

Public Document Pack

Mid Devon District Council

Standards Committee

Wednesday, 20 July 2016 at 6.00 pm
Phoenix Chamber, Phoenix House

Those attending are advised that this meeting will be recorded

Membership

Cllr Mrs J B Binks
Cllr Mrs F J Colthorpe
Cllr N V Davey
Cllr Mrs S Griggs
Cllr F J Rosamond
Cllr C R Slade
Cllr Mrs M E Squires
Cllr L D Taylor
Cllr Mrs N Woollatt

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 CHAIRMAN**

To elect a Chairman for the municipal year 2016/17.

2 **ELECTION OF VICE CHAIRMAN**

To elect a Vice Chairman for the municipal year 2016/17.

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 **APOLOGIES AND SUBSTITUTE MEMBERS**

To receive any apologies for absence and notices of appointment of Substitute Members (if any).

5 **MINUTES** (Pages 5 - 8)

To approve as a correct record the minutes of the last meeting of this

Committee (attached).

6 **CHAIRMAN'S ANNOUNCEMENTS**

To receive any announcements the Chairman of the Committee may wish to make.

7 **GUIDANCE REGARDING WHAT IS A VEXATIOUS COMPLAINT**
(Pages 9 - 16)

To receive guidance from the Head of Communities and Governance regarding what constitutes a vexatious complaint.

8 **PLANNING PROCEDURES** (Pages 17 - 104)

To receive a report of the Head of Planning and Regeneration requesting Members approve Planning Committee Procedures in light of issues that have arisen and following visits to other Local Planning Authorities undertaken in 2012/13 (Appendix 6 contains recommendations from the Planning Committee and appendix 7 contains a further recommendation following a review of the procedures by the Scrutiny Committee).

9 **UPDATE FROM STANDARDS CONFERENCE 2016**

To receive a verbal from the Standards Conference 2016 from the Head of Communities and Governance.

10 **POLICY DEVELOPMENT GROUP TITLES** (Pages 105 - 106)

To receive a report from the Head of Communities and Governance providing Members with a recommendation regarding the naming of the Policy Development Groups.

11 **COMPLAINTS**

To receive an update from the Monitoring Officer with regard to any on-going complaints being dealt with. During the discussion it may be necessary to consider passing the following resolution to protect the Members of District, Town and Parish Council's being discussed.

During discussion of this item it may be necessary to pass the following resolution to exclude the press and public having reflected on Article 12 12.02(d) (a presumption in favour of openness) of the Constitution. This decision may be required because consideration of this matter in public may disclose information falling within one of the descriptions of exempt information in Schedule 12A to the Local Government Act 1972. The Committee will need to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption, outweighs the public interest in disclosing the information.

ACCESS TO INFORMATION ACT – EXCLUSION OF THE PRESS AND PUBLIC

RECOMMENDED that under section 100A(4) of the Local Government Act 1972 the public be excluded from the next item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Act, namely information relating to an individual

12 **START TIME OF MEETINGS**

To agree the start time for meetings.

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

Stephen Walford
Chief Executive
Tuesday, 12 July 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 **STANDARDS COMMITTEE** held on 13 April 2016 at 6.00 pm

Present

Councillors

Mrs S Griggs (Chairman)
Mrs J Roach, F J Rosamond, C R Slade,
Mrs F J Colthorpe, L D Taylor, N V Davey,
C J Eginton and Miss C E L Slade

Apologies

Councillor(s)

R J Chesterton and Mrs M E Squires

Also Present

Councillor(s)

R Evans

Also Present

Officer(s):

Julia Stuckey (Member Services Officer) and Amy Tregellas (Head of Communities and Governance and Monitoring Officer)

17 **PUBLIC QUESTION TIME**

There were no members of the public in attendance.

18 **APOLOGIES AND SUBSTITUTE MEMBERS**

Apologies were received from Cllr R J Chesterton who was substituted by Cllr C J Eginton and from Cllr Mrs M E Squires who was replaced by Cllr C E L Slade for this meeting.

19 **MINUTES**

The minutes of the last meeting were approved as a true record and signed by the Chairman.

20 **CHAIRMAN'S ANNOUNCEMENTS**

The Chairman had no announcements to make.

21 **REVIEW OF THE POLICY DEVELOPMENT GROUPS**

The Head of Communities and Governance reminded the Committee that she had been asked, at the previous meeting, to undertake some research and benchmarking regarding other local authorities and their committee structures. The Committee had before it a report* in which the officer presented the information she had compiled, outlining potential changes that could be made to the current structure.

The officer outlined the contents of the report, informing the Committee that this authority was one of very few that had specific Policy Development Groups (PDG's)

as well as a Scrutiny Committee. However, many of the Councils had task and finish groups that worked on specific areas and reported back to Scrutiny.

Discussion took place regarding:

- The need for the area of economy to have a Policy Development Group to report to;
- The need for the PDG's to be in line with the Corporate Plan;
- The financial implications of adding a fourth PDG which included a Special Responsibility Allowance to the Chairman of £3484 but potential savings with expenses by reducing the numbers on Planning and Licensing;
- The difficulty of having a small pool of substitutes for Planning and having to use a substitute from the same political group;
- Private Sector Housing to be moved from Community to Housing;
- The Economy PDG would free up the other PDG's to concentrate on their own work.

It was **RECOMMENDED** to Council that:

1. A fourth Policy Development Group (PDG) be created so that the PDGs matched the priorities set out in the new Corporate Plan – i.e. Economy, Homes, Community and Environment
2. The number of Members on the Planning Committee be reduced from 15 to 11 and that the number of substitutes be increased from 5 to 7
3. The number of Members on the Licensing and Licensing Regulatory Committees be reduced from 15 to 12
4. The changes to come into effect from the start of the new municipal year

(Proposed by Cllr F J Rosamond and seconded by Cllr C J Eginton)

And **RESOLVED** that the political balance of the Planning Committee be discussed with Group Leaders prior to the annual meeting with an aim to seeking a resolution at the Annual Meeting.

(Proposed by Cllr Mrs J Roach and seconded by Cllr C R Slade)

Note: i) * Report previously circulated and attached to the Minutes.

ii) Cllr Mrs J Roach requested that her vote against recommendation 1 be recorded.

22 TRAINING/ASSISTANCE FOR PARISH COUNCILS (0.30.11)

The Head of Communities and Governance had been asked, at the previous meeting of the Committee, to provide information regarding training for town and parish councils. The Committee had before it and **NOTED** information regarding a training session * that had been delivered to town and parishes after the election last year.

The training covered the code of conduct, register of interests and general areas that it was necessary for them to know. The officer explained that a log of queries that had been raised throughout the year had been used to target training. Many of these queries included dealing with resignations, declarations of interests, co-option, procedural aspects and standing orders. There had also been inquiries regarding the new transparency codes for town and parish councils, which were dependent on financial turnover. Areas also covered included staffing matters, vexatious complainants, data protection and recording of meetings. The Officer explained that they had tried to go above and beyond the normal training provided and give guidance in these areas. She had also raised confidentially and the role of being a councillor.

The Head of Communities and Governance informed the Committee that the Learning and Development team were currently looking into whether it was possible to offer training and development to town and parish councils, in areas such as appraisals.

The Head of Planning and Regeneration provided an annual training session regarding planning.

Discussion took place regarding:

- The need for training in the use of social media;
- A protocol for the use of social media which was currently being written and would be distributed when prepared;
- The need to coordinate training with the Devon Association for Local Councils (DALC);
- Those that required the training the most were often the ones that didn't attend;
- Training for clerks to be held in June;
- Register of Interest forms that were still outstanding;
- The possibility of providing a certificate to show that clerks had attended training;
- The need for District Councillors to be aware of procedures for the town and parish councils that they attended;
- Parish Matters and the liaison that took place with parishes.

Note: * Information previously circulated and attached to Minutes.

23 **REVIEW OF THE MICROPHONES AND STANDING AT COUNCIL (0.52.39)**

At the last meeting of the Committee concerns had been raised regarding Members standing at Council. The new microphone system was designed to be used seated but Members preferred to stand when addressing the Chairman. It has agreed that Members would stand at the February meeting and this would be reviewed.

The Head of Communities and Governance informed the Committee that she had listened to the recording of the February meeting and that the quality of the recording was clear. She considered that it would be satisfactory for Members to stand if they so wished.

Discussion took place regarding the recording of meetings and it was **AGREED** that a boundary microphone was required in order that the entire meeting be recorded. Currently recording only took place when a microphone was turned on, which left areas of silence on the recording, and also that an advisory note be placed on the website to explain this.

It was **RESOLVED** that Members continue stand to speak at Council, subject to individual needs.

(Proposed by Cllr Mrs J Roach and seconded by Cllr C R Slade)

24 **COMPLAINTS (1.01.19)**

The Head of Communities and Governance and Monitoring Officer informed the Committee that she was currently looking into one complaint from a parish council and one regarding a District Councillor.

The officer informed the Committee that she had received reports of confidential information being passed to town and parish councils by District Councillors and that she would be issuing a reminder to all Councillors that information given in confidence must not be shared, even with parish councils.

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

Guidance for Councillors regarding what was a vexatious complaint
Update regarding potential changes to legislation for disqualification and sanctions for Councillors

(The meeting ended at 7.15 pm)

CHAIRMAN

**STANDARDS COMMITTEE
20TH JULY 2016:**

AGENDA ITEM:

GUIDANCE FOR COUNCILLORS REGARDING WHAT IS A VEXATIOUS COMPLAINT

Responsible Officer Head of Communities & Governance (Monitoring Officer)

Reason for Report: To provide Members with guidance as to what constitutes a vexatious complaint

RECOMMENDATION: That the Standards Committee notes the report

Financial Implications: None identified

Legal Implications: None

Risk Assessment: None.

1.0 Introduction

- 1.1 At the Standards Committee meeting on 13th April 2016 the Committee asked the Monitoring Officer to provide them with guidance regarding what is a vexatious complaint.
- 1.2 The Councils complaints policy contains sections on unreasonable, unreasonably persistent and vexatious complaints and action to be taken on unreasonable, unreasonably persistent or vexatious complaints. The relevant sections of the Policy are attached as Appendix A.
- 1.3 If Members find that they are subject to unreasonable, unreasonably persistent or vexatious complaints they are advised to speak to the Monitoring Officer and/or the Legal Services Manager for further advice.

Contact for more Information: Amy Tregellas, Head of Communities & Governance (Monitoring Officer) ext 4246

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Unreasonable, unreasonably persistent and vexatious complaints

We recognise that the Council may receive complaints from persons with widely varying ways of expressing themselves and who may possibly feel angry, impatient, frustrated or extremely worried, depending on their circumstances. We will therefore only very exceptionally wish to categorise a complaint as unreasonable, unreasonably persistent or vexatious.

This policy identifies situations and ways of responding, where a complainant, either individually or as part of a group, might be considered to be making complaints that are unreasonable, persistent or vexatious. In this policy the terms mean:

- unreasonable - exceeding the bounds of reason, not listening to reason
- persistent - to continue, firmly or obstinately
- vexatious - not having sufficient grounds for action and/or seeking to annoy.

The policy is intended to assist in managing people by categorising them within these terms and agreeing the actions to be taken.

The term complaint in this guidance also covers requests made under the Freedom of Information Act 2000 and the Data Protection Act 1998 and reference to our complaints policy or procedures includes requests made under these Acts. Unreasonable, persistent and vexatious complaints can be a problem for staff and Members. The difficulty in handling such complaints is that they are time consuming and repetitive and can take up excessive officer and Member time that could be used on other Council priorities.

Officers and Members will endeavour to respond appropriately according to the individual complainant's needs, and in compliance with our complaints policy, but this guidance is to cover occasions where nothing further can be reasonably done to assist or rectify a real or perceived problem.

Complaints received about District, Town or Parish Councillors should be referred to the Monitoring Officer.

Action to be taken on unreasonable, unreasonably persistent or vexatious complaints

An individual assessment will need to be made in each case to determine if the complaint is to be categorised as unreasonable, persistent or vexatious. To assist with this you need to consider if there has been repeated and/or obsessive pursuit of:

- Unreasonable complaints
- Complaints where there is an expectation of unrealistic outcomes
- Reasonable complaints made in an unreasonable manner
- Repeated complaints that have already been responded to in full

Where a complaint continues and officers have identified the complaint as unreasonable, persistent or vexatious, as set out in Appendix 3, they should refer the case to the Council's Legal Services Manager, using the template at appendix 4. The Legal Services Manager will investigate the issues and provide a response within 10 working days, whenever possible. In complex cases this time may be extended to maximum of 12 weeks. The complainant should be notified that the complaint is being investigated to determine if it is unreasonable, persistent or vexatious.

It is essential that any new contacts are checked and only sent to the Legal Services Manager if they relate to the current complaint under investigation. Any new service requests or complaints should be logged separately and dealt with by the service area.

The Council's Legal Services Manager, following discussions with the relevant service officer, will determine if the complaint should be classified in this way and will inform Management Team of the decision. Appendix 5 lists the options available. By taking the decision to Management Team all services can be made aware of the decision and what actions are to be taken. Any appeal against the decision will be determined by the Chief Executive.

It is important that all staff and especially front line staff are aware of any restrictions to access to our services or officers that are placed on service users/members of the public.

The Council's Legal Services Manager will notify the complainant in writing of the reason why the complaint has been classed as unreasonable, persistent or vexatious and of the actions to be taken. The Legal Services Manager will also inform the ward member.

Once a complaint has been determined as unreasonable, persistent or vexatious, its status will be kept under review and if the complainant demonstrates a more reasonable approach, their status or any restrictions applied to access to our officers will be reviewed.

Appendix 3

Criteria for determining unreasonable, persistent or vexatious complaints

A complaint may be classed as unreasonable, persistent or vexatious if the complainant meets one or more of the following criteria:-

1. Persists in pursuing a complaint where the Council's complaint process has been fully and properly implemented and exhausted and where the complainant has failed to escalate the complaint to the appropriate Ombudsman.
2. Persistently changes the substance of a complaint or continually raises new issues that prolong the contact and make it more difficult to respond effectively. It is important that any completely new issue is raised as a new complaint if appropriate.
3. Is repeatedly unwilling to accept documented evidence or deny receipt of an adequate response in spite of correspondence specifically answering their questions or do not accept that facts can sometimes be difficult to verify when a long period of time has elapsed.
4. Repeatedly make complaints but does not identify the precise issues which they wish investigated.
5. Regularly focuses on trivial matters to an extent which is out of proportion to its significance and continues to focus on this point. It is important to recognise that determining what is trivial can be subjective.
6. Have threatened or used physical violence towards employees at any time, this will mean that the complainant can only contact us in writing and staff will be informed what access to staff and buildings they are permitted to.
7. Have in the course of dealing with their complaint made an excessive number of contacts with the Council, placing unreasonable demands on employees. Contacts can be in person, phone, email, fax, letter or web-form. Judgement will be used to determine excessive contact, taking into account the specific circumstances of each individual case.
8. Have harassed or been verbally abusive on more than one occasion towards employees dealing with the complaint. Employees recognise that complainants may sometimes act out of character in times of stress, anxiety or distress and will make reasonable allowances for this. The individual circumstances of each person need to be considered and treated sensitively.
9. Makes unreasonable demands on the Council and its employees and fail to accept that these may be unreasonable, for example, insist on responses to complaints or enquiries being provided more urgently than is reasonable or within the Council's complaints procedure or normal recognised practise.
10. Makes unreasonable complaints which impose a significant burden on the human resources of the Council and where the complaint:

- a. does not have any serious purpose or value
- b. is designed to cause disruption or annoyance
- c. has effect of harassing the public authority
- d. can otherwise fairly be characterised as obsessive or manifestly unreasonable
- e. is using the Council as a means of causing harassment to another member of the public.

11. Makes repetitive complaints and allegations which ignore the replies which Council officers have supplied in previous correspondence.

Appendix 4

Suggested draft letter to complainant when papers are being referred to the Legal Services Manager.

Dear Mr/Mrs.....

Following the responses to your complaints as listed below, I am referring your complaints to the Council’s Legal Services Manager to investigate if these fall into the category of unreasonable, persistent or vexatious as detailed in the Council’s complaints policy.

You will be notified of the outcome of the investigation within 10 working days of the date of this letter. If this is not possible you will be advised of the time needed to conclude the investigation up to a maximum of 12 weeks.

Full details of our complaints policy can be found on our website www.middevon.gov.uk.

Yours sincerely
Service Manager’s name
Summary of complaints received from _____

Date received	Complaint – brief details	Response – brief details

Reason referred to Legal Service Manager as detailed in the complaints policy:

Signature of MDDC officer:

Date:

Appendix 5

Options for dealing with unreasonable, persistent and vexatious complainants

The options below can be used singularly or in combination depending on the circumstances of the case.

1. Send a letter to the complainant setting out responsibilities for the parties involved if the Council is to continue processing the complaint. If terms are contravened, consideration will then be given to implementing other action as indicated below.
2. Decline contact with the complainant, either in person, by telephone, by fax, by letter, by e-mail or any combination of these, provided that one form of contact is maintained. This may also mean that only one named officer will be nominated to maintain contact (and a named deputy in their absence). The complainant will be notified of this person.
3. Notify the complainant, in writing, that the Council has responded fully to the points raised and has tried to resolve the complaint and there is nothing more to add and continuing contact on the matter will serve no useful purpose. The complainant will also be notified that the correspondence is at an end, because they have been classed as an unreasonable, persistent or vexatious and the Council does not intend to engage in further correspondence relating to the complaint.
4. Inform the complainant that in extreme circumstances the Council will seek legal advice and if appropriate commence court proceeding for an injunction.
5. Temporarily suspend all contact with the complainant, in connection with the issues relating to the complaint being considered as unreasonable, persistent or vexatious, while seeking advice or guidance from its solicitor or other relevant agency, such as the Local Government Ombudsman.

If any of the above actions are taken, the Council's Legal Services Manager will ensure that all services are advised of the actions to avoid any repetition across services and to ensure the complainant is treated in the same way regardless of how he/she contacts the Council.

PLANNING COMMITTEE

DATE: 20 APRIL 2016

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

	<p>Consultation responses Probity in Planning for councillors and officers – Local Government Association and the Planning Advisory Service November 2013 Mid Devon District Council Constitution</p>
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 47

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 so 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

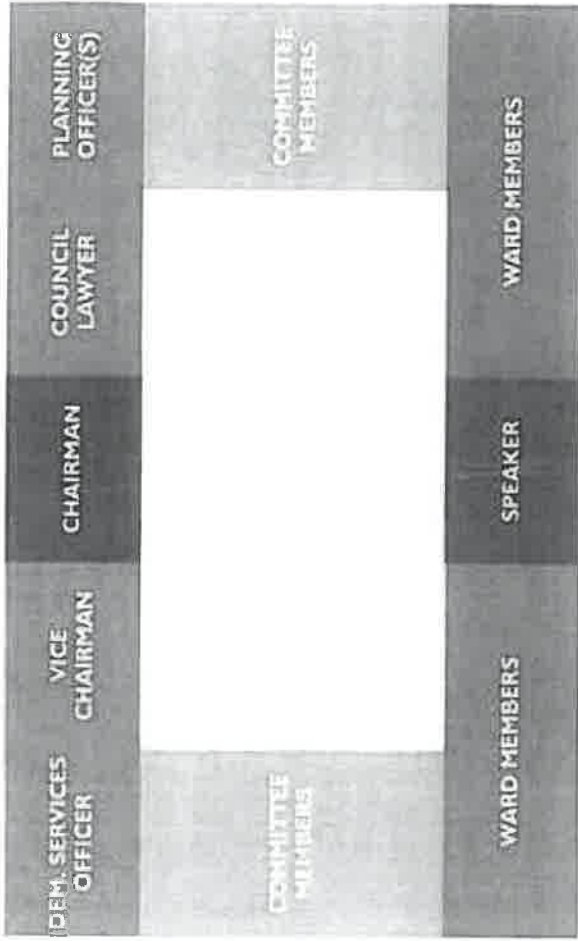
If you wish to speak:

- 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



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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.

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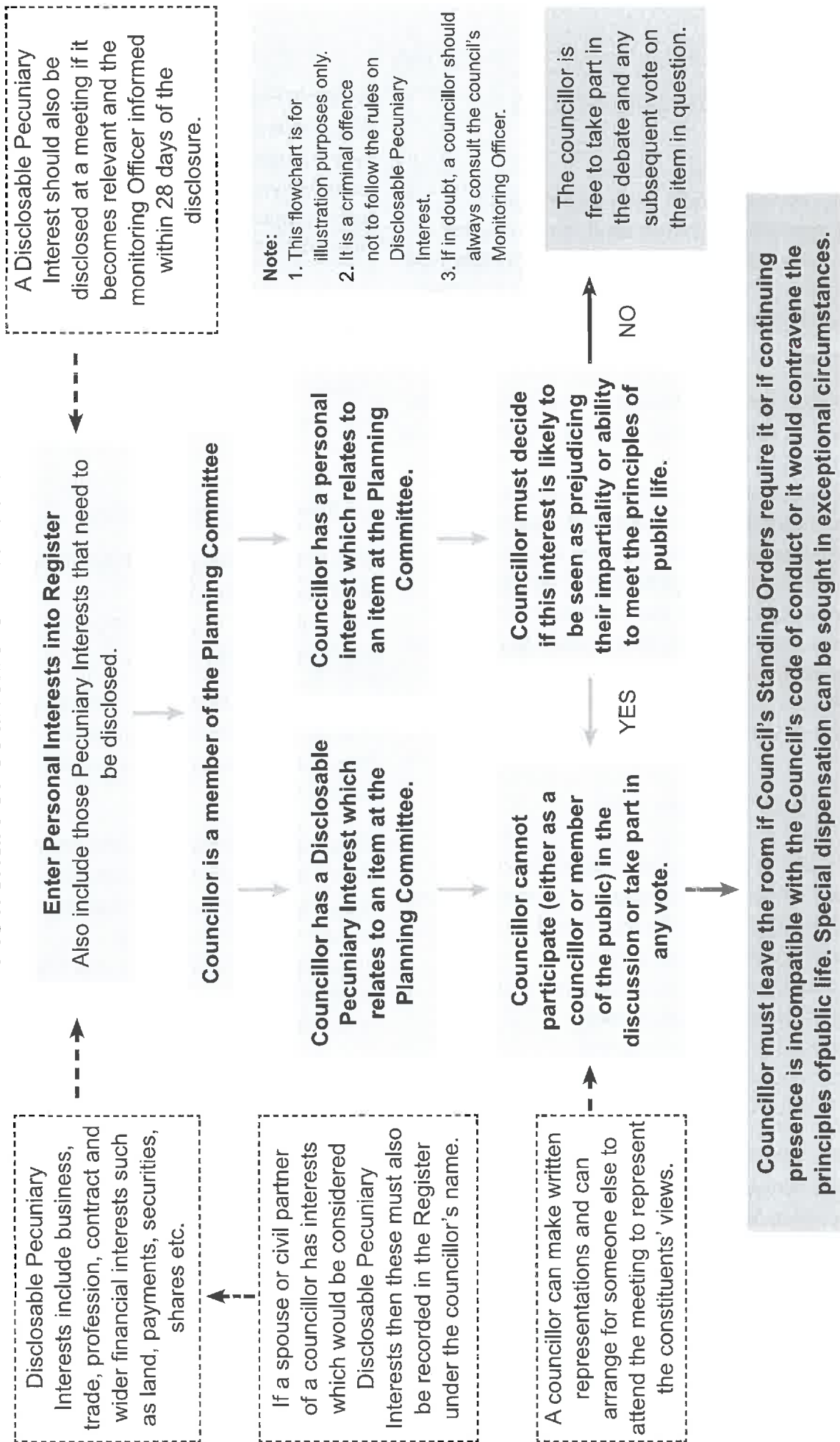
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Flowchart of councillors' interests





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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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Appendix 6

Minute 153

Planning Committee 20 April 2016

The Committee had before it a report of the Head of Planning and Regeneration requesting that Members review Planning Committee Procedures in light of issues that have arisen and following visits to other Local Planning Authorities undertaken in 2012/13.

The Chairman introduced the report, reminding Members that it has been instigated at the request of Members of the Planning Committee in 2013.

Cllr Mrs J Roach raised some matters that had come to her attention when she was Chair of the Scrutiny Committee. She informed the Committee that issues regarding planning and enforcement had been raised at Scrutiny over a period of time but had not been looked at individually as the Committee had been informed that the review being undertaken would encompass these areas. The report subsequently took a long time and would now appear to have addressed most issues that were reported. However following consultation, which involved town and parish councils, other issues were raised that had not been addressed. She also considered that Ward Members on Planning Committee had an advantage in being able to vote on applications in their ward. Single Member wards were disadvantaged when extra meetings were called as they could not always be available to attend. Councillor Roach suggested that Special Meetings were held on the morning of a scheduled meeting to avoid this problem. She also raised the matter of the lack of dimensions on plans, stating that it was not easy to see from plans the dimensions of what was being put forward. She raised the matter of validity of information given to support business plans, referring to a previous application where she had not believed the business plan to be accurate. At committee, photographs were used to support applications which were not available on line and therefore the public did not get to see them.

The Head of Planning and Regeneration responded that there had been a wide range of issues raised but the scope of the report was set by the Planning Committee. She said that pertinent issues had been raised by Cllr Roach but that those concerns fell outside of the remit of this report.

The Chairman thanked Cllr Mrs Roach for her comments.

The Head of Planning and Regeneration outlined the contents of the report, reminding Members that the review of the operational procedures in connection with Planning Committee was requested by Members of that Committee. Members of Committee had defined the scope of that review. A report was considered at the meeting of 19th June 2013. 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 indicated that they are minded to determine an application differently from the officer recommendation were also included in the scope of this report on procedures.

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.

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

There were few responses from agents or the public.

The Officer added that with regard to recommendation 4 the Planning Advisory Service previously had offered a Peer Review service, but a check would be needed to see if this was still available if Members wished to go ahead with this. She further explained that the ordering of list items on the agenda was determined by the computer system that added items in application number order. She acknowledged that agendas were often long and that additional meetings could be added to deal with this but that a balance was required. She explained that targets were in place which meant items needed to go on agendas to meet specified time scales. Options to reduce the length of meetings could include reviewing the length of officer presentations and the length of speaking allowed. She also outlined the challenges faced by officers when putting together implications reports, in that officers had a duty to give professional advice as to whether the reasons for refusal could be upheld at appeal but did not wish to undermine the Committee or the case at appeal.

Discussion took place regarding:

There was no opportunity at Planning Committee to raise any other business;

The need to produce a clear guide to planning system in order that the public could be made aware of procedures and areas that were not material planning considerations

The ordering of speakers and whether or not Members should be able to question supporters and objectors;

It was **AGREED** that the applicant should speak after the objector in order that they could correct any information given.

It was **AGREED** that Ward Members be limited to 5 minutes each.

It was **AGREED** that the Committee could ask questions of the applicant and objectors through the Chair, following their 3 minutes;

The Head of Communities and Governance informed the Committee that an additional Solicitor was being appointed and would be available to attend meetings should the need arise;

Speaking to implications reports and the fact that objectors and supporters had already had opportunity to speak at previous meetings;

It was **AGREED** to maintain the current procedure that public speaking not take place with regard to implication reports;

Site visits and the difficulties in maintaining procedures;

It was **AGREED** that clear written procedures should be in place for site visits;

It was **AGREED** that implication reports were required when Members had gone against officer recommendation for approval but were not necessary when Members had gone against officer recommendation for refusal as conditions were normally delegated to the Head of Planning and Regeneration;

Annual Review of Decisions – The Constitution stated that Members should take part in an annual review of decisions when they would be taken around the district to review application decision making, in order to review the quality of planning in the District. However few Members had been available to attend two years ago and last year there had been no review. Cllr D J Knowles suggested that he could visit sites and video record the development for the Committee to review. It was **AGREED** that a trial be undertaken;

It was **RESOLVED** that Members **NOTE** the consultation responses and recommendations of the Working Group.

(Proposed by the Chairman)

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.

(Proposed by the Chairman)

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.

(Proposed by the Chairman)

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.

(Proposed by the Chairman)

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.

(Proposed By Cllr R L Stanley and seconded by Cllr Mrs H Bainbridge)

Note: - * Report previously circulated and attached to Minutes.

Appendix 7

Minute 34

Planning Committee 8 June 2016

Arising from a report of the Head of Planning and Regeneration (previously considered by the Planning Committee on 20 April 2016), the Scrutiny Committee at its meeting on 23 May 2016 had requested that further consideration be given to:

- a) The length of time that a Ward Member is allowed to speak to an application;
- b) That photographs be posted on the website, (Public Access), in advance of the meeting; and
- c) The process for examining business cases for applications be reviewed to give reassurance of the validity of the information with the possibility of sending for external examination.

The Head of Planning and Regeneration explained the background behind the recommendations of the Scrutiny Committee. Consideration was given to:

- Whether unlimited time for Ward Members to speak was beneficial
- If the powerpoint presentation was available on the website there could be data protection issues with regard to publishing pictures of the internal layout of local residences and possible technical issues with regard to uploading such a presentation in the appropriate place on the website and that the majority of the information was already available in Public Access.
- The possibility of producing guidance and a possible proforma to help validate information with regard to business cases.

It was therefore:

RESOLVED that:

- a) Ward Members be given 5 minutes to speak on issues within their Ward.
- b) Photographs and the powerpoint presentation NOT be made available on the website but continue to be made available at Planning Committee meetings.
- c) The possibility of producing clear guidance and a possible proforma to aid the validation of business cases be investigated.

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STANDARDS COMMITTEE
20TH JULY 2016:

AGENDA ITEM:

NAMING OF THE POLICY DEVELOPMENT GROUPS

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

Reason for Report: To provide members with a recommendation regarding the naming of the Policy Development Groups

RECOMMENDATION: That the Standards Committee recommends to Council that the Policy Development Groups are renamed Economy, Homes, Community and Environment as per the corporate priorities in the Corporate Plan

Financial Implications: None identified

Legal Implications: None

Risk Assessment: None.

1.0 Introduction

- 1.1 At the Full Council meeting on 27th April 2016, it was agreed that a fourth Policy Development Group (PDG) be introduced for the Economy. This PDG is simply called Economy PDG as the priority within the Corporate Plan is called Economy.
- 1.2 Currently the other PDGs are called what they were prior to the fourth PDG being introduced i.e. Managing the Environment PDG, Decent and Affordable Homes PDG and Community Well Being PDG.
- 1.3 The purpose of this report is to recommend that the names of the PDGs in 1.2 are changed to Environment, Homes and Community so that they are in keeping with the Corporate Plan and the new Economy PDG.

Contact for more Information: Amy Tregellas, Head of Communities & Governance (Monitoring Officer) ext 4246

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