.

Staffing in enforcement was below the 2.5 FTE posts towards the beginning of the 2015/16 financial year. One Enforcement Officer post will be vacant at the time of the consideration of this report. Recruitment is underway and a temporary resource is proposed to assist the team during this period.

Building Control.

Building Control performance in plan checking has not met the local performance target over the last financial year. The Building Control team has seen significant changes over 2015/16 with the legacy following the redundancy of the previous Building Control Manager at the end of 2014. This previous Manager acted as an Inspector over part of the District and managed a caseload of applications. With the reduction in the size of the team the time taken for certain activities has increased. Staff levels have been low for part of this period following the departure of 2 Building Control Officers. The service has been restructured to replace them with Building Surveyors and appointments have been made to these posts. The new post holders are due to start work within approximately one month. Arrangements have been put in place to manage and cover plan checking during this period of reduced staffing. A review of the Building Control service including workloads and level of staffing has also been undertaken within 15/16 and there is now a Building Control Manager in place on a shared basis with North Devon Council. Authority has been given by Cabinet to develop a framework for future delivery of the service in partnership with North Devon Council.

Planning policy – Forward Planning.

Planning policy production targets reported in 2015 are as follows together with the updated position:

Document	2015 position	Current position
Local Plan Review	Pre-submission consultation in progress until 27th April 2015	In progress (see below for more detail)
CIL Draft charging schedule	Pre-submission consultation in progress until 27th April 2015	Draft charging schedule prepared. Consultation responses assessed. Awaits Local Plan Review due to proposed joint examination.
Annual Monitoring Report	2014 AMR presented to Cabinet February 2015	2015 AMR agreed under delegated powers
Cullompton Article 4 Review	Consultation completed December 2014, target to Cabinet 4th June 2015	Completed
Conservation Area Appraisals and Management Plans: Thorverton Morchard Bishop Newton St Cyres Cheriton Fitzpaine Silverton	In preparation Consultation completed mid March	Completed
Solar & Wind Landscape Sensitivity SPD	In preparation	Solar landscape sensitively to Cabinet June 2015
Self Build guidance / SPD	In preparation	Self build register requirements met
Open Space SPD	In preparation	No longer required.

The latest version of the Local Development Scheme (October 2015) indicates Local Plan Review timescale as follows:

- Sustainability appraisal scoping: May 2013 (completed)
- Preparation stage consultation : January 2014 (completed)
- Publication stage consultation: February - April 2015 (completed)
- Submission: June 2016
- Hearings: September 2016

- Adoption: January 2017
- Revision: 2020

Since the Local Development Scheme was prepared, further technical work in respect of flood modelling and highway infrastructure design at junction 28 of the M5 at Cullompton has been commissioned and is currently taking place. The outcomes of this technical work are expected in June / July. The latest estimate for Local Plan submission to the Inspectorate assuming no major modifications is August 2016.

At the meeting of Council on 27th April 2016 it was agreed that the outcomes of the Local Plan pre-submission consultation and subsequent technical work be considered by Council and Cabinet. It is likely that this will be via special meetings in August 2016. Plan submission now also expected August 2016 (assuming no major modification is made).

The Government has set out the expectation that Councils should have a local plan in place and that they should be kept up to date. It proposes to publish league tables setting out local plan progress and intervening where no local plan has been produced by early 2017. A new delivery test is also to be introduced to ensure delivery against the number of homes set out in local plans. The Government has indicated that priority for intervention will be Councils without a local plan in place and those that have not kept policies in local plans up to date.

The priority for the Forward Planning Team is currently the Local Plan Review and associated tasks. An interim Team Leader was secured in 2015 to supplement staffing and will cover a further period of maternity leave in 2016. Further resources have been secured via consultancy in order to ensure sufficient staff resources are in place to complete the Local Plan Review process through examination and to adoption.

Other current planning policy related work streams are as follows:

- Review of the Statement of Community Involvement
- Waste storage SPD
- Sustainable Urban Drainage Systems SPD
- Brownfield land register
- Strategic planning work
- Tiverton town centre masterplan
- Area B Tiverton Eastern Urban Extension masterplan
- Neighbourhood planning screening and support as resources allow

Over 15/16 the Planning Service has also produced a Tiverton Eastern Urban Extension design guide following the adoption of the Area A masterplan and adopted a masterplan SPD for the Cullompton NW Urban Extension.

Performance for 2015/16 shows that in the majority of instances targets are being met or exceeded. However there remain areas of concern, particularly given the ever tightening performance environment.

Planning Service staffing continues to still not be at full strength due to the maternity leave of several senior staff. This continues to have knock-on effects in terms of associated arrangements for cover and redeployment of staff into different roles and is expected to continue to do so into the first half of this financial year. Not all posts have been backfilled, but are being kept under review. The performance of the service in meeting the majority of targets over 15/16 represents a significant achievement, particularly in light of the challenges over this financial year referred to above.

Planning Service workload is expected to rise in 2016 due to the Local Plan Review and other emerging policy work, largescale major applications expected in Tiverton and Cullompton associated with urban extensions, the programmed submission of a planning

application for development at J27 and the implementation of further changes to the planning system.

Planning performance continues to be closely monitored. The performance of the planning service against targets is increasingly important, requires resourcing and presents an ongoing risk to the authority both financially and reputationally. Every effort continues to be made to maintain our charter standards of customer service and our performance levels within the eight and thirteen week government target periods.

Contact for Information: Jenny Clifford, Head of Planning and Regeneration
01884 234346

List of Background Papers: PS1 and PS2 returns
DCLG Improving planning performance – Criteria for designation. June 2014
DCLG Planning performance and the planning guarantee –Government response to consultation. June 2013
HM Treasury 'Fixing the foundations – creating a more prosperous nation' July 2015
Department of Communities and Local Government – Technical consultation on implementation of planning changes. February 2016

Circulation of the Report: Cllr Richard Chesterton
Members of Planning Committee

Working Environment Portfolio Performance - Appendix 5

Quarterly report for 2015-2016

No headings

For Working Environment and Support Services - Cllr Margaret Squires Portfolio

For MDDC - Services

Filtered by Performance Status: Exclude PI Status: Data not due, Data not entered

Key to Performance Status:

Performance Indicators:	No Data	Well below target	Below target	On target	Above target	Well above target
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Working Environment Portfolio Performance - Appendix 5

Performance Indicators								
Status	Title	Prev Year End	Annual Target	Current Target	Q1 Act	Q2 Act	Q3 Act	Q4 Act
No Target	<u>Number of phone calls to CF per month</u>	12,670	For Information Only	For Information Only	11,192	11,420	12,483	12,492
Management Notes:								
Above target	<u>Satisfaction with front-line services</u>	81.75%	80.00%	80.00%	80.00%	81.50%	81.33%	80.75%
Management Notes:								
Well below target	<u>% complaints acknowledged w/in 3 days</u>	46%	80%	80%	45%	57%	76%	66%
Management Notes: (Quarter 4)								
100% of complaints were acknowledged, but the system only shows 45% as acknowledged with in 3 days.								
This is not accurate, checking against manual files indicates that more were acknowledged in time.								
Full analysis will be completed for the annual report to Members on complaints.								
(LR)								
Above target	<u>% of complaints resolved w/in timescales (10 days - 12 weeks)</u>	97%	90%	90%	93%	100%	98%	93%
Management Notes: (Quarter 4)								
7 complaints remain at investigation stage, but are still within the policy SLA.								
These complaints will be resolved in 2016-17.								
The % resolved within time over all is 96% .								
(LR)								
Above target	<u>% Emails received by Customer Services responded to within 5 days</u>	98.0%	95.00%	95.00%	99.00%	98.50%	98.67%	99.00%
Management Notes:								
Not calculable	<u>Number of Complaints</u>	74	For information only	For information only	61	39	87	95
Management Notes:								
Not calculable	<u>Number of Digital payments</u>	8,989	For information only	For information only	7,083	10,892	14,705	10,407
Management Notes:								

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Working Environment Portfolio Performance - Appendix 5

Performance Indicators								
Status	Title	Prev Year End	Annual Target	Current Target	Q1 Act	Q2 Act	Q3 Act	Q4 Act
(Quarter 4)								
figures for 2015-16 include payments made at the post office, these will not be included in future years as digital as these are assisted cash- cheque payments.								
(LR)								
No Target	<u>Number of web hits per month</u>	n/a	For information only	For information only	0	0	0	0
Management Notes:								
(Quarter 4)								
data not available while the website is both Umbraco and Goss. Final Goss pages to be closed at the end of march.								
Communications Officer to receive training on Google analytics to ensure information can be gathered and reported from Umbraco for 2016/17								
(NC)								
On target	<u>% electoral registration forms returned during annual canvass of electors</u>	0%	90%	90%	0%	0%	98%	0%
Management Notes:								
On target	<u>% Electoral Commission Registration Performance Standards</u>	0%	90%	90%	0%	0%	100%	0%
Management Notes:								
On target	<u>% Electoral Commission Returning Officer Performance Standards</u>	100%	90%	90%	n/a	n/a	n/a	0%
Management Notes:								
(2015 - 2016)								
no elections until May and June 2016								
(JS)								
Well below target	<u>Response to FOI Requests (within 20 working days)</u>	95%	100%	100%	70%	90%	88%	87%
Management Notes:								
(Quarter 4)								
145 requests responded to 19 over 20 days								
(LC)								
Below target	<u>Working Days Lost Due to Sickness Absence</u>	9.21days	8.00days	8.00days	1.64days	3.68days	5.71days	8.12days
Management Notes:								
(Quarter 4)								
The total number of days lost to sickness absence is 1062 which is split into 623 days for long Term Sickness (15 + days) and 439 for short term sickness (less than 15 days).								
(JC)								

Finance Portfolio Performance - Appendix 6

Quarterly report for 2015-2016
No headings
For Finance - Cllr Peter Hare-Scott Portfolio
For MDDC - Services

Key to Performance Status:

Performance Indicators:	No Data	Well below target	Below target	On target	Above target	Well above target
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Finance Portfolio Performance - Appendix 6

Performance Indicators								
Status	Title	Prev Year End	Annual Target	Current Target	Q1 Act	Q2 Act	Q3 Act	Q4 Act
Below target	<u>% total Council tax collected - monthly</u>	97.80%	98.5%	98.5%	29.4%	56.7%	83.4%	98.1%
<p>Management Notes: (March)</p> <p>Prior to this year the monthly targets were always achieved until the last month which in my opinion made them pointless. In order to make them more meaningful I asked Audit to change the Targets to reflect the best monthly figures we have achieved in the past. Therefore the figures give the Office something to aim for each month instead of waiting till the end of the year.</p> <p>(JC)</p>								
Above target	<u>% total NNDR collected - monthly</u>	99.00%	98.00%	98.00%	31.10%	55.80%	80.59%	99.10%
<p>Management Notes: (March)</p> <p>Both Ctax and NNDR monthly collection rates have changed in their make up because we have now added 12 monthly instalments. The effect of this is that the April - January monthly instalment figures are slightly down on previous years where as the February and March instalments bring the collection back up.</p> <p>(JC)</p>								
Above target	<u>Percentage of Invoices Paid on Time</u>	99.26%	97.50%	97.50%	n/a	99.57%	n/a	99.73%
<p>Management Notes: (October - March)</p> <p>The Creditors team continue to perform very well, continually looking to improve processes; including being very proactive in encouraging departments to GRN invoices promptly on receipt of goods.</p> <p>(RF)</p>								
Well above target	<u>Time taken to process Housing Benefit/Council Tax Benefit new claims and change events</u>	8days	14days	14days	14days	13days	12days	10days
<p>Management Notes:</p>								

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Risk Report Appendix 7

Report for 2015-2016
 Filtered by Flag:Include: * CRR 5+ / 15+
 For MDDC - Services

Not Including Risk Child Projects records or Mitigating Action records

Key to Performance Status:

Risks: No Data (0+) High (15+) Medium (5+) Low (1+)

Risk Report Appendix 7

Risk: Asbestos Health risks associated with Asbestos products such as lagging, ceiling/wall tiles, fire control.

Effects (Impact/Severity):

Causes (Likelihood):

Service: Housing Services

Current Status:
Medium (5)

Current Risk Severity: 5 -
Very High

Current Risk Likelihood: 1 -
Very Low

Head of Service: Nick Sanderson

Review Note: Recommendations from the HSE after the events last year have now been implemented.

Risk Report Appendix 7

Risk: Breaches in HR Legislation Failure to keep Council policies up to date, that complement the appropriate legislation

Failure to develop staff knowledge and competence regarding legislation/changes

Effects (Impact/Severity): - The Council could face poor reports from assurance bodies
 - Failure to meet statutory duties could result in paying penalties, stretching already thin financial resources
 - Failure to comply with legislation could lead to legal challenge against individuals or the Council as a whole
 - Future legislation changes, their impact on services and the cost of implementing changes to policies, procedures and service delivery

Causes (Likelihood):

Service: Human Resources

Current Status: No Data	Current Risk Severity: 5 - Very High	Current Risk Likelihood: 1 - Very Low
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Head of Service: Jill May

Review Note: The council employs four Chartered Ins of Personnel and Development (CIPD) staff who undertake regular employment law updates. All policies are reviewed on an three year programme which has slipped lately due to pressure of work (reorganisations, consultations and redundancies) however we always prioritise legislative change. Therefore whilst this is a huge risk it is a risk which is managed.

Risk: Chemicals Staff using chemicals incorrectly.

Effects (Impact/Severity):

Causes (Likelihood):

Service: Leisure Services

Current Status: Medium (5)	Current Risk Severity: 5 - Very High	Current Risk Likelihood: 1 - Very Low
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Head of Service: Jill May

Review Note:

Risk Report Appendix 7

Risk: Council Finances - Banking Arrangements Problems with banks and online services may affect ability to access funds when we need to or receive / process payments on a timely basis

Effects (Impact/Severity): Unable to promptly pay suppliers or treasury commitments

Causes (Likelihood): ICT systems down at Council or Bank so impossible to review cash position or make urgent payments

Service: Financial Services

Current Status:
Medium (5)

Current Risk Severity: 5 -
Very High

Current Risk Likelihood: 1 -
Very Low

Head of Service: Andrew Cawdron, Andrew Jarrett

Review Note:

Risk: Council Finances - Investments Failure to invest in the Council's funds in an efficient and effective manner may cause potential of a loss of monies invested

Effects (Impact/Severity): • Could result in cash flow loss of up to £3M

Causes (Likelihood): • Future banking collapses

Service: Financial Services

Current Status:
Medium (5)

Current Risk Severity: 5 -
Very High

Current Risk Likelihood: 1 -
Very Low

Head of Service: Andrew Cawdron, Andrew Jarrett

Review Note: Cabinet have recently agreed to invest in CCLA

Risk: Council Finances - Treasury Management Failure to comply with the CIPFA Code of Practice on Treasury Management /local authority accounting would be a breach in statutory duty

Effects (Impact/Severity):

Causes (Likelihood):

Service: Financial Services

Current Status:
Medium (5)

Current Risk Severity: 5 -
Very High

Current Risk Likelihood: 1 -
Very Low

Head of Service: Andrew Cawdron, Andrew Jarrett

Review Note: Strategy is approved by Cabinet annually.
2015 Audit found no issue with this

Risk Report Appendix 7

Risk: Document Retention If documents fail to be retained for the statutory period then we may face financial penalties

Effects (Impact/Severity):

- The Council may be disadvantaged in taking or defending legal action if prime documents are not retained;
- Performance statistics cannot be verified;
- The external auditor may not be able to verify the Council's final accounts and subsidy may be lost.
- Mismanagement of burial records

Causes (Likelihood): • "Data debris" cluttering system and storage space

Service: Management Team

Current Status:
Medium (5)

Current Risk Severity: 5 -
Very High

Current Risk Likelihood: 1 -
Very Low

Head of Service: Liz Reeves

Review Note:

Risk: Failure to comply with card security standards As an organisation we need to comply with the requirements of TrustWave to be authorised as card payment processors.

Effects (Impact/Severity):

Causes (Likelihood):

Service: Management Team

Current Status:
Medium (5)

Current Risk Severity: 5 -
Very High

Current Risk Likelihood: 1 -
Very Low

Head of Service: Liz Reeves

Review Note: Annual review of policy and training for all staff. ICT advise on all payment systems to ensure comply to PCI standard.

Risk: Fire and Explosion Risks associated with storage of combustible materials, fuels and flammable substances and sources of ignition, as well as emergency procedures (existence, display and knowledge of), accessibility (or obstruction) of emergency exits and walkways to. Also, risks associated with use of fire extinguishers, having correct type in location, in date and trained operatives on site.

Effects (Impact/Severity): Very High (5) – Although the risk is low, a fire in the server or storage room could potentially cause loss of life, have serious financial implications and severely impact the councils ability to provide services due to loss of IT infrastructure.

Causes (Likelihood): Very Low (1) – The likelihood of a fire within ICT is extremely low. No quantities of combustible materials are stored within the work area. There is easy access to the emergency exit and all staff have received fire awareness training.

Service: I C T

Current Status: No
Data

Current Risk Severity: 5 -
Very High

Current Risk Likelihood: 1 -
Very Low

Head of Service: Liz Reeves

Review Note: we had an incident 7 pm Tuesday evening and our heat sensors and recovery team worked all as it should and problem averted

Risk Report Appendix 7

Risk: H&S RA - Refuse Driver/Loader Risk Assessment for Role - Highest risk from role RA. - Risk of RTA from sever weather conditions

Effects (Impact/Severity):

Causes (Likelihood):

Service: Street Scene Services

**Current Status:
Medium (10)**

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 2 - Low

Head of Service: Stuart Noyce

Review Note: Annual Review of Risk Assesment

Risk: Information Security Inadequate Information Security could lead to breaches of confidential information, damaged or corrupted data and ultimately Denial of Service. If the council fails to have an effective information strategy in place.

Risk of monetary penalties and fines, and legal action by affected parties

Effects (Impact/Severity):

Causes (Likelihood):

Service: I C T

**Current Status:
Medium (5)**

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 1 - Very Low

Head of Service: Liz Reeves

Review Note:

Risk: Legionella Legionella

Effects (Impact/Severity):

Causes (Likelihood):

Service: Leisure Services

**Current Status:
Medium (5)**

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 1 - Very Low

Head of Service: Jill May

Review Note:

Risk Report Appendix 7

Risk: Plant Rooms plant rooms

Effects (Impact/Severity):

Causes (Likelihood):

Service: Leisure Services

Current Status: Medium (5)

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 1 - Very Low

Head of Service: Jill May

Review Note:

Risk: St Andrew Street A staircase in the new development does not meet current building regulations due to conservation requirements.

Effects (Impact/Severity):

Causes (Likelihood):

Service: Property Services

Current Status: High (15)

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 3 - Medium

Head of Service: Nick Sanderson

Review Note: The staircase has to remain in position, no further issues reported from the housing team. We will continue to monitor and will take action where possible and permitted.

Risk: Vehicles, Transport, Driving Risk of collisions with other moving or stationary vehicles, cycles and/or pedestrians.

Effects (Impact/Severity):

Causes (Likelihood):

Service: Street Scene Services

Current Status: No Data

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 1 - Very Low

Head of Service: Stuart Noyce

Review Note:

Risk Report Appendix 7

Risk: Waste Collection - Health and Safety Inadequate training with regards to Manual Handling and workplace hazards (eg contact with broken glass) could result in Health and Safety risks

Effects (Impact/Severity):

Causes (Likelihood): - Increasing demand and service costs due to increasing population, consumer society and an increasing amount of waste

Service: Street Scene Services

Current Status:
Medium (9)

Current Risk Severity: 3 - Medium

Current Risk Likelihood: 3 - Medium

Head of Service: Andrew Jarrett, Stuart Noyce

Review Note: All staff received manual handling training in Dec 2015 with M Lowe

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SCRUTINY

23 May 2016

REPORT OF THE REVIEWING THE COSTS OF ECONOMY WORKING GROUP

Responsible Officer **Liz Reeves, Head of Customer Services**

RECOMMENDATION(S):

- **Areas of land for sale should be promoted by Members at Parish Council Meetings.**
- **A pricing structure for services that could be sold, for example to town and parish councils, local charities and small businesses be put together and actively promoted.**
- **Assets such as the Town Halls (Tiverton and Crediton) to be used to maximise income, either by sale, rent or by joint development as they are assets that could generate income.**
- **Conditions of service to be reviewed to consider amending terms and conditions regarding sickness benefits for new employees.**
- **Management information to show long and short term sickness figures.**
- **That staff be incentivised to put forward business ideas and suggestions that could be taken forward to generate income and that some form of reward scheme be put in place.**
- **That the authority becomes less risk adverse and encourage new ventures.**
- **That Scrutiny undertake a review on the effect of price rises on the Leisure Service, based on appendix 1.**

1 Introduction

At a meeting of the Scrutiny Committee held on 13 July 2015 it was agreed that a Working Group be set up following discussion regarding performance indicators, sickness levels, areas of work that had not been completed despite being agreed by Councillors and the impact of redundancies. Members considered that these pressures could put the Council at risk. It was agreed that the group needed to look at the past, present, future of cuts and their impact.

2 The problem

At a meeting of the Group the Head of Finance gave an overview of the situation since austerity measures began. He explained that during that period the formula grant had dropped from £6.2m to £3.7m, a reduction of 40%. Despite this the authority was still providing 'business as usual'. If inflation was added to this the savings were even greater.

Large savings had been made from a range of measures including the Enesco Project off-setting utility spend, solar panels on the roofs of housing had generated profit, cuts had been made to grants, reduced management team, savings in grounds maintenance and restructures in Finance and Legal Services.

3 The Issues

At the first meeting of the Group the following areas were identified as being of concern:

Asset Management

Staff sickness

Partnership Working

Income Generation and Innovation

3.1 Asset Management

The Property Services Manager was asked to report to the Group and he outlined the assets of the authority, explaining that it was responsible for £14m of assets.

He presented the draft asset plan which set out how the authority would manage land and properties. This was reviewed by CSAG (Capital Strategy Asset Group) which was a group of Members and Officers.

He stressed the importance of property assets meeting the needs of the Corporate Plan and that it was essential to ensure that adequate business facilities were provided.

As an example of work being carried out the officer gave information regarding the public conveniences at Lowman Green. These were in the process of being converted into a restaurant and would be leased for 10 years. Another example was a commercial building in Birchen Lane where planning consent had been obtained for conversion into affordable flats. Other assets were being looked at with regard to providing an income.

The importance of maintaining and improving properties as an asset was discussed, for example the leisure centres which needed to be well maintained and up to date in order to generate income.

The Enesco Project had generated an income stream and Property Services continue to keep up with cost saving innovations such as LED lighting.

The officer listed the variety of properties owned by the authority such as housing, Market Walk, parks and open spaces, depots and car parks. He explained that information regarding all assets was stored on a database which was maintained by Local Land Charges and Estates.

Plans were also needed for any assets that were or could become a liability – The officer explained that in the short term the depots for waste and recycling were functional and practical but in the longer term efficiencies could be found if the depots were combined on one site. Grounds Maintenance and Housing Services could share a site if a large enough one was found but their current depots did not have a large value and the efficiencies saved would not be significant.

Odd bits of land – the group discussed various plots of land around the District which have no use to the authority and could be sold on to neighbouring householders. It was agreed

that Members should actively promote this at Parish Council Meetings to encourage people to approach the council with regard to purchase.

It was **AGREED** that areas of land for sale should be promoted by Members at Parish Council Meetings and that assets such as the Town Hall (Tiverton and Crediton) needed to be used to generate money, if there was a value should be sold or jointly developed as they were assets that could generate income. This needed to be fair across the district.

3.2 Staff Sickness

The Head of Human Resources was asked to update the Scrutiny Committee regarding staff sickness. This was an agenda item for the Committee on 22 February 2016.

It was **AGREED** that sickness reporting within the authority did not provide enough detail. Short term and long term sickness needed to be separated. Current terms and conditions provided sick pay from day one. It was proposed that terms and conditions should not be changed for existing staff but that contracts could be changed for new staff.

3.3 Partnership Working

Cllr Rosamond had investigated a funding stream through the LGA where expertise could be drawn in to look at income generation. Funding for 2015/16 had already been used as part of the project for sharing IT with North Devon. Further funding had become available and the CE was making an application regarding Planning.

3.4 Income Generation and Innovation

Cllr Binks had visited the leisure centres as a Zest member. She suggested that the car parks were an under-utilised facility that could generate an income. It was **RECOMMENDED** that the Scrutiny Committee investigate the potential charging for car parking at leisure Centres. At a Scrutiny Meeting on 21 March the CE confirmed that officers would take this into consideration.

Leisure Services

Cllr Binks made several comments regarding income generation for the Leisure Service which are at appendix 1.

3.5 Business Forum

Cllr R Evans had, at the request of the Group, attended a meeting of the Tiverton Business Forum. Cllr Evans had given the message that the Council was looking to work in partnership with other companies and that it had a wealth of knowledge to share in areas such as Health and Safety and Human Resources as well as an established Property Maintenance team and Grounds Maintenance Unit. Nothing was forthcoming from this meeting but Cllr Evans agreed to discuss it with the cabinet Member for Planning and Regeneration to see if there was a way forward.

3.6 Officer Suggestions

The Head of Customer Services informed the Group that she had mentioned this at Management Team and that it had been agreed that this matter would be discussed at Senior Officers Forum. It was generally agreed that it would be beneficial to reward staff for

ideas that they put forward and that officers should be encouraged to think in a 'can do' manner rather than 'can't'.

Suggested questions to staff were:

- Are we working as efficiently as we can?
- Can we increase income?
- What services can we reduce?

It was **AGREED** that a recommendation to the Scrutiny Committee be that staff be incentivised to put forward ideas and suggestions for business ideas that could be taken forward to generate income, that the authority become less risk adverse and that some form of reward scheme be put in place.

3.7 Staff Working from Home

Economies that could be made if staff worked from home were discussed. Officers responded that this could free up office space, could be more productive and save on travel time but the costs of providing equipment, if a feature of their job could impact on house insurance. Discussion took place regarding potential problems with home working including communication, staff feeling left out and a reduction shared knowledge.

4 The View of the Customer

Members agreed that there was a need to benchmark services to find out how they were being received. The Membership of the Council were asked to survey their local Parish Councils to find out if any changes had been noted. The following questions were asked?

Since austerity began the formula grant paid to this Authority from Central Government has reduced by 40%. The authority has endeavoured to continue with 'business as usual' wherever possible but inevitably cuts have had to be made.

Could you please let us know;

- How you feel about the current level of services provided by Mid Devon District Council:
- If you have noticed a reduction in the services provided in recent years; and if so, please provide details and the impact this has had. Please give an example:
- What services you consider to be poor;
- What services provided are good.

The survey flagged the following as areas of concern:

- Electronic Planning (paperless)
- Planning Enforcement
- Communication.

There was general praise for the waste and recycling service.

An email was sent to all parishes, thanking those that had responded to the survey and informing them that the results showed concerns in the above areas. Parishes were informed that the Working Group would be raising these concerns with the appropriate services.

5 Conclusion

As a result of these meetings and presentations from officers the recommendations on page 1 have been put forward.

The Working Group would like to thank the officers who helped with this for their time and 'open' comments.

APPENDIX 1

Cllr Binks made the following comments:

- When members of Community Well Being PDG voted recently for a 30% reduction in discount to Zest 60+ in 2016, were they aware this would mean an immediate increase from £200 -£240 pa to £302pa for Zest membership which offers access only between 9am-5pm?
- This 50% increase was made with little advance warning to users and without consulting the Lords Meadow Leisure Centre Users' Panel. Why?
- The increase in State pensions during this time has been £4 PW maximum and many users need to budget expenditure on a weekly basis and cannot afford to pay in advance.
- Most customers on MTB (Means Tested Benefits) use the Pay as you go (PAYG) charges for the gym and these prices have risen from £2.50 per session to £4.80 per session - nearly twice as much - resulting in some users having to cut back from two weekly visits to one single visit.
- The impact of this increased charge could have been softened by extending the time frame to 8am-6pm for use of the Centre.
- Are members aware that present membership charges include unwanted activities that many users do not use, such as dry side activities, court use and sauna, yet they do not have option to choose just gym and swimming or yoga and swimming?
- We need a simpler membership structure that does not include unwanted activities which are 'junked in' to boost its offering.
- The opportunity to renew at current prices was not offered to all existing Zest members, which is partial and unfair.
- Are members aware of the financial benefits to the Centre of annual payments made up front or by 12 monthly direct debit instalments, even though average annual usage is about eleven months? Do we have figures monitoring the actual attendance over 12 month period?
- Are members aware of the public health benefits of the Leisure Centre in helping an ageing population maintain fitness levels through active lives and social relationships? Many of them meet up socially in the coffee shop after class and spend money which keeps this facility going throughout the day for all users.
- Are they aware that between 9am - 4pm the centre is used mainly by less affluent groups such as parents with small children under 5, shift workers, unemployed, GP referrals and retirees of 60+ who keep it ticking over?
- Are members aware that no discount is given during the 2 week Christmas/New Year closure period and during the Easter break?
- Are members aware that all users of Monday classes are affected adversely because they are cancelled on 3 Bank Holiday Mondays pa without compensation to Zest 60+ users (early May, spring and summer)?
- Are members aware that inadequate staff cover for sickness and planned holidays or courses means that lessons are cancelled from time to time, without compensation being offered - often without enough notice to save a wasted journey? (Examples can be given.)

Recommendations

- Monitor Trends and usage by Groups: We need careful monitoring of trends in visits to gym, classes and pool by all age groups, including young people, so as to identify gaps to fill and target groups through regular emailing of special offers and events.
- Value for Money: We need to improve our service offering to give better value, if charges are to be increased.
- Simplify Structure: We need to simplify the structure of membership so people only pay for classes they want to use.
- User Panels: We need to respond to User Panels through regular meetings with their representatives.
- Better Collaboration: We need to increase our offering of flat rate and subsidised activities and classes by increased collaboration with groups like Active Devon, Drink Wisely, Age

Well et al, who are keen to support certain target groups like young parents, 60+ and health referrals.

- Public Health: We need to work with local GP practices and Health Centres to facilitate the use of 'on prescription' classes to Customers on MTB with health issues.
- Better Customer Experience: We need to offer better customer service through cleaner changing rooms, toilets and showers: answering telephone calls: responding to online enquiries: being able to cancel classes online as well as booking them: better information about special offers, events such as Active Devon support.
- Monitor use by Means Tested Benefits users: We need to re-examine the prices of PAYG activities to everyone on Means Tested Benefits. A price increase rise from £2.50 to £4.80 per gym session to customers on discretionary MTB rates is not fair and will discourage use and lead to lower fitness levels in this group.
- Auto Renewal: For everyone who can afford to pay up front or pay by direct debit, we need to eliminate income lost by 'void' months through agreed automatic renewal of membership. Failing that, to automatically generate reminders to customers to renew membership by email, letter or personal contact - even offering a free swim or gym pass for a friend as an incentive. I have never been contacted to renew my membership in the last 15 years and so I often leave it for a couple of months - as a result, the centre loses an income stream and a customer for a short while. It all adds up to a need for better customer care and customer engagement.

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