

PLANNING DEVELOPMENT CONTROL COMMITTEE

26 May 2005

REVIEW OF PLANNING PROTOCOL

Report of City Secretary and Solicitor

Contact Officer: Howard Bone Tel No: 01962 848552

RECENT REFERENCES:

ST41 Planning Protocol - Review Following Further Standards Board Guidance – Standards Committee 18 April 2005

EXECUTIVE SUMMARY:

The Committee held an informal meeting in October 2004, considering various aspects of the planning process. These considerations included a discussion on the workings of Sub-Committees and Viewing Sub-Committees.

Further Guidance from the Standards Board has been issued, focussing on lobbying and “dual-hatted” Members. At its meeting of 18 April 2005, the Standards Committee reviewed the Planning Protocol in the light of this Guidance, and experience of the Protocol in operation since the previous review.

The purpose of this report is to seek the views of the Planning Development Control Committee on the revised Protocol, including whether any further changes are required in respect of Sub-Committees and Viewing Sub-Committees, so these can be considered by Standards Committee, before a revised Protocol is adopted by Full Council.

RECOMMENDATIONS:

- 1 That the Committee consider the revised Planning Protocol and advise Standards Committee of any proposed amendments (including any amendments to the Protocol in respect of Sub-Committees and Viewing Sub-Committees), prior to the revised Protocol being considered by Standards Committee and recommended to Full Council for adoption.

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DETAIL:

1 Introduction

- 1.1 The Planning Protocol, which forms part of the Council's Constitution, was first adopted in April 2002. The Protocol sets out guidance for Members on dealing with planning matters, with particular reference to issues arising from the Code of Conduct.
- 1.2 The Planning Development Control Committee held an informal meeting in October 2004 to consider the operation of the planning system. These discussions included consideration of the operation of Sub-Committees and Viewing Sub-Committees.
- 1.3 The Standards Board for England has issued Guidance on lobbying and dual-hatted members, and Standards Committee considered this Guidance at its meeting of 18 April 2005 (report ST41 refers). The Committee considered a revised Planning Protocol, and suggested various amendments to it. The minutes of this meeting (including the amended Protocol) are attached to this report at Appendix 1. Report ST41 gives the full background to the suggested changes arising from the Guidance.

2 Viewing Sub-Committees and Sub-Committee meetings

Sub-Committee Meetings

- 2.1 At its informal meeting, the Committee noted that the procedure for setting up planning site visits was as set out in part 8 (paragraphs 8.8 and 8.9) of the Planning Protocol.
- 2.2 There was discussion over the selection of applications where a Sub-Committee would be appropriate. Previous practice had been for the DC Team Manager to discuss with the Chairman whether a scheme merited a Sub-Committee on the grounds that the development was contentious, complex, large scale, listed building, in the conservation area or involved a mix of ownerships. The outcome of this discussion would then determine if a Sub-Committee was established for that particular development.
- 2.3 As a result of the meeting, it was agreed that:-
 1. That the present arrangements for calling Sub-Committees (other than Viewing Sub-Committees) be kept under review.
 2. That the item on the agenda of PDC meetings be placed at the end when Members and Officers can assess the need of applications to be subject to a Sub Committee.

- 2.4 The Protocol (at paragraph 8.8) sets out the criteria and purpose for Sub-Committees. These are:-
- a) to consider the preparation of a development brief for a particular site, before an application has been submitted;
 - b) to consider the details of a planning application which is particularly significant; or
 - c) where the Planning Development Control Committee has taken the view that it was not possible to conduct a site visit with the public present.
- 2.5 At present, the procedural item "Membership of Sub-Committees" is still taken towards the start of the meeting in the procedural (as opposed to business) section. The Committee Administrator emails Members in advance giving details of application where Sub-Committees are likely to be considered. Members may wish to consider this issue (and any related changes to the Protocol) further.

Viewing Sub-Committee Meetings

- 2.6 At the informal meeting of the Committee, it was agreed that there was a need to make it clear to those present that there would not be an opportunity for further public speaking again at the subsequent Planning Development Control Committee.
- 2.7 This has been put into practice, with the Chairman pointing this out at the Viewing Sub-Committee meeting. The leaflet on Viewing Sub-Committees will be amended on the next reprint to make this clear. It might be helpful to include a note to this effect in paragraph 8.3 of the Protocol, by adding the sentence: "**Further public participation at the Planning Development Control Committee will not normally be permitted, unless new issues or information have emerged since the Viewing Sub-Committee**".
- 2.8 It was also agreed that once public participation at the Viewing Sub-Committee had been completed, and the Viewing Sub-Committee was ready to make its decision, Members of the Sub-Committee should assemble together (but within listening distance of the public present) in order that proper deliberation of the officers' recommendation can take place without interruption. **It is considered that the Protocol could be changed by adding in this wording to paragraph 8.4.**

3 Standards Committee Consideration

- 3.1 As indicated earlier, the Standards Committee considered amendments to the Planning Protocol at its meeting of 18 April 2005. Report ST41 sets out the background to the suggested changes as a result of the Guidance issued by the Standards Board on lobbying and dual-hatted members.
- 3.2 Appendix 1 comprises the minutes of this meeting, and includes the Planning Protocol with the changes proposed underlined/deleted. Changes in bold are changes which were not in the original ST41 report, but which Standards Committee felt were appropriate

4 Conclusions

- 4.1 Members are asked to review the proposed changes to the Planning Protocol (as set out in Appendix 1) and the possible amendments suggested in section 2 above, and

recommend accordingly to Standards Committee, prior to the revised Planning Protocol being adopted by Full Council.

OTHER CONSIDERATIONS:

5 CORPORATE STRATEGY (RELEVANCE TO):

5.1 Relevant to the aim of being more open and democratic in the way the Council conducts its business

6 RESOURCE IMPLICATIONS:

6.1 None

BACKGROUND DOCUMENTS:

Planning Protocol

Lobby Groups, Dual-Hatted Members and the Code of Conduct – Standards Board

APPENDICES:

Appendix 1 - Minutes of Standards Committee 18 April 2005 and revised Planning Protocol

APPENDIX 1**STANDARDS COMMITTEE****18 April 2005****Attendance:**

Councillors:

Baxter (Chairman) (P)

Cook (P)
Hoare
Nelmes (P)Nunn (P)
Quar
Rees (P)**Independent Members and Parish Representatives in attendance:**Professor R Johns (Independent Member)
Mr J Spokes (Independent Member)
Mr D Makewell (Parish Representative)

1. APOLOGIES

Apologies were received from Councillor Quar and Dr B Spender (Independent Member)

2. MINUTES

RESOLVED:

That the minutes of the previous meeting of the Committee held on 7 February 2005 be approved and adopted.

3. PUBLIC PARTICIPATION

There were no questions asked or statements made.

4. DRAFT PROTOCOL REGARDING MEMBER PARTICIPATION IN THE CONSIDERATION OF GRANT AID APPLICATIONS FROM LOCAL ORGANISATIONS

(Report ST40 refers)

RECOMMENDED:

THAT THE DRAFT PROTOCOL REGARDING MEMBER PARTICIPATION IN THE CONSIDERATION OF GRANT AID APPLICATIONS FROM LOCAL ORGANISATIONS, AS APPENDED TO THE ABOVE REPORT, BE APPROVED AND INCLUDED IN PART 5 OF THE CONSTITUTION.

4. **PLANNING PROTOCOL - REVIEW FOLLOWING FURTHER STANDARDS BOARD GUIDANCE**

(Report ST41 refers)

RESOLVED:

1. That, subject to inclusion of the proposed amendments now made and shown in italic bold type in Annexe A to these minutes, the proposed amendments to the Planning Protocol (as set out in Appendix 2 of the above report) be agreed and forwarded to the Planning Development Control Committee for further consideration.

2. That a further report be submitted to Standards Committee thereafter, for final approval and recommendation to Council for adoption.

3. That the Director of Development be requested to give consideration to preparing an explanatory note to be given to all applicants and potential applicants, emphasising that whilst during negotiations officers may sometimes indicate that a particular approach to a development might be acceptable to the Local Planning Authority, the final decision would be taken by either a panel of officers or the Planning Development Control Committee, which could take a different view.

5. **CODE OF CONDUCT AND RELATED ISSUES – REVIEW OF 2004/05**

(Report ST42 refers)

RESOLVED:

1. That the Standards related activities undertaken during 2004/05 be noted.

2. That, in addition to meeting other training needs which may arise, two Code of Conduct training evenings continue to be held each year, one for City Councillors and one for Parish Councillors/Clerks.

3. That the Independent Members and Parish Representatives be requested to undertake further evaluation of Committee meetings during 2005/06, to provide ongoing monitoring regarding the level of compliance with the Code of Conduct and good meetings practice generally.

4. That the Work Programme for the Committee in 2005/06 be approved.

6. **VOTE OF THANKS**

As this was the last meeting of the Committee in the current Municipal Year, the Chairman thanked in particular Dr Spender and Mr Makewell for their services during the past four years, as they had not sought re-appointment for a further two year term.

The meeting commenced at 6.00 pm and concluded at 7.15 pm.

ANNEXE A

PROTOCOL ON PLANNING MATTERS – PROPOSED CHANGES

1. GENERAL ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS

- 1.1 The public are entitled to expect the highest standards of conduct and probity from all persons holding public office. There are statutory provisions and codes setting those standards, which must be followed if the public perception of the integrity of local government is to be maintained and improved. Dealing with planning matters places upon Members a particular need for probity and they must ensure that only material planning considerations are taken into account.
- 1.2 This Protocol deals primarily with planning applications, but the principles apply with equal vigour to consideration of Regional Spatial Strategies, Local Development Documents, Supplementary Planning Documents and other Development Plan Documents, Development Briefs, enforcement cases and all other planning matters. Where Regional Spatial Strategies, Local Development Documents and other Development Plan Documents ¹are concerned, this Protocol does not preclude Members from taking part in any discussions relating to the general principles of land allocation policies outside the Council's formal meetings arrangements, providing such discussions do not include reference to individual site allocations.
- 1.3 Members are reminded that they are required to comply with the City Council's adopted Code of Conduct (included within Part 5 of the Constitution).
- 1.4 Section 38(6) of the Planning and Compulsory Purchase Act 2004² requires all planning applications to be determined by reference to the Development Plan, if material to the application, and any other material consideration. The emphasis in determining applications is upon a plan led system.
- 1.5 Officers involved in the processing and determination of Planning matters must also act in accordance with the Employees Code of Conduct (included within Part 5 of the Constitution) and with the relevant sections of the Royal Town Planning Institute's Code of Professional Conduct.
- 1.6 Members and Officers are reminded that the Council has adopted a number of codes relating to different aspects of conduct in public life and copies are included in the Constitution. The overriding principle of this Protocol is that Members should not favour any individuals or groups and must represent their constituents as a body and vote in the interests of the District as a whole. Whilst Members should take account of all views expressed, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.
- 1.7 Members and Officers should not accept gifts or hospitality. They should comply strictly with the City Council's adopted Code of Conduct and Council's approved Guidance on Gifts and Hospitality contained in Part 5 of the Constitution. If, however, a degree of hospitality is unavoidable, it should be ensured that this is minimal and its receipt is declared as soon as possible. Members should send written notice to the City Secretary and Solicitor.

¹ Amended to reflect the change from Structure and Local Plans, to Local Development Documents and Development Plan Documents (Planning and Compulsory Purchase Act 2004).

² Amended to reflect changes (Planning and Compulsory Purchase Act 2004).

Officers should notify their Director. In all cases details must be entered in the Gifts and Hospitality record book.

- 1.8 Regular training courses will be provided for Members on planning issues, and Members are strongly encouraged to attend these courses. Members are reminded that attendance will be monitored by reports to Standards Committee.

2. DECLARATION AND REGISTRATION OF INTERESTS

- 2.1 Members should observe the guidance on declaring personal and prejudicial interests, and not participating in matters involving a prejudicial interest, as set out in:

- (i) the City Council's adopted Code of Conduct
- (ii) "Lobby Groups, Dual-Hatted Members, and the Code of Conduct" published by the Standards Board for England
- (iii) "The Guidance for Good Practice on Members' Interests", published by the Commission for Local Administration (the Ombudsman)

copies of which are in the Members Library.

- 2.2 The Register of Members' Interests maintained under the City Council's adopted Code of Conduct will be updated at least every twelve months. Where any changes occur to Member's interests, whether by way of addition or deletion, they should be notified, in writing, to the City Secretary and Solicitor as soon as they occur, by the Member concerned.

- 2.3 Members who have substantial property interests, or other interests which would prevent them from voting on a regular basis, should avoid serving on the Planning Development Control Committee.

- 2.4 Guidance on what constitutes a personal interest or a prejudicial interest is contained in the City Council's adopted Code of Conduct and in the Guidance issued by the Standards Board for England and the Ombudsman. *The guiding rule is that a Member should not use his/her position improperly to confer on or secure for himself or for any other person, an advantage or disadvantage.*

- 2.5 Paragraph 8 of the City Council's adopted Code of Conduct defines a "Personal Interest". A Member will have a Personal interest in a matter if:-

- a) The matter relates to an interest which must be registered under Paragraphs 14 and 15 of the City Council's adopted Code of Conduct (including employment, shareholdings, contracts with the City Council and land interests);
- b) A decision on the matter might reasonably be regarded as affecting a Member's well-being or financial position, to a greater extent than other Council Tax payers, ratepayers or inhabitants of the area. Paragraph 8 of the Code extends this to include (amongst others) matters which might affect the employer, business, employees, and company shareholdings, of a Member or his relatives or friends.

Reference should be made in all cases to the City Council's adopted Code of Conduct to ascertain whether or not an interest is a personal interest.

Personal interests must always be declared, at the commencement of the meeting, or (if later) when the interest becomes apparent.

The City Council's adopted Code of Conduct makes further provisions where a personal interest is also a prejudicial interest (paragraph 10). Prejudicial interests are those interests which "*a member of the public, knowing the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest.*"

In such cases, then not only must the interest be disclosed, but (subject to certain exceptions specified in paragraph 10(2) of the Code) the Member should withdraw from the meeting room and take no further part in the relevant proceedings. The responsibility for declaring an interest lies with the individual Member.

- 2.6 As advised in the Standards Board for England Guidance "Lobby Groups, Dual-Hatted Members, and the Code of Conduct", a District Councillor who is also a Parish/Town Councillor should declare a personal interest in a planning application made by a private individual where the Parish/Town Council has submitted observations to the District Council on that application. Such Members will not necessarily have a prejudicial interest in such an application, but they³ should, however, still consider whether it is appropriate to participate in the District Council decision, in the light of the facts of the case and their own particular circumstances. Further advice is contained in paragraph 4.13 below on whether participation in Parish/Town Council decisions prevents participation at District Council level.
- 2.7 Seminars are held after the Council elections to give guidance to all Members on the declaration of interests and other issues in the City Council's adopted Code of Conduct. Members of the Planning Development Control Committee will also receive specialised training in relation to planning regulations and procedures, and the practical operation of this Protocol and the Development Plan (i.e. the Regional Spatial Strategy and Local Development Documents).

3. DEVELOPMENT PROPOSALS SUBMITTED BY OR INVOLVING MEMBERS AND OFFICERS: PROPOSALS FOR COUNCIL DEVELOPMENT

3.1 Where Members or Officers:-

- (a) own land which is the subject of, or is affected by, a planning application (whether that application is submitted by the Member, another member of his or her family, or a third party); or
- (b) submit their own development proposals to the Council (either themselves or via an agent); or
- (c) object to applications where such an objection would constitute a personal **and** prejudicial interest (e.g. objecting to an application on a neighbour's land)

³ Amended in light of new Standards Board Guidance

they should immediately notify the City Secretary and Solicitor (as the Council's Monitoring Officer) and Director of Development Services, giving details of the application and their involvement/interest. Notification should be in writing, preferably by email or fax. Members should treat this as a personal obligation, and not leave such notification to their agent. Members should take no part in the processing of their own applications, or applications in which they have a personal and prejudicial interest.⁴

- 3.2 Proposals falling under Paragraph 3.1 above (applications submitted by Members and Officers, or where the Member/Officer has objected in situations where this would constitute a personal and prejudicial interest) should be reported to the Planning Development Control Committee as main items and not dealt with by Officers under delegated powers. As part of the report the Director of Development should confirm that the application has been processed normally. Under the adopted Codes of Conduct, neither Members nor officers should seek to improperly influence a decision about their own planning applications, or about other applications in which they have a personal and prejudicial interest. This does not mean that a Member has fewer rights than the general public to explain and justify the proposal or their objection to an officer, before the application is considered by the Planning Development Control Committee. In certain circumstances, it may be more appropriate to request a friend, or engage a professional consultant, to act on their behalf. Contact with officers should be with the relevant Director or a senior manager, to avoid any suggestion of undue influence being put on staff.
- 3.3 Proposals for the Council's own development (or a development involving the Council and another party) should be treated in the same way as those by private developers and in accordance with guidance given in Circular 19/92. This Circular outlines that the same administrative process, including consultation, should be carried out in relation to the Council's own planning applications, and that they should be determined against the same policy background (i.e. the Development Plan and any other material planning considerations). This paragraph also applies to private applications in respect of Council owned land (e.g. prior to a land sale being agreed or negotiated). Decisions must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Council if the development is permitted. It is important that the Council is seen to be treating such applications on an equal footing with all other applications as well as actually doing so.
- 3.4 Members who are also members of other authorities or public bodies, or who have been appointed as the Council's representative on a body (such as a youth club or village hall association) will have a personal interest in a planning application submitted by that body. Such applications will usually have a direct impact on the body, and will therefore tend to be prejudicial. Members should always consider whether such an interest is prejudicial, and should normally withdrawn from the room during consideration of such applications (rather than make use of Paragraph 10(2) of the Code), in order to ensure public confidence in the decision-making process.⁵

⁴ This paragraph has been revised to cover both councillors' own applications, and those applications where they have objected and have a personal and prejudicial interest. It has also been extended to cover officers' interests too.

⁵ Inserted to clarify position for dual-hatted Members.

- 3.5 Members are reminded that Personal Interests are widely defined in Paragraph 8 of the Code of Conduct, and extend to include interests of family and friends of Councillors, and their employers. ***Careful consideration will need to be given as to whether an applicant or objector comes within this definition, in which case a personal and prejudicial interest needs to be declared and the Member cannot take part in the decision making process. If it is merely someone who the Member knows in the wider community and with whom they have no close personal links, such a declaration is not necessary.***
- 3.6 Members who do have a personal and prejudicial interest in an application should ensure that any written representations they wish to make are sent to officers, and not Members. This will avoid Members breaching the Code requirement prohibiting Members from improperly influencing the decision on the matter.⁶
- 3.7 Serving Members and Officers should never act as agents for individuals (including a company, group or body) pursuing a planning matter.⁷

4. LOBBYING OF AND BY MEMBERS AND ATTENDANCE AT PUBLIC MEETINGS

- 4.1 If Members are to undertake their ward roles fully, it is very likely that they will be subject to lobbying on planning matters and specific planning applications. Great care is essential in these circumstances to maintain the Council's and indeed the Member's own integrity and the public perception of the planning process.
- 4.2 It is clear that all Members of Planning Development Control Committee have a particular responsibility in this respect. However, where local plan issues are concerned, Members of ***either*** a scrutiny committee considering Development Plan Documents ***or*** Cabinet will also be affected. On those rare occasions when a planning matter is referred to full Council, that responsibility will extend to all Members.
- 4.3 Taking account of the need to make decisions impartially, Members should not favour or appear to favour any person, company, group or locality. Members should not openly and finally declare which way they intend to vote in advance of the meeting. To do so without all relevant information and views would be unfair and prejudicial and may amount to maladministration. If Members are in a position with regard to any matter where they consider it necessary to express an opinion, they should make it clear that this is a preliminary view and that they will only be in a position to take a final decision after hearing all the relevant evidence and arguments at Committee. If the Member feels that the public would believe he/she had come to a conclusive view on the planning matter or application before the meeting, then he/she should not take part in the debate, nor vote on the issue.
- 4.4 Where the Monitoring Officer believes that a Member has prejudiced his/her position by expressing a conclusive view on an application before its determination by the Committee, the Monitoring Officer will advise the

⁶ Inserted to remind Members of the need not to act improperly.

⁷ Moved to reflect that Members acting as agents is less common than Members submitting their own planning applications.

Member that it would be inappropriate for him/her to take part in the debate, or vote on the application. The final decision, however, rests with the Member.

- 4.5 It is very likely that, from time to time, Planning Members will be approached by an applicant prior to a meeting at which his/her application will be considered. The Member should have regard to the advice in para 4.1 - 4.3 above and restrict discussion to issues of fact, without expressing either support for or opposition to the proposal. Where applicants require planning or procedural advice they should be referred to the Officers.
- 4.6 While 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 relevant 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. In this regard, political group meetings prior to Planning Development Control Committee meetings are not appropriate and should not be held. Votes on planning matters should not be taken at political group meetings. The view of the Ombudsman is that the use of political “whips” at group meetings in this way is maladministration. Decisions can only be taken after full consideration of the officer’s report and information and discussion at the Committee.
- 4.7 The Chairman and Vice-Chairman of the Planning Development Control Committee should attend a briefing with officers prior to Committee, to help them give an effective lead at the meeting. Such a briefing with officers is also available to other Group Representatives on the Committee.
- 4.8 The Ward Member role in respect of planning applications can present a dilemma between maintaining an open mind and still providing effective representation of the concerns of local people. Ward Members involved in decision making on planning matters should not organise local support or opposition to a proposal, lobby other Members, or act as an advocate. However, other Ward Members (who are not part of the decision making process) can make representations and address the relevant Committee. In the case of a one Member ward where the Member serves on the Planning Committee, an adjoining Ward Member should be requested to assist. If that is not possible, or in exceptional cases where the Member has found it necessary to campaign for a particular point of view, the Member can step down from the Committee for that item, so that he/she can fully represent local views by addressing the Committee as a Ward Member.
- 4.9 Members who are also members of lobby and campaign groups should carefully consider whether they have an interest in a matter where their group has commented or is otherwise involved. Membership of such groups will usually be an interest which must be registered in the Register of Interests under paragraph 15(d) of the Code of Conduct (body whose principal purposes include the influence of public opinion or policy). “Membership” should be widely interpreted, and will include acting and participating as a member of a group, as well as being formally signed up.

- 4.10 Where a lobby or campaign group has made representations on an application under discussion, Members who are members of the group should declare a personal interest in the matter. They should carefully consider whether the interest is also a prejudicial interest (in which case they should leave the room). The nature of the Member's involvement in the group and its decision on the issue, and what the Member has publicly stated in respect of the application, will be factors which should be taken into account. Members who are members of a single issue lobby group which makes representations on a particular application, and Members who publicly and actively participate in lobby group campaigns against particular applications, will usually have a prejudicial interest in the application and would have to leave the room during the discussion.
- 4.11 As explained above, Members who are, or might be seen to be, members of a campaign or lobby group, may have a prejudicial interest in an application about which the group is campaigning, and therefore may not be able to remain in the room and speak at the appropriate time. If Members are invited to join a particular campaign group, they may wish to point out the implications of this, and instead continue to remain outside the group, whilst receiving information and views from the group together with any representations they receive from others. They may thereby be able to speak at the Planning Development Control Committee meeting where the application is considered.
- 4.12 If a Member involved in determining planning matters has responded to lobbying by campaigning for a particular course of action prior to a Committee meeting (thereby ***appearing to indicate*** his or her views about the application in advance), but does not have a prejudicial interest (see 4.10 above), that Member should stand down from the Committee for that item. A Portfolio Holder should also consider whether they might be perceived as having pre-determined the issue and whether they can still participate in a decision. In such instances they can still address the Committee as a Ward Member or Portfolio Holder (see 4.8 above), after which they should sit apart from the Committee and not participate in the decision making process for that item.
- 4.13 Members who are also on their Parish Council will need to carefully balance their right to participate in discussions on applications at Parish level, with the need to approach planning matters at District level with an open mind. Expressing a view or voting on the information available to the Parish Council of itself should not disqualify a District Councillor from participating in later decisions at District level. In such cases at the Parish Council, the District Councillor should indicate that he/she can only come to a final view having heard the latest information available at the relevant District Council meeting. The District Councillor should also not be involved in active campaigning for a particular cause or organising local support or opposition to the proposal. At the District Council meeting the Member will declare a personal interest in the matter, and ⁸have regard to the need to balance the circumstances of the particular case with the latest information, plan policies and other material considerations. Some Members who are both parish and district councillors avoid the potential conflicts mentioned above by not serving on parish council planning

⁸ Inserted to ensure personal interests are always declared in dual-hatted situations.

committees (where appointed) or leaving before planning matters are discussed.

- 4.14 **Members** who are **also** members of a parish council which submits a planning application will normally have a personal and prejudicial interest in the application, and should leave the room during consideration of such applications.⁹
- 4.15 **A** Member of the Council should **not** put pressure on officers for a particular recommendation.
- 4.16 Members involved in determining planning matters will almost certainly be invited by applicants from time to time to informally visit application sites, prior to a committee meeting. Whilst such invitations may be accepted, Members must be careful about what they say and recall the guidance given in para 4.3 above. As a reminder, they should explain that whilst they can listen to what is said, to express a firm point of view or an intention to vote one way or another **will exclude them from the final decision making process.**
- 4.17 Officers involved in the processing or determination of planning matters should not attend public meetings in connection with development proposals (i.e. pre-application) or submitted planning applications, unless those meetings have been arranged by or with the express agreement of the Council. To do so could lead to allegations of bias or prejudice in relation to a particular point of view. If put in such a position of attending meetings arranged by, or with the consent of the Council, or by accident, officers should take great care to maintain impartiality, concentrate on providing factual information, listen to comments and avoid giving views on the merits or otherwise of the proposal.
- 4.18 Similarly, Members involved in the determination of planning applications should take great care to maintain impartiality when attending public meetings in relation to planning matters. At such meetings it is preferable for no view on the merits or otherwise of a proposal to be given. But if a view is expressed, it should be made clear that the view is based on the information available at that time and a conclusive decision can only be made when all relevant information is available, at the meeting at which the matter is to be determined.
- 4.19 If Members consider that they have been exposed to undue or excessive lobbying or approaches, these should be reported to the Monitoring Officer, who will in turn advise the appropriate officers (usually the Chief Executive and/or the Director of Development).

5. OFFICERS' PRE-APPLICATION DISCUSSIONS WITH APPLICANTS

In any discussions on planning issues, it will always be made clear at the outset, that such discussions will not bind the Council to make a particular decision, and that any views expressed are based on the officers provisional professional judgement but do not commit the Council to any particular decision. **A leaflet to this effect will be handed to applicants.**

5.1

⁹ This new provision makes clear the position where a parish council submits its own application.

- 5.2 Advice given will be consistent and based upon the Development Plan (i.e. Structure and Local Plans) and other material considerations. Every effort will be made to ensure that there are no significant differences of interpretation of planning policies between planning officers.
- 5.3 At the beginning of pre application discussions, the officer will hand to the applicant/agent a disclaimer based upon para 5.1 above. Where appropriate, two or more officers will attend potentially contentious meetings, with a follow up letter sent particularly when material has been left with the Council. Officers will make a file note in every case
- 5.4 Every effort will be made to ensure that the advice given is impartial and is seen to be.
- 5.5 To maintain impartiality, it is preferable that Members do not take part in the officers' pre-application discussions with applicants. Should there be occasions when Members are involved, they will be advised by the appropriate professional officers of the Council, which will always include a senior planning officer. The involvement of Members in such discussions will be recorded as part of the written file record. Members should not offer advice in such situations.

6. OFFICER REPORTS TO COMMITTEE

- 6.1 Reports to Committee on planning matters must be accurate and cover all relevant points. Where a planning application is subject to a full report this will refer to the provisions of the Development Plan, and all other relevant material planning considerations. Where appropriate this will include a full description of the site and any related planning history. The report will also summarise the representations and consultations made in response to the application.
- 6.2 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 carefully minuted when this does occur.
- 6.3 All reports will contain a technical appraisal which clearly justifies the stated recommendation.
- 6.4 All reasons for refusal and conditions to be attached to permissions must be clear and unambiguous.

7. THE DECISION MAKING PROCESS AND DECISIONS CONTRARY TO OFFICER RECOMMENDATION AND/OR THE DEVELOPMENT PLAN

- 7.1 In determining all types of applications submitted pursuant to the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Council will follow the guidelines adopted and attached as Appendix A to this Protocol. This will be subject to change from time to time to reflect government guidance and case law.
- 7.2 At meetings of the Planning Development Control Committee applicants/agents, Parish and Town Councils, and other interested parties will

be allowed to address Members in accordance with the scheme of public speaking in operation at the time of the meeting.

- 7.3 In discussing, and then determining, a planning application or other planning matter, Members will confine themselves to the planning merits of the case and 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 to be applied must be clearly stated at the time the propositions are moved at the meeting. If necessary, the application should be deferred to allow time to consider the precise wording.
- 7.4 If a resolution is passed which is contrary to a recommendation of the Director of Development (whether for approval or refusal), the reasons for such a decision will appear in the minutes of the Committee. Officers should also be given the opportunity to explain the implications of the contrary decision. In addition the manner of voting of individual Members shall, upon their request, be recorded in the minutes.
- 7.5 Conscious of the public arena in which planning decisions are made, Members will conduct the business of the Planning Development Control Committee in a fair and sensitive manner. The debate on a planning application will be confined to the planning considerations of a development proposal. Members and officers should address one another during the debate in a proper manner.
- 7.6 Due to the quasi-judicial nature of the Planning Development Control Committee, a Member cannot vote on an application unless he/she has been present throughout the whole consideration of that item.
- 7.7 When an application is decided at Committee and the applicant/objector/public speaker then leaves the meeting room, Members who have taken part in the decision making process should normally refrain from immediately following them out of the room and engaging them in conversation. Such action can create an unfortunate public perception regarding the impartiality of the Member regarding the application and should, therefore, be avoided. In addition, it may also mean that they would miss the introduction of the next item and therefore be unable to participate under the terms of para. 7.6 above.
- 7.8 If the report of the Director of Development recommends approval of a departure from the Development Plan, the justification for this should be included, in full, in the report.
- 7.8 Senior Legal and Planning Officers should always attend meetings of the Planning Development Control Committee and any Committees/Sub-Committees with significant delegated powers which deal with planning matters, to ensure that procedures have been properly followed and planning issues properly addressed.
- 7.9 Members with a personal and prejudicial¹⁰ interest, which they are under an obligation to declare, should withdraw from the meeting and not speak or vote

¹⁰ Inserted to clarify that Members need only withdraw when they have a personal **and** prejudicial interest, rather than a personal interest only.

in the decision making process. If they insist on remaining, the Member's action may be investigated by the Standards Board, and the decision reached by the relevant Committee is likely to be void on the basis of being contrary to the rules of natural justice. In addition, those Members who have indicated before the meeting that they had reached a conclusive view on an application or other planning matter, should consider carefully whether their continued involvement in determining the application or other matter would prejudice the integrity of the planning process. Their continued involvement could amount to maladministration. In this connection Members' attention is drawn to the advice in paragraph 4 above.

- 7.10 Where a Member wishes to support the Council or an appellant in respect of any appeal against an application refused, or an Enforcement Notice issued, by the Council, that Member shall as a matter of courtesy give written notice of his/her intention to the City Secretary and Solicitor and the appellant. Where in these cases the appeal is to be dealt with at an inquiry or informal hearing, such notice shall be delivered to the City Secretary and Solicitor and the appellant normally not less than five working days before the commencement of the inquiry.
- 7.11 In deciding whether to make representations in a personal or private capacity, the Member should consider very carefully beforehand the advice given in the City Council's adopted Code of Conduct.
- 7.12 Only officers and Members of the Council who are prepared to observe this Protocol ought to be involved in the process of dealing with planning matters, determining planning applications and applications for listed building consent and conservation area consent.

8. SITE VISITS

- 8.1 Officers will seek to inform Members at a Committee meeting of the details of a planning application by the use of plans, photographs, videos, and other visual aids as appropriate. A decision by the Planning Development Control Committee to carry out a site inspection should normally only take place where objective decisions cannot be taken without viewing the site and adjoining properties. Site visits will be carried out by a Planning (Viewing) Sub-Committee, established with five or seven members of the parent committee (normally including the Chairman and Vice-Chairman) which will consider the proposal on site, and make a recommendation to the following Planning Development Control Committee. Examples of when site visits might be appropriate would be:
- There is considerable local concern about a proposal, allied to planning reasons for carrying out a visit (e.g. the physical relationship of the site to other sites in the neighbourhood).
 - The submitted plans are not clear as to the exact nature of the proposal.
- 8.2 The purpose of a site visit is for Members to gain knowledge of the development proposal, the application site and its relationship to adjacent sites. They should not be used **merely** to appease local opinion or allow additional public participation. Where appropriate, developers will be asked to peg the site out to show the proposed development. The minutes of the

meeting referring an application to a site visit should specify the reasons why this course of action is being taken.

- 8.3 Following site visits, officers will prepare reports on the planning issues and any relevant information obtained from the site visit to enable the Planning Development Control Committee to determine the application.
- 8.4 The agreed procedures normally allow Members to receive representations from any interested party during the course of the site inspection. Such representations will be governed by the scheme of public participation at site visits in operation at the time of the visit. If there are a number of interested parties, the Chairman may request that contributions be restricted to nominated spokespersons. Any public participation will normally take place after a presentation from officers. Members may ask questions during the site visit. However decisions are rarely made at the site visit and it is more usual for a recommendation to be made to the next Development Control Committee. It is essential that Members and Officers ensure that those attending, or making representations, are not led to believe that a decision has been taken on the visit, or that conclusive views have been reached. On rare occasions the Sub-Committee will have delegated powers to determine the matter. In those circumstances it will adjourn to an appropriate venue at a time and date which has been published in accordance with the provisions of the Local Government Act 1972.
- 8.5 The City Secretary and Solicitor will ensure that all correspondence in relation to site visits clearly identifies the purpose of a site inspection, the format and conduct of the inspection and if appropriate, the procedure for applicants/agents and interested parties to address elected Members.
- 8.6 In the case of meetings of the Planning (Telecommunications) Sub-Committee, meetings will take place on site, and public participation will be permitted in line with the current public participation procedures and subject to the Chairman's discretion. Due to the strict time limits on matters which are considered by the Sub-Committee, the Sub-Committee has delegated powers, and will normally make a decision on site.
- 8.7 In some instances the Planning Development Control Committee may take the view that it may not be practicable for either a Planning (Viewing) Sub Committee or the Planning (Telecommunications) Sub Committee to conduct a site visit with the public present eg having regard under the Council's Procedure Rules for the need for orderly conduct and/or any physical problems with site access. In such cases the procedure set out in paras 8.8 and 8.9 below may be utilised to provide for public participation.
- 8.8 Sub Committees may be formed, and meetings held, to a) consider the preparation of a development brief for a particular site, before an application has been submitted or b) consider the details of a planning application which is particularly significant, or c) where the Planning Development Control Committee has taken the view that it was not possible to conduct a site visit with the public present. Members, officers, and the Ward Member(s) may visit the site (in the company of the developer) immediately prior to a Sub Committee meeting, in order that they may familiarise themselves with the site and the planning issues. The site meeting will be carried out in the same way as a site visit by a planning inspector following a planning appeal. Accordingly, Ward Members and developers will be permitted to point out factual aspects of

the site and the proposed development only, and will not be allowed to present their case (whether for or against the proposal). Developers will be encouraged to inform the Officers of the features on site that are relevant so that the Officers can point these out to Members. This will mean that the developer's role will be to ensure the safety of Members and Officers while they are on the site.

- 8.9 The public will not be permitted to attend site visits preceding such Sub Committees. However, following such a site visit, Members will adjourn to a local meeting room, where public participation will be permitted, subject to the Chairman's discretion under the Council's Procedure Rules, and the developer and Ward Members will be allowed to make representations. The Sub Committee will make a recommendation to the relevant scrutiny Committee or Cabinet (for development briefs) or Planning Development Control Committee (in the case of planning applications) after its deliberations.

9. REVIEW OF DECISIONS

- 9.1 At least on an annual basis, the Planning Development Control Committee will make a review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations. A similar review in respect of officers delegated decisions will also be undertaken. This audit may be carried out in conjunction with an audit of the effectiveness of the planning process and may involve visits to application sites.
- 9.2 The Planning Development Control Committee will formally consider the outcome of this review, and any amendments to existing policy or practice will be identified. Such reviews will be in addition to any exercise undertaken by the Principal Scrutiny Committee, relevant Performance Improvement Committees, or the Winchester District Local Plan Committee as part of their work.

10. COMPLAINTS AND RECORD KEEPING

- 10.1 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.
- 10.2 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 Managers in the Development Directorate.

APPENDIX A

Guidelines on Material Considerations for Determining Planning Applications**A. Applications Under the Town and Country Planning Act 1990 (TCPA)**

- (i) Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires all planning applications to be determined by reference to the Development Plan, if material to the application, and any other material consideration. The Development Plan includes the Regional Spatial Strategy and Local Development Documents. If the Development Plan is material to the application then the statutory provision is that the application should be determined in accordance with the Development Plan unless material considerations indicate otherwise. The emphasis in determining applications is upon a plan led system.
- (ii) Other material considerations include policies and proposals in emerging Local Development Documents which will gain increasing weight as the Documents approach adoption. Where policies appear in a Deposit Draft and have not been objected to, considerable weight should attach to those policies. Where other documents are incorporated within a Local Plan and are able to be the subject of consultation and objection also, such as Supplementary Planning Documents, they too will be material to the planning decision which is to be taken.
- (iii) Material considerations include also national planning guidance in the form of Circulars and Planning Policy Guidance and case law. A ministerial statement may be a material consideration.
- (iv) In exceptional circumstances the personal circumstances of an applicant for planning permission may be a material consideration which may outweigh other planning considerations. Where this is the case specific and valid reasons must be given to justify an exception.
- (v) What constitutes a material consideration is a matter of law. The weight to be attached to the consideration is a matter of planning judgement for the decision maker having regard to the planning evidence. In attaching weight to any offers of community benefit accompanying any planning application Members will be mindful of the Advice in Circular 1/97 (planning obligations; Section 106 Agreement) as to the legality and materiality of such offers.
- (vi) Consider thoroughly any advice given by a statutory consultee or relevant Government Department, including views expressed by English Heritage or the Environment Agency.
- (vii) Take into account the view of local residents when determining a planning application, but recognise that such opposition cannot be a reason in itself for refusing planning permission unless founded on valid planning reasons, which are supported by substantial evidence (Circular 8/93 – Annex 3 Paragraph 15).
- (viii) Take into account earlier Council decisions, appeal decisions in relation to the site, or other related appeal decisions.
- (ix) Not prevent, inhibit or delay development which could reasonably be permitted.

- (x) In relation to planning conditions, avoid the imposition of conditions which are unnecessary, unreasonable, unenforceable, imprecise or irrelevant.
- (xi) In determining planning applications, the Human Rights Act 1998 requires that local planning authorities must not act in a way which is incompatible with the Convention Rights protected under the Act. In certain cases, interference with a Convention Right may be permissible if it is necessary for specified reasons, is proportionate, and in the public interest.

B Application Under the Planning & Listed Building Act (PLBCA)

- (i) It is now established that the determination of planning application and applications for PLBCA are two separate statutory duties. The provisions of the TCPA do not override those of the PLBCA.
- (ii) The Development Plan contains policies that deal with development in Conservation Areas and applications for Listed Building consent to which under the PLBCA to enable them to consider the desirability of preserving the building or its setting or any feature of special historic interest or the Conservation Area.