

SOUTH STAFFORDSHIRE COUNCIL

PLANNING COMMITTEE – 20TH DECEMBER 2016

PROPOSED PLANNING PROTOCOL FOR MEMBERS AND OFFICERS

REPORT OF MONITORING OFFICER

PART A – SUMMARY REPORT

1. SUMMARY OF PROPOSALS

- 1.1 To introduce a protocol to govern the conduct of officers and members when dealing with planning matters.
- 1.2 If agreed by Planning Committee on 20th December 2016, the Protocol will be effective from 1st January 2017. The changes needed to the constitution will go to Council on 13th December 2016.

2. RECOMMENDATION

- 2.1** That the Committee agree to the adoption of the Planning Protocol and that the Monitoring Officer is given delegated authority to make any minor changes needed.

3. SUMMARY IMPACT ASSESSMENT

POLICY/COMMUNITY IMPACT	Do these proposals contribute to specific Council Plan objectives?	
	Yes	The planning system potentially supports all three Council objectives but in particular a skilled and prosperous district and a safe and sustainable district. The Protocol seeks to enhance the transparency and openness of the administration of planning matters.
	Has an Equality Impact Assessment (EqIA) been completed?	
	No	No significant impacts are envisaged; the Protocol does not change any existing planning policies.
SCRUTINY POWERS APPLICABLE	No – subject to approval by Council (for the Constitution changes) and subject to approval by Planning Committee and Standards and Resources Committee	
KEY DECISION	No	
TARGET COMPLETION/ DELIVERY DATE	20th December 2016	
FINANCIAL IMPACT	No	There are no direct financial implications arising from the introduction of the Protocol.
LEGAL ISSUES	No	The Protocol builds on the principles set out in the Members' Code of Conduct, the Code for employees and the Protocol on Councillor/Employee Relations.
OTHER IMPACTS, RISKS & OPPORTUNITIES	No	No other significant impacts, risks or opportunities have been identified.
IMPACT ON SPECIFIC WARDS	No	District-wide application.

PART B – ADDITIONAL INFORMATION

4. INFORMATION

- 4.1 **Planning Protocol** - Members are already bound by the provisions of the Code of Conduct as well as the Protocol for Councillor/Employee Relations and guidance on planning site visits along with the wider public law provisions applicable to members. The proposed Protocol is an advisory document that sits alongside the other provisions and should be taken into account when any planning matter is being considered. It was agreed by the Standards and Resources Committee in July that a protocol should be drafted and brought to its meeting in December 2016 for approval.
- 4.2 The Planning Protocol (at appendix A) seeks to put the Members' Code of Conduct into context specifically relating to planning matters. The Protocol will be applicable to all planning matters including the preparation of the Development Plan¹, the consideration and determination of development control applications, enforcement matters and the protection of trees and hedgerows.
- 4.3 The Protocol also brings together some other changes to the Planning Committee namely the requirement that Members are present for the whole of a debate if they wish to vote and also that voting will generally take place by electronic voting (at appendix b). This change is subject to Council approval and will be tabled at the meeting on 13th December 2016, if that change is not approved then this section will be removed from the Protocol.
- 4.4 Although the majority of the Protocol is aimed at Members, it also covers the conduct of officers in planning matters.
- 4.5 The Protocol covers the following:
- Declaration and Registration of Interests
 - Membership of another local authority ("dual-hatted" members)
 - Lobbying
 - Gifts and Hospitality
 - Acting as an agent for a planning applicant
 - Pre-application discussions
 - The decision making process
- 4.6 In short, the Protocol is intended to give further guidance to Members (and officers) about how they undertake their role in a planning context. The information contained in the Protocol is simply the message that has been given to Members in training on the Code of Conduct. However it has become clear from a number of recent matters that some further clear guidance is needed to try and reduce the number of complaints and to assist members.
- 4.7 **Planning agents** - The justification for this restriction is one of good governance and transparency. Indeed the aim of the protocol is to ensure the integrity of the planning system is preserved, and that it is, and is seen to be, open and fair to all parties. For a member of the planning committee to also act, potentially against the Council, may give some the impression that he or she has a preferred position.

¹ Core Strategy (Local Plan) Development Plan Document and other Development Plan Documents

- 4.8 In many other Councils there is a clear bar on this from happening. The guidance states that a member of the Planning Committee (or an officer) may not act as an agent within the District. The advice from the LGA supports this approach².
- 4.9 **Electronic voting** – Previously the Challenge Panel that looked at the Planning process recommended the introduction of electronic voting, having seen it take place at other Councils. However at the triangulation meeting in 2014 members voted against the introduction. Since that time there have been a number of meetings where members have reported that they felt intimidated by sections of the public in casting their votes and that they would wish to see electronic voting. This issue goes before Council on 13th December 2016.
- 4.10 We already have the technical equipment to allow us to do this and therefore there is no cost involved. The provision in the constitution, which goes before Council on 13th December 2016, is drafted to allow the Chairman of the meeting concerned to decide whether or not to use it. If it is introduced it is likely to be from 1st January 2017. There will be extensive testing of the equipment in advance of the first meeting to ensure that it will work, indeed if it is agreed it should be introduced it will be trialed at the Overview and Scrutiny meeting on 5th January 2017.
- 4.12 **Approval Process** - It is intended that the Protocol will go through the following approval process:
- Constitution Changes – Council - 13.12.16
 - Protocol - Standards and Resources Committee 15.12.16 – an update will be given to the meeting on the decision of the Standards and Resources Committee
 - Protocol - Planning Committee 20.12.16
- 4.13 **Implementation** – it is intended that soon after the coming into force of the protocol on 1st January 2017 (if it is approved by Members) that training will be given by the Monitoring Officer on the protocol.
5. IMPACT ASSESSMENT – ADDITIONAL INFORMATION
N/A
6. PREVIOUS MINUTES
N/A
7. BACKGROUND PAPERS
N/A

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² http://www.pas.gov.uk/c/document_library/get_file?uuid=e0cde66c-8cda-4f56-b784-a45cdd41f089&groupId=10180 - see page 6



South Staffordshire Council

PLANNING PROTOCOL

**Protocol for Members and Officers
dealing with planning matters**

DECEMBER 2016

SUMMARY OF KEY POINTS

This Planning Protocol for Members and Officers dealing with planning matters applies to all Members and officers, who should make themselves familiar with its guidance. The main points of the guidance, cross-referenced to the detailed text, are set out below for the convenience of Members and officers. They are as follows:

- Planning is a formal administrative process which can lead to complaint or judicial review (para 1.4);
- Compliance with the Members' Code of Conduct, including the registration and disclosure of disclosable pecuniary interests, disclosure of relevant public service interests at meetings, and registration of gifts and hospitality received within the previous twelve months with an estimated value of at least £50 (individually or in total) (para 2.1 – 2.17);
- Members of Planning Committee and officers should not act as agents for those pursuing a planning matter in the District (para 3.1);
- Planning proposals from Members and officers must be dealt with by the Planning Committee, with the proposers taking no part in its processing (para 3.2-3.3);
- Proposals by the Council must be treated in the same way as those from private developers (para 3.4);
- Members must maintain an open mind on the merits of applications when being lobbied (para 4.1- 4.3);
- Members should not lobby on behalf of applicants, nor commit themselves to a conclusive view on a matter, such that it would indicate that their mind is closed on the matter, before all the evidence is heard (para 4.4- 4.9);
- Where Members or officers attend public meetings, they should not express any conclusive view about the merits of any proposal such that it would indicate that their mind is closed on the matter (para 4.10- 4.11);
- In any pre-application or pre-decision meetings, officers must not commit the Council to any particular decision (para 5.1-5.4).
- At site visits, Members and officers must not discuss the merits of any application (para 6.1-6.3);
- Officer reports to the Planning Committee must be comprehensive and accurate, with a written recommendation underpinned by reasons (para 7.1- 7.6). Any departure from the Development Plan must be supported by justification;
- Members must not put pressure on officers for a particular recommendation (para 7.5);
- Planning decisions must be supported by clear and convincing evidence. Reasons for decisions contrary to officers' advice, or for approval of proposals contrary to the Development Plan, must be clearly stated (para 8.2- 8.4);

- Planning Committee meetings should be conducted in a professional manner, with legal and planning officers in attendance (para 8.5-8.8);
- Members wishing to support an appellant (including the Council) at an appeal against a Council decision must notify the Monitoring Officer (para 8.9 – 8.11);
- Planning records should be comprehensive and accurate, and monitored by planning Team Leaders. The Director of Planning & Strategic Services will monitor Planning Committee decisions on a continuous basis (para 10.1-11.2).

1. GENERAL ROLE AND CONDUCT OF MEMBERS AND OFFICERS

- 1.1 This Planning Protocol is an advisory document that sits alongside the Members' Code of Conduct, the Officers' Code of Conduct, Protocol for Member and Officer Relations, Complaints, Compliments and Comments Policy and other provisions concerning probity in public office as they relate to planning. As such, it will be taken into account when a complaint under the Members' Code of Conduct that relates to planning matters is being considered.
- 1.2 This Planning Protocol applies to all Members and officers and to all planning matters, including the preparation of the Development Plan, the consideration and determination of development control applications, (including those for planning permission, listed building consent, conservation area consent and advertisement consent), enforcement matters and the protection of trees and hedgerows.

Why have a local protocol for Planning?

- 1.3 The Council has adopted a Code of Conduct for Members. The Code of Conduct concerns probity and other aspects of conduct across the whole range of a Member's duties. This Local Protocol seeks to relate the Code of Conduct's requirements specifically to planning. However, it goes beyond the specific concerns of the Code of Conduct to give more detailed advice on the operation of the planning system. The aim of this additional advice is to ensure the integrity of the planning system is preserved, and that it is, and is seen to be, open and fair to all parties.
- 1.4 Determining a planning application is a formal administrative process involving rules of procedure, rights of appeal, and an expectation that people will act reasonably and fairly. Those involved should always be alert to the possibility that an aggrieved party may:
- a) seek judicial review of the way the decision was arrived at; and/or
 - b) complain to the Ombudsman on grounds of maladministration; and/or
 - c) complain to the Monitoring Officer that a Member has breached the Code of Conduct.
- 1.5 Decisions on planning involve considering development proposals against the wider public interest. Much is often at stake, particularly the financial value of landholdings and the quality of their settings, and opposing views are often strongly held by those involved. Planning decisions affect people and their property, and at times can be contentious. The issues involved are rarely straightforward. There are nearly always two sides to every case, and many shades of opinion in between. It is important, therefore, that planning decisions affecting these interests are made openly, impartially, with sound judgement and for justifiable reasons, and in accordance with the law.

Role of Members

- 1.6 Members set the Council's planning policy and (except where such responsibility is delegated to officers) determine planning applications within the context of that policy. It is a requirement of the Members' Code of Conduct that Members must not use their position as a Member improperly to confer on or secure for themselves or any other person an advantage or disadvantage. Whilst Members have a special duty to their constituents, including those who did not vote for them, their over-riding duty is to the whole community. They should vote in what they perceive to be in the interests of the whole District. Voting will generally be

by electronic vote but may at the Discretion of the Chairman be by show of hands or can, if the Committee agrees, be by a record of names.

- 1.7 When Members come to make a decision on a planning matter, they must:
- a) act fairly and openly
 - b) approach each case with an open mind
 - c) refer to the Development Plan and material considerations in decision making including the National Planning Policy Framework
 - d) carefully weigh up relevant issues
 - e) determine each case on its own merits
 - f) ensure that there are clear and substantial planning reasons for their decisions, and that those reasons are clearly stated.

Role of officers

- 1.8 The function of officers is to advise and assist Members in matters of planning policy and in their determination of planning applications by:
- a) providing impartial and professional advice
 - b) making sure that all the information necessary for the decision to be made is given
 - c) providing a clear and accurate analysis of the issues
 - d) referring to the Development Plan and material considerations in decision making
 - e) setting applications and enforcement issues against the relevant Development Plan policies and national policy guidance
 - f) taking into account all other material considerations
 - g) giving a clear recommendation
 - h) carrying out the decisions of the Council made in Committee
 - i) disclosing to the Council their direct or indirect pecuniary interests under section 117 of the Local Government Act 1972
 - j) acting in accordance with the Code of Conduct for Officers and any applicable professional code of conduct.
 - k) Where officers are exercising delegated powers they will:
 - a) act fairly and openly
 - b) approach each case with an open mind
 - c) refer to the Development Plan and material considerations in decision making

- d) carefully weigh up relevant issues
- e) determine each case on its own merit
- f) ensure that there are clear and substantial reasons for their decisions, and that those reasons are clearly stated.

Application to policy formulation and other planning matters

- 1.10 While this Protocol will most commonly need to be followed in dealing with planning applications, it also applies to consideration of Development Plans, development briefs, enforcement cases and all other planning matters. In particular, the following parts of this Protocol apply to policy formulation and planning issues other than determination of applications:
- a) the registration and disclosure of disclosable pecuniary interests (section 2)
 - b) dealing with lobbying, the duty to reach decisions impartially without predetermining issues, and attendance at other public meetings (section 4)
 - c) pre-application and pre-decision discussions with applicants or potential applicants (section 5).
- 1.11 However:
- a) subject to the overriding requirement to comply with the Members' Code of Conduct, and
 - b) providing the discussions do not refer to individual sites
- this Protocol does not preclude Members from taking part in discussions on the general principles of land allocation policies in the Development Plan outside the Council's formal meetings.
- 1.12 If the Development Plan is material to the application, the application should be determined in accordance with it unless material considerations indicate otherwise.
- 1.13 Where information has been provided to Members or officers on a confidential basis, it shall not be disclosed to third parties. Breach of this provision may result in a Code of Conduct investigation and/or other action.

Training

- 1.14 Seminars are held from time to time to give guidance to Members on registration and disclosure of disclosable pecuniary interests and other issues relating to the Code of Conduct. Members of the Planning Committee will also receive specialised training on planning law and procedures, the practical operation of this Protocol and the Development Plan. Members involved in determining planning issues will be required to complete an appropriate level of training on planning matters before being able to serve in that capacity. Members' attendance at training sessions will be monitored and recorded.

2. DECLARATION AND REGISTRATION OF INTERESTS

- 2.1 All Members, whether or not dealing with planning matters, must observe the Code of Conduct in:
- a) maintaining the general standards of conduct required
 - b) registering and disclosing disclosable pecuniary interests; and
 - c) registering receipt of gifts or hospitality within the previous twelve months with an estimated value of at least £50 (individually or in total).

Registration and Disclosure of Interests

- 2.2 The general principle behind the requirement to disclose disclosable pecuniary interests ("DPIs") is that a Member should not use his or her position to further a private or personal interest rather than the general public interest, nor give grounds for suspicion that he or she has done so. Responsibility for declaring interests lies with the individual Member or officer. Information about the declaration of interests is given in the Members' and officers' Codes of Conduct. The key issue is whether a member of the public would reasonably think that they might be influenced by their interest.
- 2.3 Within 28 days of becoming a Member or Co-opted Member, a Member must notify the Council's Monitoring Officer of any DPI (as defined in Part 3 of the Code of Conduct), where the pecuniary interest is the Member's, his/her spouse's or civil partner's, or is the pecuniary interest of somebody with whom the Member is living as a husband or wife, or as if they were civil partners, and where the Member is aware that that other person has that interest. Regarding the requirement to register gifts and hospitality, see below.
- 2.4 The Monitoring Officer must register any interests notified to him in the Council's Register of Members' Interests maintained under the Localism Act 2011. Following re-election or re-appointment, the duty to notify the Monitoring Officer applies only as regards disclosable pecuniary interests not already entered in the Council's Register.
- 2.5 Where a DPI has not been entered in the Register of Members' Interests and it is a disclosable pecuniary interest in any matter being considered at a meeting of the Council, Committee or Sub-Committee at which the Member is present, the Member must disclose the interest to the meeting. The only exception to this duty is where the Member has a sensitive interest (as explained in Part 2 of the Code of Conduct) in which case the Member must disclose not the interest but merely the fact that he/she has a disclosable pecuniary interest in the matter concerned.
- 2.6 Members should refer to Part 2 of the Code of Conduct for information as to the implications of having a disclosable pecuniary interest for their continued involvement in the matter being considered at the meeting.
- 2.7 Within 28 days of any disclosure at a meeting of an unregistered disclosable pecuniary interest, where that interest is not the subject of a pending notification, the Member must notify the Monitoring Officer of the interest.
- 2.8 Members should disclose a "non pecuniary interest" at a meeting of the Council, committee or sub-committee *where they consider that interest to be relevant* to an item of business being considered at that meeting. The disclosure shall be made at the commencement of the meeting, or when the interest becomes apparent, and shall be recorded in the minutes of the meeting. This could for example include membership of any of the following: a public or charitable body, any body to which you have been appointed by the Council, any political party, trade union or other body one of whose principal purposes is to

influence public opinion or policy). Disclosure of such an interest does not affect a Member's ability to participate in discussion or vote on the relevant item, provided it is not also a DPI.

- 2.9 The Member will need to consider for themselves whether there is a breach of the Code of Conduct. In any case where a Member is in any doubt about their position, advice should be sought from the Monitoring Officer or the lawyer on duty.

Membership of another Local Authority

- 2.10 A Member who is also a member of another tier of local government will not have a disclosable pecuniary interest in a planning application made by a private individual simply because his or her Parish/County Council has submitted observations to the Council on that application or the Member voted at the Parish/County Council meeting. However, the Member should have regard to the guidance on pre-judging applications in section 4 of this Protocol.
- 2.11 Members of the Planning Committee who are also members of another tier of local government should adopt the practice of making it clear, when they participate in a debate on development proposals at a Parish/County Council meeting, that the views they express are based on the information before them at that time, and might change in the light of further information and/or debate at the Council's Committee meeting. This is to make it clear that the Member is keeping an open mind on the issue and cannot therefore be found to have predetermined the matter when it comes before the Council. Further guidance on avoiding predetermination is provided at paragraphs 4.4 – 4.9 below.
- 2.12 The "dual-hatted" Member (i.e. Member serving more than one authority) should take great care, in relation to a planning application submitted by another authority of which they are a member, which is considered at a meeting at which the Member is present. In such case advice as to their position, should be sought from the Monitoring Officer. In many cases there is likely to be a DPI issue. However where appropriate a dispensation can be granted by the Monitoring Officer to allow them to take part in the debate and vote *where it is appropriate to do so*.

The representative role

- 2.13 A Member may choose to represent particular views of an individual or section of the community on a planning application. Where the Member advocates or clearly declares their support for or against those views, **such that they no longer have an open mind on the issue**, this will mean that the Member is no longer able to act impartially in the determination of that application. Where the Member is a Member of the Planning Committee, they should take no further part in the consideration of, or voting on, that particular matter – they can however speak as a local member at the start of the consideration of the issue but cannot thereafter take part in the debate or vote. However, where a Member merely reports the views of an individual or section of the community on the application for information purposes, they will normally be able to continue to participate in the consideration of the item, provided they make it clear that they are relaying those views in a reporting, and not representational, capacity.

Membership of lobbying groups

- 2.14 Where a Member is also a member of a lobbying group which has publicly expressed support for or against a planning application, careful consideration of all the surrounding circumstances will be required in order to identify whether the Member has or might appear to have pre-judged the issue, for example the Member's role in the lobbying group and the extent to which the Member is

publicly identified with that position are relevant considerations. The Member should also disclose a non-pecuniary interest when the relevant item is considered at a meeting at which the Member is present (whether as a Member of the meeting or observer), in accordance with Para. 2.8 above.

Group discussions

- 2.15 Members cannot accept an instruction from anyone to determine an application in a particular way, as they must determine the issue on its merits. So, while they may give appropriate weight to the views of other Members whether expressed in the Committee meeting or in prior discussions, they must determine the application on its merits and should not take into account any factor which they are not prepared to state in open Committee. As a result it is not appropriate for any group of Members to instruct Members to vote in a particular manner on an application or to apply or threaten to apply any sanction to any Member who voted contrary to the group's collective view. If such instructions are given Members should declare it in exactly the same manner as they would declare any other attempt at lobbying.

Gifts and Hospitality

- 2.16 The Code of Conduct obliges all Members to register gifts or hospitality within the previous twelve months with an estimated value of at least £50 (individually or in total) by written or email notification to the Monitoring Officer within 28 days of receipt. However, Members dealing with planning matters should be particularly alert to the possibility that they may be called upon to determine, or make representations on, a planning application submitted by someone who has offered them a gift or hospitality, even if an application has not yet been submitted. If a gift or hospitality is received from an actual or potential planning applicant, even if its receipt is registered or its value does not exceed £50, the recipient should still consider what the public perception might be. Cases where Members have accepted hospitality from planning applicants have been the subject of criticism by the Ombudsman. For this reason, all gifts, of whatever value, should be refused if there is any reason to suspect that the person offering them is an actual or potential planning applicant.
- 2.17 If a gift is accepted from an actual or potential planning applicant, whatever its value, Members are advised to notify the Monitoring Officer. If acceptance of a degree of hospitality by Members and/or officers is unavoidable, it should be ensured that this is at a minimum and that its receipt is notified. Members and officers should also consider whether it would be appropriate in a particular case to notify instances where gifts or hospitality have been offered, but refused. If it is, written notification should be sent to the Monitoring Officer.

3. DEVELOPMENT PROPOSALS SUBMITTED BY OR ON BEHALF OF MEMBERS AND OFFICERS, AND DEVELOPMENT BY THE COUNCIL

Acting as agents for a planning applicant

- 3.1 Serving Members of Planning Committee and officers should not act as agents for individuals (including a company, group or body) pursuing a planning matter in the District.

Planning application by a Member or officer

- 3.2 Proposals submitted by Members and officers that are to be decided by the Council, as Local Planning Authority, must be reported to the Planning Committee and not dealt with by officers under delegated powers. The Monitoring Officer must be informed of all such proposals as soon as they are submitted. It is the duty of all officers to inform their line manager of any

financial interests they have in a matter with which the Council is dealing. An application for planning permission will give rise to a direct financial interest. Likewise, the onus is on Members and officers to inform the Monitoring Officer if a planning application relating to property in which they have a beneficial interest is submitted. Neither employees nor Members should assume that planning officers will otherwise be aware that the application is in respect of their land or property.

- 3.3 If Members or officers submit their own development proposal to the Council, they must take no part in its processing. Both officers and Members will have the same rights as any member of the public to seek to explain and justify their proposal to an officer in advance of the Committee meeting. A Member exercising this right (providing the general obligations in the Code of Conduct and the Protocol for Member and Officer relations, in particular those relating to a Member's duty not to compromise the impartiality of officers, are not breached) should not be regarded as "seeking improperly to influence" the decision or using his position to secure an advantage and can speak in favour of their application.

Proposals for the Council's own development or development on Council land

- 3.4 Proposals for the Council's own development (or a development involving the Council and another party) must be treated in the same way as those by private developers. The same administrative process, including consultation, must be carried out in relation to the Council's own planning applications, and they should be determined against the same policy background (the Development Plan and any other material planning considerations). This paragraph also applies to private applications on Council-owned land (e.g. before a land sale is agreed or negotiated). Decisions must be made strictly on planning merits and without regard to any other gain that may accrue to the Council if the development is permitted. It is important not only that the Council treats such applications on an equal footing with all other applications, but is seen to do so.
- 3.5 In such cases the Members deciding on the matter are not in breach of the rules on DPis as the Monitoring Officer has given a dispensation under section 33 of the Localism Act 2011 for such applications, on the basis that the number of persons prohibited by section 31(4) from participating in any particular business would be so great a proportion of the Council as to impede the transaction of the business.

4. LOBBYING AND REQUIREMENTS RELATING TO PUBLIC MEETINGS

Lobbying of Members by the public or planning applicants

- 4.1 Members may be subject to lobbying on planning matters and specific planning applications. When this occurs, great care is essential to maintain the Council's, and indeed the Member's own, integrity and the public perception of the planning process.
- 4.2 Members who are likely to be involved in determining a planning matter at any meeting should, before the meeting, simply listen to points of view about the proposal. They should actively take steps to explain that, whilst they can listen to what is said, and may even adopt a preliminary view on the matter, they are keeping an open mind on the matter until it is considered at Planning Committee. If however they do form a definite view on the proposal, **such that their mind is then closed on the issue**, they should be guided by paragraphs 4.7 to 4.8 below. Where the applicant requires planning or procedural advice, he or she should be referred to officers.
- 4.3 If Members consider that they have been exposed to undue or excessive lobbying or approaches, these should be reported to the Monitoring Officer.

Members' duty not to pre-judge applications/lobbying by Members

- 4.4 As a general principle, and taking account of the need to make decisions impartially, Members involved in decision making on planning should not organise support or opposition to a proposal, lobby other Members, act as an advocate, or put pressure on officers for a particular recommendation. Even if Members feel strongly about a proposal, they should not make up their minds how they intend to vote in advance of the decision-making Meeting, because all the information will not normally be available until then.
- 4.5 Members need to take account of the general public's expectations (and the expectations of those who might investigate any complaint), that a planning application will be processed in a fair and open manner in which Members making the decision will take account of all the evidence presented before arriving at a decision. Members should not indicate (or give the impression of) support for or opposition to a proposal in a manner **which suggests they have a closed mind** to any views or further information which may be available at the meeting at which the matter is discussed. In particular Members should not declare their voting intention before the meeting at which a decision is to be taken. To do so without all relevant information and views would be unfair and prejudicial and may amount to maladministration, they can as set out below at paragraph 4.6 indicate that they are minded to adopt a particular position but should be clear that they have an open mind. The officer report and late list should be read and plans/photographs seen before decisions are made. Members will also have an opportunity to put questions to officers and hear the views of their fellow Members, the Applicants and other third parties during the course of the discussion.
- 4.6 Section 25(2) of the Localism Act 2011 provides that, when dealing with allegations of bias or predetermination, a decision maker is not to be taken to have had a closed mind just because they have previously done anything that directly or indirectly indicated what view they took, or would or might take, in relation to a matter that was relevant to the decision. Thus, if a Member has previously given a view on an issue, this does not in itself show that that Member has a closed mind on that issue. The fact that a Member might have campaigned on an issue, or made public statements about their approach to it, does not prevent a Member from participating in discussion of the matter when it comes before the Council, and to vote on a decision regarding it. So long as the Member approaches decision making with an open mind, in the sense such Member has regard to all material considerations, and remains open to the possibility that, however unlikely, he or she will hear arguments during the debate that might change their mind about how they intend to vote, such Member will not be held to have predetermined the issue.
- 4.7 Whilst Members involved in making decisions on planning matters will begin to form a view as more information and options become available, a decision can only be taken by the Planning Committee when all available information is to hand and has been duly considered. Individual Members should reach their own conclusions on an application or other planning matter rather than follow the lead of another Member. Decisions can only be taken after full consideration of the officer's report and information and discussion at the Committee.
- 4.8 If a Member does fully commit themselves to a particular view on a planning issue before it is considered at Committee, **such that their mind is no longer open to consideration of the merits of the case**, the Member should leave the meeting room before the item is considered and take no part in the debate nor vote on the application. Where a Member wants to act as a representative (rather than merely reporting the views) of his or her electoral area they

should declare this fact and not vote in such a case they can make representations to the Committee(see paragraph 2.12).

- 4.9 Where the Monitoring Officer believes that a Member has predetermined the matter before the Committee determines it, in the sense that the Member's mind is closed to the merits of any opposing views about the issue the Monitoring Officer will discuss the position with the Member. Where the Monitoring Officer is satisfied that actual predetermination has occurred, she or he will advise the Member that it would be inappropriate for him to be present at the meeting or to vote on the application, in such a case the continued presence of the Member may put the Council at risk of a challenge to its decision on the particular matter. If the Member does not follow the Monitoring Officer's advice, the Monitoring Officer will consider referring the matter to the Standards and Resources Committee.
- 4.10 During Committee Meetings, everything said may be scrutinised by Applicants, objectors, legal advisers and the Press, so Members and officers should be circumspect. Those Members who serve on the Planning Committee should ensure they do not speak to members of the public, or pass or accept notes from them, during the course of a Meeting. If you leave the room during the Meeting, avoid speaking to any Applicants or objectors/supporters who may be waiting outside the room. If a Member leaves the room during debate or whilst an application is before the Committee they will not take part in the debate or vote on that application when they return.

Members' and officers' attendance at other public meetings

- 4.11 Officers, and Members who intend to take part in the decision-making process, should take care in attending meetings in connection with development proposals or submitted planning applications, unless those meetings have been arranged for the purpose of disseminating information by the Council, or by an appropriate local body, (such as a Parish Council), that is not openly advocating support for or opposition to the proposal, or unless it is known that those with different views will also be attending, so that a balance of views will be expressed. Members should take advice from the Director of Planning & Strategic Services or the Monitoring Officer before deciding whether to attend meetings that appear to have been organised for lobbying purposes.
- 4.12 When attending public meetings of any kind officers and Members should do no more than explain background or policy and, while a preliminary view on the matter may be expressed, no conclusive view should be offered on the merits or otherwise of the proposal, such as may indicate that the member's mind on the matter is now closed. It should be explained that a decision can only be made when all relevant information is available. Those with opposing views could make allegations of bias or prejudice because a balance of views was not presented. In some circumstances Members might feel it is valuable to attend meetings to listen to particular points of view, but should always make it clear that they must also listen to opposing arguments before reaching any conclusion.

5. PRE-APPLICATION AND PRE-DECISION DISCUSSIONS WITH APPLICANTS

Action by officers

- 5.1 In any discussions on planning issues, officers will always make it clear at the outset that any views they express are based on the officer's professional judgement and do not commit the Council to any particular decision.
- 5.2 Advice given will be consistent and based upon the Development Plan and other material considerations. Every effort will be made to ensure that there are no

significant differences in interpretation of planning policies between planning officers.

- 5.3 Officers taking part in discussions should make it clear whether they or the Committee are likely to take the decision, or if this is not yet known, the criteria used to decide whether an application is referred to the Committee.
- 5.4 Where the planning officer considers it appropriate, a written note of discussions will be made, and/or a follow up letter sent explaining the conclusions of the discussion. Two or more officers will attend potentially contentious meetings.

Attendance by Members at officers' pre-application or pre-decision discussions

- 5.5 If Members are involved in pre-application discussions, they will be advised by the appropriate professional officers of the Council. Members should not seek to advise applicants, their agents or objectors on the likely acceptability of planning proposals. The involvement of Members in such discussions will be recorded as a written file record. Officers may, on occasions, have confidential pre-application discussions with prospective developers which include commercially sensitive information. Any notes of such meetings which officers may make are confidential and must not be disclosed to third parties. If Members accompany officers at such meetings Members should not disclose any confidential matters discussed at such meetings to any third parties. All Members have access to any such confidential advice and will be bound by the same rules of confidentiality.

6. SITE VISITS

- 6.1 If a site visit is undertaken its purpose is for Members to gain knowledge of the development proposal, the application site and its relationship to adjacent sites. It is not a formally convened meeting that is open to the public, applicants and objectors. Members and officers may not discuss the merits of the application at the site visit with each other or with other persons
- 6.2 The Director of Planning & Strategic Services will ensure that all correspondence in relation to site visits clearly identifies the purpose of a site visit and the format and conduct of the visit. Written procedures setting out the purpose and conduct of site visits shall be maintained by the Director of Planning & Strategic Services and Monitoring Officer and communicated to all parties (Appendix A). Responsibility for ensuring compliance with those procedures at the site visit rests with the Director of Planning & Strategic Services or his/her representative.

Informal site visits

- 6.3 It is often helpful if Members familiarise themselves with a site before the application is debated by the Committee. However, Members should be aware that the Code of Conduct, and this Protocol, apply to them should they become involved in any conversation with a member of the public while visiting a site. Members are reminded that they have no legal right to enter private land without the permission of the owner or occupier.

7. OFFICER REPORTS TO COMMITTEE

- 7.1 Reports to Committee on planning matters must be accurate and cover all relevant points, including the substance of any objections and the views of those consulted, and an analysis of the key points. The report will refer to the provisions of the Development Plan, and all other relevant material planning considerations. The agenda will be released to Members a week before Planning Committee and there is an expectation that Members will take the time to

familiarise themselves with the full report, key issues and consultee responses for each application.

- 7.2 Unless the matter is considered to be urgent, all reports to the Committee will be in writing. Oral updates may be given at the Meeting in respect of any late information or representations received. All reports will have a written recommendation of action/decision, and oral reporting (other than to update an existing report) will only be used on rare occasions and will be recorded when this does occur. Officers' oral presentations should be confined to a brief summary of the written report together with any updating. Members are not bound to follow officers' recommendations, but if a contrary decision is made, it should be for clear cut planning reasons which need to be carefully minuted.
- 7.3 All reports will contain a technical appraisal that clearly justifies the stated recommendation.
- 7.4 All reasons for an officer recommendation must be clear and unambiguous.
- 7.5 Members will not seek to interfere with the impartiality of the advice contained in officers' reports or to put improper pressure on officers for a particular recommendation. This would be contrary to the Code of Conduct.
- 7.6 If the officer's report recommends approval of a departure from the Development Plan, the material considerations justifying the departure must be clearly stated in the report.

8. THE DECISION MAKING PROCESS

If there are technical or detailed questions that need to be asked at a Committee Meeting, whenever possible, advance warning should be given to the case officer. This will ensure that a prompt and full reply is provided, and the progress of the Meeting is not delayed.

Public participation

- 8.1 At meetings of the Planning Committee interested parties will be allowed to address Members in accordance with the scheme of public participation in operation at the time of the meeting.

Decisions contrary to officer recommendation

- 8.2 In discussing, and then determining, a planning application or other planning matter, Members will confine themselves to the planning merits of the case. The reasons for making a final decision should be clear and convincing, and supported by planning evidence. If Members wish to refuse an application against officer advice, or impose additional conditions on a permission, the reasons for refusal or the additional conditions must be clearly stated at the time the propositions are moved at the meeting.
- 8.3 If Members wish to approve an application that has been advertised as not in accordance with the development plan contrary to the officer's recommendation, the material considerations leading to the conclusion must be clearly identified, and how those considerations justify overriding the development plan clearly demonstrated.
- 8.4 If a resolution is passed which is contrary to an officer's recommendation (whether for approval or refusal) a copy of the minute showing the Committee's reasons will be placed on the application file.

Conduct of meetings

- 8.5 Conscious of the public arena in which planning decisions are made, Members will conduct the business of the Planning Committee in a fair and sensitive manner. Members and officers will address one another during the debate in a professional manner.
- 8.6 Legal and planning officers should always attend meetings of the Planning Committee, to ensure that procedures have been properly followed and planning issues properly addressed.
- 8.7 As well as registering and disclosing interests in accordance with the Code of Conduct, Members will follow the Code of Conduct requirement not to do anything which would cause the Council to breach equalities legislation; to treat others with respect; and not to use his or her position as a Member improperly to secure for themselves or any person an advantage or disadvantage. In particular, Members should take care when addressing the meeting to avoid making statements that might reasonably be regarded as stereotyping particular sections of the community.
- 8.8 Care should be taken by Members before introducing new information into the debate at the Committee as that might lead to consideration of an application being deferred or the Committee taking a decision on the basis of information which subsequently proves to be incorrect. Where a Member receives relevant information in respect of an application which is not contained in the Committee report, whenever possible the Member should advise the Director of Planning & Strategic Services directly so that the information can be confirmed before the Committee meeting.

Appeals against planning decisions

- 8.9 Where an appeal arises against a decision to refuse an application, officers or agents/lawyers appointed on behalf of the Council will represent the views of the Council at the appeal.
- 8.10 Where a Member wishes to support the Council, or an appellant, on any appeal against an Council decision on a planning matter, that Member shall as a matter of courtesy give written notice of his or her intention to the Monitoring Officer. Where the appeal is to be dealt with at an Inquiry, the notice shall be delivered to the Monitoring Officer and the appellant normally not less than five working days before the start of the Inquiry.

9. PLANNING ENFORCEMENT

- 9.1 Ward Councillors can help the work of the Council by acting as "eyes and ears" on the ground. If they believe there has been a breach of planning control, the enforcement officers should be informed promptly, and given as much information as possible. However, Members should not involve themselves in any subsequent investigation and should not seek to confront or negotiate with alleged "offenders".
- 9.2 Please remember that a breach of planning control is not a criminal offence. Whether or not enforcement action should be taken is a matter of judgement and expediency.

10. REVIEW OF DECISIONS

- 10.1 The Director of Planning & Strategic Services and Chairman of the Planning Committee will monitor Planning Committee decisions on a continuous basis. If concerns arise relating to decisions made contrary to the officer's recommendation, they will report these concerns to the Committee.

11. COMPLAINTS AND RECORD KEEPING

- 11.1 In order that any complaints can be fully investigated, record keeping will be complete and accurate. In particular, every planning application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings or significant telephone conversations. The same principles of good record keeping will be observed in relation to enforcement and Development Plan matters. Monitoring of record keeping will be undertaken on a continuous basis by planning Team Leaders.

12. REVIEW

- 12.1 This protocol will be kept under review and updated from time to time in the light of changes in law and practice, and having regard to experience and lessons learned from individual situations.

IN SUMMARY

DO:

- *look at the whole picture starting with the Development Plan*
- *think not only of your constituents but of the whole District*
- *if asked by the public, advise about procedures but nothing else*
- *remember at all times that Meetings are held in public*

DON'T *make your mind up in advance of a Planning Meeting - or give the impression you have done so.*

South Staffordshire Council

Code of Practice for Members and Officers - Planning Committee Site Visits

Development Management Services

November 2016

Introduction

In their publication, "Probity in Planning, the role of councillors and officers", the Local Government Association (LGA) gives advice on the conduct of committee site visits. It suggests that councils should set out the criteria for deciding when a site visit is justified and the procedures for such visits. In doing the LGA says the following:

- Site visits can cause delay and additional costs and should only be used where the expected benefit is substantial;
- They should be carefully organised to ensure that the purpose, format and conduct are clearly established at the outset and subsequently adhered to throughout the visit;
- It is acknowledged that the "triggering" of site visits by the ward councillor is a proper part of the representative role of councillors and should normally be acceded to but the "substantial benefit" test should still apply. It is good practice to keep a record of the reasons why a site visit is requested:
- 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 any photographs taken by officers (although if that is the case then additional illustrative material should have been requested in advance); or
 - there is good reason why the comments of the applicant and objectors cannot be expressed adequately in writing, or the proposal is particularly contentious.
- Such an inspection could be unaccompanied (ie without the applicant and objectors) or accompanied but run on the lines of a site inspection by a Planning Inspector.

Requests for a site visit

The approved procedure is that:

- Agendas sent out first class on Monday and should be received by Members on the Tuesday;
- Members will request site visits by contacting and giving reasons for them to the Strategic Development and Planning Manager by midnight on the Thursday;
- By midday Friday the Strategic Development and Planning Manager will agree the site visits with the Chairman that Members require;
- Strategic Development and Planning Manager informs Members, applicants and agents of the site visits by email and/or letter by the end of the Friday;
- Site visits to take place on the same day as Planning Committee.

Procedural Matters

In order for the system to work there are a number of procedural matters for councillors to be aware of.

1. In the absence of the named persons:
 - in the absence of the Chairman notification of site visits will be agreed with the Vice-chairman;
 - in the absence of the Strategic Development and Housing Manager then notice will be given to one of the Team Leaders in Development Management.
2. Notice of site visits will be sent out by e-mail and/or letter to councillors on the Friday of the week before the Committee meeting (or Thursday if Friday is a Bank Holiday).
3. Where Friday is a Bank Holiday notice of site visits must be received by the Chairman by the end of Wednesday.
4. The Chairman should keep a note of the reasons for the request for a site visit and who made it and pass this on to the Strategic Development and Planning Manager who will record it on the application file.

Requests for site visits will be considered critically by the Chairman in making a decision as to agree to the request for a site visit from a Councillor because:

- They can be time consuming and costly
- They need to add "substantial benefit" to the consideration of the application
- They should not be used as a delaying tactic in the processing of an application
- There may be alternative ways of obtaining the information such as by photographs or requests for other information
- Unless the objectives are clear a site visit may add little to the planning process and thus not be in the interests of achieving Best Value.

Attendance at site visits

Only elected members of the Council have a right to take part in the site visit together with:

- The Strategic Development and Planning Manager or his/her representative
- Any other officer of the Council or other agency who may be invited to give technical advice

The participation of any other persons is at the discretion of the Chairman.

Site visit procedure

All District Councillors are invited to attend any site visit.

The purpose of the site visit is to appraise Councillors of the application site and its surroundings, explain issues, clarify any matters concerning the application and to verify matters raised by representations on the application.

In order that information can be disseminated to all those present at the site visit it is important that those present remain together in a single group.

It may be necessary to view the application site and the proposals from adjoining land in which case approval to do so must be obtained.

It is not the purpose of the site inspection to hear representations from any parties, onlookers, objectors, supporters, applicants or agents.

The Chairman may ask the applicant/agent or consultee or third party to verify certain matters but this should be limited to obtaining information and not putting forward a case in support of the application,

The Chairman may at his/her discretion ask any objectors if there are any matters that they wish to draw the councillors attention to but again this should be on an informative basis only. Where residents have been invited to attend by a councillor then there is a joint responsibility on the Councillor to ensure that the terms of this protocol are maintained by the residents.

The purpose of the site visit is to gather information and therefore as a general rule those present should not become involved in general conversation/discussion/negotiation with those present.

Those present should not give opinions as to matters expressed by others present.

The procedure will be as follows:

- The Chairman will call the meeting to order and introduce those present.
- The planning officer, and any officers from other agencies, in attendance will summarise the application, any relevant planning history, the features of the site and the planning issues and material consideration.
- The Chairman will ask the local member, and/or a representative of the Parish Council if present, if there are any matters to which they wish to draw attention.
- Only the Chairman, or an officer, may address or question the applicant or agent for clarification of any matters of fact. Any other members should address their questions through the Chairman.

- At no time should members debate or opine the merits of the application.
- If requested, and it is in his/her view beneficial to the conduct of the site visit, the Chairman may agree to the site being viewed from adjoining land/buildings if the relevant landowner consents. In this case the meeting will be adjourned to the adjoining land and all members present will reconvene there and the visit will progress accordingly.
- Upon completion of the site visit the Chairman will close the site visit and, if appropriate, thank those in attendance for their assistance.

An oral report of the findings of the site visit will be given to the Planning Committee.

APPENDIX B – CHANGES TO THE CONSTITUTION – RULES OF DEBATE (NOW TO BE KNOWN AS STANDING ORDERS- CHANGES IN HIGHLIGHTING

16.0 VOTING

16.1 Majority

Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those councillors voting and present in the room at the time the question was put. Only those councillors who have been present for the entirety of the debate on the item in question are entitled to vote.

16.2 Chairman's casting vote

If there are equal numbers of votes for and against, the Chairman will have a second or casting vote. There will be no restriction on how the Chairman chooses to exercise a casting vote.

16.3 Method of voting

Unless this Constitution provides otherwise, or a recorded vote is demanded under Rule 16.4, the Chairman will at his or her discretion take the vote by electronic vote, show of hands or, if there is no dissent, by the affirmation of the meeting. Generally voting at Planning Committee will be by electronic vote unless the Chairman of the meeting decides otherwise or a recorded vote is to be taken.

16.4 Recorded vote

There shall be a recorded vote if:

- (a) the majority of Councillors present at the meeting demand it,
- (b) The law so requires it, including in relation to the adoption of the annual budget for the Council

Where there is a recorded vote the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes.

16.5 Right to require individual vote to be recorded

Where any Councillor requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether they voted for or against the motion or abstained from voting.

16.6 Voting on appointments

If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.