



# Planning Code of Good Practice

Local Code of Good Practice  
for Councillors and Officers  
dealing with planning matters

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## **1 Introduction**

- 1.1 The conduct of both Officers and Members in Local Government needs to be of the highest standing: on this depends the bond of trust between Councils and their local people, which is essential if Councils are to play their part in leading communities and improving people's quality of life. The local administration of the planning system has come under close scrutiny. The Nolan committee's Third Report investigated standards in public life, and was followed by the Local Government Act 2000 which introduced a structure by which local authorities were to promote high standards of conduct, through a National Code of Conduct for Members. In 2013 the Local Government Association provided updated guidance on 'Probity in Planning' and the Localism Act 2011 created a new Standards regime with a more local focus.
- 1.2 This Code offers clear guidance and advice as to procedures and practices to elected Members, Officers and members of the public in connection with the determination of planning applications and other applications. This Code will ensure that not only are the applications determined in a fair and impartial way, but also in a way which is seen to be fair and impartial. The introduction of the Local Government Act 2000 and associated legislation provides the necessary statutory framework by which these standards may be achieved, maintained and regulated by each local authority.
- 1.3 The key purpose of the planning system is to contribute to the achievement of sustainable development and the approach to decision taking should be in a positive way. When performing this role the Local Planning Authority and elected members are making decisions that necessarily affect land and property interests, as well as the financial value and settings of land holdings. As such, there is a need to make decisions that are open, impartial and based on sound judgment and reason. The process of determining applications should leave no grounds for a suggestion that a decision has been biased or ill founded in any way. Decisions must always be made on planning grounds and planning grounds alone.
- 1.4 This Code of Good Practice has been adapted from national guidelines on probity to take account of the local situation. Two particular areas of the Localism Act are relevant to this code. Firstly, with regard to pre-determination the Act makes it clear that it is proper for councillors to play an active part in local discussions and that they should not be liable to legal challenge as a result, provided they maintain an open mind. Secondly, and related to pre-determination, the Act introduces a new requirement for developers to consult local communities before submitting planning applications for certain developments. This gives Members and local residents a chance to comment when there is still genuine scope to make changes to proposals at both pre-application and post submission stage.
- 1.5 The terms of Reference for the Planning Committee are set out in the Council's Constitution ([www.boston.gov.uk](http://www.boston.gov.uk)) which specifies the matters that are delegated to be considered by the Planning Committee.

## **2. Status of the Code**

- 2.1 This Code sets out the basis as to how Officers and Members should determine planning and other relevant applications submitted to the Council and ensures that conduct accords with the Council's Codes of Conduct for Members and Officers which are contained within the Council's Constitution.
- 2.2 This Code is contained in the Council's Constitution. A breach of this Code, depending on the circumstances, does not usually amount to a breach of criminal law, but may adversely affect the standing of the Council. It could result in a decision being judicially reviewed or allegation of a breach of the Code of Conduct or a complaint of maladministration made to the Local Government Ombudsman.
- 2.3 Participation in consideration of a planning application where a Member has a Disclosable Pecuniary Interest would be a criminal offence under the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

## **3. The General Role and Conduct of Councillors and Officers**

- 3.1 Elected Members are guided by the Council's Code of Conduct, the seven principles of public life and the Localism Act 2012. This Code is further amplified by reference to the Council's Constitution in respect of general Council procedures as well as further explanation in specific Codes of Conduct, such as the advice contained in this Code.
- 3.2 Councillors and officers have different but complementary roles with the determination of planning applications and it is important that an open, respectful and transparent relationship is developed based upon mutual trust and understanding of each other's positions. It is important for the overall standing of the Council and the achievement of local performance targets that they work together as an effective team. The role of a Councillor when determining a planning application is to have an overriding duty to the whole community and, accordingly, in deciding the outcome of an application to make a reasoned decision taking into account the provisions of the Development Plan and all relevant material considerations.
- 3.3 The basis of the planning system is that consideration is given to all development proposals in an open and transparent way against policy. Much is often at stake in such decisions and in the process for local people and development interests, as well as for the Borough of Boston itself. Given the nature of these decisions opposing views are often held by those involved. Whilst these views must be taken into account in the determination of planning applications, as stated above, the Planning Committee must not favour any person, group or locality. Members must therefore take steps to ensure that in the discharge of their Planning Committee duties the distinction between this role and their role as an individual ward councillor is constantly made clear. If Members wish to act in the latter capacity they must make that clear at the outset. Members who do not feel that they can act in this way should consider whether they are best suited to serve on the Planning Committee, especially if they feel they will often be placed in the position of wishing to represent constituents and to speak as a Ward Member rather than a member of the Planning Committee.

- 3.4 In reaching a decision Members should ensure they read, consider and take account of the relevant material considerations connected with the application and should not favour any person, group or locality or put themselves in a position where they may appear to do so.
- 3.5 All decisions should be made in an open and transparent manner by the Members of the Planning Committee and this should not at any time be compromised in any way. Therefore, such actions as messages being passed to Members of the Planning Committee during a debate should be avoided as this could give an impression of undue influence from a third party. In the first instance in an emergency any notes should be passed to the Democratic Services Officer.
- 3.6 Members should always address the Planning Committee through the Chairman and avoid speaking directly to one another. It is important that all matters being discussed are clearly heard and acknowledged by everyone at the meeting.
- 3.7 In order to ensure that decisions are taken on planning grounds and are sound, it is incumbent on all Planning Committee Members to give full consideration to reports prepared by Officers and familiarise themselves with all relevant national planning guidance (including the National Planning Policy Framework), Development Plan policies and other material considerations well in advance of a development proposal at the Planning Committee itself. It is important also that Members are seen to be meeting this provision of the code.
- 3.8 The role of Officers is to advise Councillors and the Council as a whole (through the Cabinet and relevant Portfolio Holders) and to carry out work as set out in the Corporate Plan and agreed business plans. Officers are employed by the Council, not by individual councillors, and it follows that instructions to them may only be given through a decision of the Council, the Cabinet, the relevant Portfolio Holders, or the Planning Committee.
- 3.9 The conduct of Officers who advise on the determination of planning applications is contained generally in the Council's protocol for Member/Officer relations and is supplemented by guidance from their professional bodies, such as The Royal Town Planning Institute, the Law Society etc. Officers may not be instructed by any Member to conduct themselves in a manner which would place them in conflict with their professional codes of conduct.
- 3.10 Members should abide by the following advice:-
- Members should always pass a copy of any lobbying correspondence to the Development Control Manager/Democratic Services Officer at the earliest opportunity;
  - Members should never pressurise or lobby Officers for a particular recommendation;
  - Members should promptly refer to the Head of Built Environment and Development any offers made to them for benefits which are or are not related to the application;

- Members should inform the Monitoring Officer where they feel that they have been exposed to undue or excessive lobbying, approaches including inappropriate offers of gifts or hospitality (see also paragraph 3.12)
- Members should never use political group meetings to dictate how they should vote on a planning issue and should not lobby fellow Members regarding concerns or views, nor attempt to persuade other Members to vote in a particular way.

- 3.11 Officers are required to act impartially at all times in determining applications and providing advice at the Planning Committee. Officers will be expected to conduct themselves in all they say and do in a manner which totally preserves the position of impartiality.
- 3.12 During the determination of an application, it is possible that Officers and Members may be offered hospitality by an interested party. Even though this rarely occurs, it is important to recognise that these offers should be politely declined.
- 3.13 Under the Member's Code of Conduct there is a requirement for any offers of gift or hospitality received over the value of £50, to be notified to the Monitoring Officer within 28 days of the offer being received. Any offers will be entered into the register of gifts and hospitality which is open to public inspection. **It is particularly important for Planning Committee Members to decline any offers of gifts or hospitality.**
- 3.14 Similarly, for Officers, in the event of any offers of gifts or hospitality being received over the value of £25 these should be declined and reported to the Monitoring Officer as soon as possible after receipt. This is a requirement of the Employee Code of Conduct.

#### **4. Declaration and Registration of Interests**

- 4.1 Upon being elected Members are required to complete a form to register their disclosable pecuniary interests and local choice interests and are under a duty to maintain that declaration and amend, as necessary, within 28 days of becoming aware of any such changes, throughout their term of office.
- 4.2 A register of Members' interests will be maintained by the Council's Monitoring Officer and is available for public inspection.
- 4.3 Furthermore, Members are under a duty to declare interests as and when matters arise at the Planning Committee. Guidance on these issues may be sought from the Council's Monitoring Officer. The decision as to whether an interest ought to be declared rests with the individual Councillor involved.
- 4.4 Under the Member Code of Conduct, a member will have a conflict of interest in a Planning Committee decision if:
- The matter relates to an interest in respect of which the Member has given notice in the Register of Members' Interests; or

- The decision might reasonably be regarded as affecting their well being or financial position or that of a relative or friend or employer to a greater extent than other council taxpayers, ratepayers or inhabitants of the authority's area.

4.5 Where a Member considers they have such a conflict of interest in a matter, they must always declare it.

4.6 Where a conflict of interest is such that if a member of the public with knowledge of the relevant facts would reasonably regard that interest as so significant that it is likely to prejudice the Member's judgement of the public interest, they should declare that interest and take no part in the debate or vote on the item under discussion. There are exceptions to this, however, and full details are given in the Council's Constitution.

4.7 Where any Member of the Council considers that they have a significant conflict of interest as described in 4.6 they should:-

- Ensure they do not participate at any stage in the consideration of the planning application if, following advice from the Monitoring Officer, they consider that any decision they take could be challenged on the grounds of bias;
- Ensure they do not seek or accept any preferential treatment, or place themselves in a position that could lead to the public to think they are receiving preferential treatment because of their position as a councillor.

4.8 Pecuniary Interests are defined in regulations. The regulations in general will mean that a member will have to register any interest they or their husband or wife or civil partner, or someone with whom they live as husband or wife or civil partner in:

- Any employment, office, trade, profession or vocation that they carry on for profit or gain;
- Any sponsorship that the councillor receives including contributions to the councillor's expenses as a councillor, or the councillor's election expenses;
- Any land licence or tenancy they have in the Borough
- Any current contracts, leases or tenancies between the Council and them
- Any current contracts, leases or tenancies between the council and any organisation with land in the Borough area in which they are a partner, paid director, or have a relevant interest in its shares and securities;
- Any organisation which has land or a place of business in the Borough area and in which they have a relevant interest in its shares or its securities.

4.9 If a Councillor has a disclosable pecuniary interest they must leave the meeting immediately and cannot participate, or participate further, in any discussion of the matter at the meeting, or participate in any vote, or further vote, taken on that matter at the meeting. However, the Member can address the Committee as part of the public speaking scheme, but must leave the meeting immediately after taking part.

4.10 When an application is to be determined there is an expectation that it will be dealt with transparently, openly and in a fair way. Members will be expected to take account of all relevant evidence and give it appropriate weight in the decision making process and arrive at a reasoned sound decision.

## **5. Predetermination and Bias**

- 5.1 Members of the Planning Committee need to ensure that they do not fetter their ability to participate in the decision making process on an application by making up their mind or clearly indicating that they have made up their mind on how they will vote prior to the consideration of the application by the Committee.
- 5.2 The Planning Committee should, when considering an application, take into account all views that are expressed in such a way that they are openly heard and fairly considered in a balanced way before the Committee reaches a decision.
- 5.3 Members of the Planning Committee can have a predisposition to an initial view, where the Member is clear they are still willing to listen to all material considerations presented at the Planning Committee before deciding on how to exercise their vote on behalf of the community.
- 5.4 The fettering of a members discretion as set out in 5.1 and then taking part in the decision making process will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a risk of bias or predetermination or a failure to not take into account all of the factors enabling the application to be considered on its merits.
- 5.5 The Localism Act 2011 now sets out that a Member who has expressed a preference for a particular outcome of an application as it proceeds to determination, will **not** be taken to have had a closed mind when making the decision just because they have previously done or said anything to indicate their view in respect of the matter. However, it is important that a fair minded observer would think that the Member was open to changing their mind in the light of different or additional information, advice or evidence presented.
- 5.6 Planning Committee Members need to avoid bias and predetermination and take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in an open and fair manner. To do this, Members taking the decision on an application must take account of all the evidence presented before arriving at a decision, and should avoid committing themselves one way or another, or making extreme statements either in favour or against applications, before hearing all the arguments.
- 5.7 A situation can arise when a Member of the Planning Committee represents a Ward within which a contentious application is lodged. If, prior to the matter being considered by the Planning Committee, that Member decides to make a public statement, and either supports or opposes the application, it will be difficult for that Member to be seen to subsequently determine the application transparently, openly and fairly. Accordingly, the Member should make an open declaration in relation to his or her position and not vote on the determination of the application at the Planning Committee. The open declaration should be noted in the Planning Committee minutes. The Member will also be required to leave the room for the

duration of the consideration of the item and vote. Where they have exercised their right to speak as Ward Member, they can address the Planning Committee at the appropriate time, in accordance with the Ward Member speaking arrangements, but must then leave the room immediately thereafter.

- 5.8 Ultimately, it is the responsibility of the individual member to ensure that their role on the Planning Committee is not compromised and it is also for them to strike a balance that may need to be made between ward and other interests and the requirements of the Planning Committee.

## **6.0 Dual-hatted – Parish and Borough Councillor**

- 6.1 It should be appreciated that planning applications submitted to Parish Councils are referred for consultation. Parish Councils do not determine applications, but they have a statutory role as consultees; their role is to make comments to the Borough Council.
- 6.2 Planning Committee Members who are also Members of Parish Councils (Dual-hatted Members) may find that they are expected to express a view at the Parish Council meeting or vote on whether or not that Council should object or comment on a proposal.
- 6.3 In such circumstances, Dual-hatted Members should observe the advice relating to pre-determination and bias set out in section 5 of this Code.
- 6.4 Dual-hatted Members must appreciate that whilst they are entitled to speak and vote at Parish Council meetings, it can cause confusion for the public. Therefore, they should always take the following action:
- Declare at the Parish Council meeting that if the application was to be considered by the Boston Borough Council Planning Committee they may take a different view once they had heard all the relevant policies and guidance, background history and consultation responses from Officers and may find themselves voting differently;
  - If they are attending the Boston Borough Council Planning Committee when the matters if being discussed or reported, declare that they have attended a meeting of the Parish Council when the application was considered, but they have an open mind and will make a judgement based on the evidence provided and solely on planning considerations.

## **7. Development Proposals Submitted by Councillors and Officers; and Council Development**

- 7.1 Proposals to the Council by serving and former councillors and officers and their close friends and relatives can easily give rise to suspicions of impropriety. So indeed can proposals for the Borough's own development. Proposals can take the form of either planning applications or development plan proposals.
- 7.2 It is perfectly legitimate for such proposals to be submitted. However, it is vital that they are handled in such a way that gives no grounds for accusations of favouritism.

- 7.3 Members should not act as agents for planning applications within the borough nor be involved in the preparation of plans associated with any such applications.
- 7.4 Where Members are submitting their own planning applications or development plan proposals these should be reported to the Development Control Manager. For significant applications Members should appoint an architect/agent to act on their behalf and the Council's Monitoring Officer will be informed of such proposals.
- 7.5 Significant applications will be reported to the Planning Committee and will not be dealt with by officers under delegated powers. The Officer Code of Conduct deals with these issues in respect of applications/proposals submitted by Borough Council staff.
- 7.6 The consideration of a proposal from a councillor in such circumstances would be considered as a prejudicial interest under the Member Code of Conduct and as such, the councillor would be required to withdraw from any consideration of the matter.
- 7.7 The Code also provides that the councillor should not seek improperly to influence a decision about the matter. It is important to emphasise that 'improperly' does not imply that a councillor should have any less rights than a member of the public in seeking to explain and justify their proposal to an officer in advance of consideration by a Committee.
- 7.8 Proposals for a council's own development should be treated in the same way as those of private developers (subject to the requirements of the 1992 General Regulations), particularly in relation to officers' advice.

## **8. Lobbying**

- 8.1 It is recognised that lobbying is a normal and perfectly legitimate element of the process of considering planning applications. If a Member, who is not on the Planning Committee, wishes to support a particular viewpoint then that Member has a right to appear at Planning Committee and seek permission to address the meeting.
- 8.2 It is, however, important that Members protect their impartiality and integrity in planning matters. Planning Committee Members will not breach the Code by listening to or receiving viewpoints from residents or other interested parties provided that they make it clear that they are keeping an open mind. However, expressing an intention to vote one way or another before a Planning Committee meeting would prejudice impartiality.
- 8.3 Lobbying may be verbal or by circulation of letters or documents to all or some Councillors. Lobbying can take two forms:-
- Lobbying of Councillors by applicants, agents or objectors
  - Lobbying by other Councillors.

- 8.4 Councillors should not organise support for or against a planning application and should not lobby other Councillors as this would signal that they had made up their mind before hearing the evidence. Each Councillor should make up his or her own mind on the evidence and facts presented to the Committee.
- 8.5 Circulation of papers which have not been formally lodged with the Planning Officer or Democratic Services Officer prior to the meeting is specifically prohibited, as this could constitute lobbying.
- 8.6 Whenever lobbying takes place Members should record the key discussion points on the standard form issued by the Council, copies are available in the Members' Lounge or from Democratic Services. This form should then be submitted to the Democratic Services team prior to the commencement of the meeting so that the information can be formally reported and recorded at the start of each committee meeting.

## **9. Role of the Borough Council Ward Member**

- 9.1 Ward Members have a central role in helping to represent the views of local people and other stakeholders at both pre-application and planning application stage. Ward Councillors bring strong community leadership, extensive local knowledge and an up to date understanding of current issues. Planning officers have to act impartially at all times, but will provide support and advice to ward councillors on planning matters in order for them to play this community leadership role.
- 9.2 Ward Members will be notified that a planning application has been submitted relating to an address within their Ward. Although the majority of planning applications are determined by Planning Officers under the Scheme of Delegation, Members will be given the opportunity to request that an application is referred to the Planning Committee, but they must give clear planning reasons for the request.
- 9.3 If requesting that a planning application be referred to Committee, Members must notify the Development Control Manager either by using the standard pro forma or by e-mail to [planning@boston.gov.uk](mailto:planning@boston.gov.uk), by telephone or in person giving clear planning reasons for the request. There is an expectation that where a Member makes such a request, they should attend to address the meeting. Officers will confirm the receipt of the request and indicate the likely target committee date.
- 9.4 Members may be approached by residents, objectors and the applicant about an application in their ward. You must pass on any correspondence or representations received to the Development Control Manager or the Monitoring Officer. At the Planning Committee Members may pass on verbally another person's/organisation's views but must make it clear to the Committee that the comments are a third party opinion and not commit themselves to a view on the application.

## **10. No Political Decisions on Planning Applications**

- 10.1 Decisions on planning applications must not be taken in political group meetings prior to a Planning Committee meeting. The view of the Ombudsman is that "use of political whips at group meetings amounts to maladministration." Such a procedure can also give rise to legal challenge by way of judicial review through the Courts.

10.2 Each Councillor should independently consider the application without any undue influence.

## **11. Pre-application Discussions**

11.1 Discussions between a potential applicant and the council (officers or Members), prior to the submission of an application can be of considerable benefit to both parties and is encouraged. However, it would be easy for such discussions to become, or to be seen, particularly by objectors, to become, part of a lobbying process on the part of the applicant.

11.2 In order to avoid such perceptions, pre-application discussions will take place within the following guidelines. (Although the term 'pre-application' has been used, the same considerations should apply to any discussions which take place before a decision is taken).

11.3 It should always be made clear at the outset that the discussions will not bind the 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.

11.4 Advice should be consistent and based upon the development plan and other material considerations. There should be no significant difference of interpretation of planning policies amongst planning officers. In addition, all officers taking part in such discussions shall make clear what the decision-making route may be and that they are not the decision-maker.

11.5 Ideally a written note should be made of important meetings if possible. At least one officer should attend any such meeting involving a Member and a follow-up letter is advisable at least when documentary material has been left with the council. A note should also be taken of telephone discussions if possible. (The decision as to whether to register everyday contacts between councillors and interested parties will depend on circumstances).

11.6 In the case of advice given by planning officers it should always be made clear that any views which they express are subject to review at a more senior level and the final recommendation lies with the Development Control Manager or the officer properly exercising a delegation.

11.7 Wherever possible meetings should be held at the Council's offices during normal office hours. Meetings on site may sometimes be helpful, but regard should be had to the guidance on lobbying and hospitality.

## **12. Officer Reports to Committee**

12.1 All decisions that are to be made by the Planning Committee will be based upon written reports by Officers supplemented, where necessary, by a brief oral presentation which may include a site plan, an aerial photograph of the site, photographs of the site, key application plans and drawings and other relevant material that the Officer considers will assist the Planning Committee in

consideration of the proposal. Planning reports by officers will be accurate and include a clear exposition of the development plan, site or related history, the substance of any objections and the views of those consulted.

- 12.2 In most cases, reports will have a written recommendation to either refuse the planning permission, with reasons, or to approve planning permission with conditions. Oral reporting will be limited to updating or clarification and to answer questions and will be carefully minuted when it does occur. Recent changes to the appeals process mean that the documents which the council can use to defend its decision on certain development types are confined to the officer report and the Committee minute only. It is important therefore that the minute records the debate and the precise reasons for the decision.
- 12.3 Reports will contain technical appraisals which clearly justify a recommendation.
- 12.4 If the report's recommendation is contrary to the provisions of the development plan, the other material considerations which justify the departure from the development plan will be clearly stated.

### **13. Responses to Public Consultation**

- 13.1 Written or e-mail representations on planning applications should normally be received by the latest of the dates given on neighbour letters/press or site notices, which ever are employed to publicise an application. This is so that there is a 'cut-off' date after which a delegated decision may be issued when the statutory time period for publicity has passed.
- 13.2 Any further written or e-mail representations to be reported to Committee must have been received within the Development Control Team before the end of the working day prior to the day of the Planning Committee meeting.
- 13.3 However, the Development Control Manager will have discretion to consider and report to Committee any submissions received after that time should they contain any material planning considerations or planning issues which have not been raised in other responses to the Officer Report on the application.

### **14. Planning Committee Meetings**

- 14.1 The Committee meeting is the arena where members of the public will witness decisions being taken. Conduct by Councillors or Officers which may be seen by the public to be inappropriate could quickly bring into question how a decision has been taken. It is therefore important that the procedures followed are transparent, easy to understand, fair to all parties and seen to be so.

- 14.2 Before the meeting, Committee Members should read the officer's reports and shall reserve judgement on how they will vote on an application or other matter until they have heard the views of others at the meeting. If others have no views to express at the meeting it shall be resolved that each Member supports the officer's recommendation in the report and the application shall be determined in accordance with it.
- 14.3 In addressing the Committee, the non Committee Member must make it clear to all present in the room that he/she is not a Member of the Planning Committee which will determine the application. Substitute Members of the Committee may address the Committee, as a non-committee Member, if they are not acting as a substitute for that particular meeting. The Member may address the Committee once, but may not then speak further or raise questions except, that if a Planning Committee Member wishes to clarify something that the non Member has said, this may take place immediately following the non Member's address and the non Member may reply.
- 14.4 It is appreciated that some non Members may wish to take part in further subsequent discussion, seek further clarification or make additional addresses to the Committee. This is not permitted because a third party, such as an applicant or objector, could feel aggrieved if a Member not on the Committee (and thus not bound by the protocols against predetermination), and possibly had been publicly supporting or campaigning against the proposal, could cross question officers or join in debate as though they /she were a Committee member. This could be viewed as unfairly influencing Members and bringing undue influence to bear.
- 14.5 All Members present at the meeting shall be invited to, and must declare if they have expressed a particular opinion for or against an application, before the debate on that application starts, or as soon as any interest becomes known to them.
- 14.6 The order for consideration of all planning applications will be:-
- Planning Officer oral and visual presentation;
  - Any public speaker(s) who wish to speak against the proposal (total of 5 minutes to be shared if more than one registered speaker);
  - Any public speaker(s) who wishes to speak in favour of the proposal (total of 5 minutes to be shared if more than one registered speaker);
  - The applicant/agent for the application (total of 5 minutes to be shared if more than one registered speaker)
  - Any eligible Parish Councillor who wishes to speak for or against the proposal (total of 5 minutes);
  - Any eligible Ward Councillor(s) who wish to speak for or against the proposal;
  - Questions to the Planning Officer by the Committee Members;
  - Planning Committee Members debate the proposal;
  - Planning Committee Members move and debate any alternative motions to the recommendation. The Democratic Services Officer clarifies the wording of the alternative motion and the Chairman put these to the vote as appropriate;
  - Chairman of the Planning Committee puts the original recommendation to the vote, if necessary;

- Chairman of the Planning Committee puts the substantive motion to the vote which will be the formal decision of the Planning Committee on the proposal.

- 14.7 Where propositions are made which are contrary to officer recommendations, the proposer shall clearly state the reasons why they are making such a proposal before a vote is taken. Similarly, if an application is determined contrary to the officers' written recommendation, precise reasons for refusal should be explained to and agreed by the Committee or, in the case of an approval, the nature of any conditions to be imposed on any grant should be identified. The reasons for decisions contrary to officer recommendations shall be fully set out in the minutes of the meeting.
- 14.8 All Members should be present at the outset of the consideration of an item on the agenda that relates to a planning application and remain in the committee room until a decision on the application has been made. Any member who is not present for the full duration of the consideration of a planning application is advised not to vote or take part in the discussions
- 14.9 In the event that a planning application is being considered that has been deferred from an earlier meeting, planning officers should ensure that the report updates the information from the earlier meeting, as some members may not have attended the meeting when the application was first considered.

## **15. Public Speaking Scheme**

- 15.1 Once the Planning Committee agenda and accompanying papers are made available to the public five working days prior to the Planning Committee meeting, all persons who have made representations on an item bound for Committee will be notified of the date of the meeting and arrangements for public speaking. Anyone who wishes to speak must notify the Democratic Services Officer.
- 15.2 Completed request to speak forms must be received by the Democratic Services Officer by no later than 12 noon on the working day before the day of the meeting.
- 15.3 Registered speakers will be invited to make their representations to the Planning Committee in the following order:-
- Objector(s)
  - Supporter(s)
  - Applicant/Agent
  - Parish Councillor
  - Ward Member
- 15.4 Objector(s) wishing to speak will be allocated five minutes to make their representation. If more than one person requests to speak as an objector the allocated time may be shared between those speakers or used solely by the first person who registers to speak.
- 15.5 Should more than one person request to speak as an objector, the contact details of the first registered person will be provided to subsequent speakers, who will be responsible for contacting the first registered speaker. The subsequent speaker

can request that the speaking time be shared with them or ask the registered speaker to incorporate their comments within their address to the Committee. If the first registered speaker declines to share the speaking time, only they will be permitted to speak.

- 15.6 Supporter(s) wishing to speak will be allocated five minutes to make their representation. If more than one person requests to speak as a supporter the allocated time may be shared between those speakers or used solely by the first person who registers to speak.
- 15.7 Should more than one person request to speak as a supporter, the contact details of the first registered person will be provided to subsequent speakers, who will be responsible for contacting the first registered speaker. The subsequent speaker can request that the speaking time be shared with them or ask the registered speaker to incorporate their comments within their address to the Committee. If the first registered speaker declines to share the speaking time, only they will be permitted to speak.
- 15.8 The applicant / agent will automatically be given the allocation of five minutes speaking time. Should the applicant and agent wish to speak it is their responsibility to divide the allocated five minutes of speaking time between them.
- 15.7 A Parish Councillor may address the Planning Committee in respect of any application within their Parish that is on the agenda. They will be allocated five minutes in which to make their representation.
- 15.8 A Ward Councillor may address the Committee without time limit, but must in advance of the meeting register with the Democratic Services Officer their intent to speak if they wish to take advantage of it.
- 15.9 Under the public speaking scheme, all comments must be restricted to the application being considered and to matters to do with planning, planning policy, or listed building and conservation area issues upon which the decision will be made.
- 15.10 Speakers should not interrupt other speakers or interrupt the Planning Committee debate.
- 15.11 Speakers are advised not to make slanderous statements or any other racial motivated, discriminatory, inflammatory, offensive or abusive remarks.
- 15.12 The Chairman has the right and duty to stop anyone speaking in such a manner and will, if necessary, suspend the meeting if there is any activity or behaviour which, in their opinion, is disrupting the proper consideration of a planning application and/or the conduct of the business of the Planning Committee.
- 15.13 Once a speaker has addressed the Committee, they must return to their seat in the public gallery. Open discussion between committee members and members of the public is not permitted. However, Members of the Committee may question the content of the speaker's representation. Should this situation arise the question will be directed through the Chairman.

- 15.14 Supporting documentation / photographic evidence may be submitted by public speakers for circulation to Members of the Planning Committee. Any such documentation must be received by the Democratic Services Officer by 12 noon two clear working days before the day of the meeting (e.g. if the meeting is held on a Tuesday the documentation must be received by 12 noon on Thursday of the previous week).
- 15.15 All supporting documents must be provided in hard copy format with sufficient copies for all Members of the Planning Committee and Officers. Additional documentation may not be circulated at the meeting of the Planning Committee.
- 15.16 In circumstances where an application would be subject to referral to the Secretary of State if the Committee was Minded to Approve it, the Chairman of the Planning Committee will have discretion to amend the time allocation for each category of speaker, subject to the time allocated for objectors and supporters being of equal length.

## **16. The Development Plan**

- 16.1 The law requires that where the development plan is relevant, decisions must be taken in accordance with the plan unless material considerations indicate otherwise (s.38(6) Planning and Compulsory Purchase Act 2004).
- 16.2 All applications must be assessed in accordance with Section 38(6) of the Planning and Compensation Act 2004 and Section 70 of the Town and Country Planning Act 1990 as amended by Section 143 of the Localism Act 2011.

## **17. Decisions Contrary to the Development Plan and/or Officer Recommendation**

- 17.1 Guidance and Directions from the Secretary of State for Communities and Local Government require that certain types of application, which he has defined which may not be in accordance with the Development Plan, are statutorily advertised as such. Representations received in response to the advertisement would then be considered when the application is ultimately determined.
- 17.2 If it is then intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and how, where relevant, these considerations justify overriding the development plan. The application may then have to be referred to the Secretary of State for Communities and Local Government, if the Council wish to approve it, depending upon the type and scale of the development proposed.
- 17.3 If the officers' report recommends approval of such an application, the justification for this will be included in full in that report and the recommendation would be framed in terms of the Committee being 'Minded to Approve' the application and authority be given for it to be referred to the Secretary of State, if such referral applies. These types of application which the Council wish to refuse do not need to be referred to the Minister.
- 17.4 If the Planning Committee makes a decision contrary to the officers' recommendation (whether for approval or refusal), a detailed minute of the Committee's reasons will be made and a copy placed on the application file

together with a note of the general nature of any conditions to be imposed. The officer should also be given an opportunity to explain the implications of the contrary decision. The courts have expressed the view that such reasons should be clear and convincing. The personal circumstances of an applicant will rarely provide such grounds. A notable exception is where planning policy allows for this, for example, the provision of a dwelling for an agricultural worker

- 17.5 If it is the professional opinion of the officers that the reasons given for a refusal are not capable of being satisfactorily supported by the officers in view of their genuinely held opinions, Members should accept the need to employ consultants and/or appear themselves at any appeal hearing or Inquiry in order to promote the case if subsequently challenged.
- 17.6 Whilst the Council makes extensive use of standard wordings for conditions, in those cases where Councillors may wish to add or amend conditions, an officer will be asked to draft any such conditions at the conclusion of debate, if it is reasonable to do so, before the Committee is asked to agree to them. In any event, the general nature of the amended condition/s or new condition/s to be imposed will be minuted and delegated authority will be given to the Development Control Manager to draft the condition/s together with the addition of any other conditions which, in the opinion of the Development Control Manager become necessary as a result of ongoing negotiations or changes to a proposal.

## **18. Committee Site Visits**

- 18.1 Any lack of consistency in the Council's approach to agreeing and holding Committee site visits could leave the Council open to the accusation that such visits are, at best arbitrary and unfair and, at worst a covert lobbying device.
- 18.2 Formal site visits can cause delay and additional costs and should only be used in the circumstances as set out in paragraph 17.4 below. The officer's report and presentation to the Committee and the response to Member questions should contain sufficient information on the planning issues for the Committee to reach a decision based on land use planning grounds.
- 18.3 Formal site visits may be requested by the ward councillor in advance of the Planning Committee meeting at which the application is to be considered. It is acknowledged that this is a proper part of the representative role of the member, and should normally be acceded to, subject to the agreement of the Chairman of the Planning Committee and provided also that the site meeting is necessary in accordance with paragraph 17.4. A record of the reasons why a site visit is called will be made as part of the minutes of the meeting.
- 18.4 A formal 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 proposal is particularly contentious.
- 18.5 Individual Members should only make unaccompanied informal site visits where the site is being viewed from a public vantage point.

- 18.6 If a formal Committee site inspection is to take place, the planning officer will inform the applicant accordingly and obtain confirmation that access to the site is available. In some instances it will be possible to view the site from the highway, in which case the applicant will not be contacted.
- 18.7 The Chairman or the Vice Chairman of the Planning Committee, a Planning Officer and Democratic Services Officer shall all be present at a site before an inspection meeting commences.
- 18.8 The site inspection is part of the decision-making process and must be treated as a continuation of the Committee meeting. Although site inspections are not arranged in relation to all planning applications, where there is a site inspection, Members should not take part in the debate or vote on a planning application at a committee meeting unless they have attended the site inspection that forms part of that meeting. The formal site inspection should take place at a time to be agreed.
- 18.9 The Chairman or, in his/her absence, the Vice-Chairman should take control of the proceedings, formally open the inspection and ask the planning officer to “present” the site. Questions should be addressed to the planning officer through the Chairman and the inspection should not be allowed to become a free for all where questions are addressed to any other party.
- 18.10 Any necessity to seek clarification on matters such as a site boundary should be raised with the planning officer who will seek clarification from the site owner/applicant/objector if necessary. Whether the site owner is applicant, or not, neither he nor any objector should be invited to speak and should not be allowed to address Committee Members as this opportunity will be available at the Planning Committee meeting
- 18.11 A Democratic Services Officer or other appropriate officer will be present at all site inspections to advise on procedure and take notes. When all questions have been responded to and any new issues understood, the Chairman will formally close the site inspection.
- 18.12 A record of any relevant issues raised and questions answered will be made by the Democratic Services Officer and a copy placed on the planning file
- 18.13 Where ward members, members of the public, applicants, objectors, parish councillors etc do attend a site inspection, they should be politely, but firmly requested to refrain from speaking. If this is not practicable, the Chairman should abandon the site inspection. Any letters of notification of the site visit to, for example, the applicant, should emphasise that they will not be permitted to take part.
- 18.14 During the site inspection, Members should refrain from entering into conversation with any other person on the site or breaking away from the main group into smaller groups or discussions. They should at all times consider that they are in a formal situation until the Chairman closes the site inspection.

18.15 An acceptable alternative to a site inspection may be a visual recording of the site. This can be in general or in relation to a specific matter on which the Committee has sought clarification in advance.

## **19. Regular Review of Decisions**

19.1 The report of the Audit Commission *Building in Quality and the 2002 update, Development Control and Planning* recommended that Councillors should revisit a sample of implemented planning permissions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, thereby strengthening public confidence in the planning system, and can help with reviews of planning policy.

19.2 Such reviews will be undertaken at least bi-annually. They will include examples from a broad range of categories such as major and minor development; permitted departures; upheld appeals; listed building works and enforcement cases. Briefing notes will be prepared on each case. The Planning Committee will subsequently formally consider the review and decide whether it gives rise to the need to reconsider any policies or practices. The review will normally be undertaken by an accompanied coach tour of the Borough.

19.3 The Development Control Manager will periodically report to the Planning Committee on the results of planning appeals and any issues arising there from.

## **20. Complaints and Record Keeping**

20.1 The adoption of the advice in this guidance should greatly reduce the occasions on which complaints are justified. It should also provide less reason for people to complain in the first place.

20.2 So that complaints may be fully investigated and, in any case, as a matter of general good practice, record keeping should be complete and accurate. Omissions and inaccuracies can in themselves cause a complaint or undermine the Council's case.

20.3 The guiding rule will be that every planning application file will 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 has been reached.

20.4 Although all delegated application decisions are reported to the Planning Committee for notification purposes and to receive questions, particular care will be taken with applications determined under delegated powers, in terms of process and decision documentation and recording. These principles will apply equally to enforcement and development plan matters. As a matter of standard practice, the delegated officer report will be made available for public inspection the Council's website.

## **21. Training**

21.1 A Member may not sit at a Planning Committee meeting without first having received appropriate mandatory training which may consist of the following:-

- an overview of the key role of planning in the Borough;
- the role of Members in the planning process;
- workshops on new Council or Central Government policy and legislation;
- other planning issues that either Members' request or Officers recommend;  
annual site visit

21.2 Members will be expected to make themselves available to attend training sessions in order to keep up to date on the latest planning and development issues.