

# PART 5

## Codes and Protocols

### Part 5D – Planning Code of Conduct (20 July 2015)

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## Introduction

This Code of Conduct applies to all members dealing with planning matters, with some sections applying to all members of the Council and other sections applying to members on the Planning Committee (including substitutes).

Planning is not an exact science. Rather it relies on informed judgement within a firm policy context. It is often highly contentious because its decisions affect the daily lives of everyone and the private lives of individuals, landowners and developers. This is heightened by the openness of the system (it actively invites public opinion before taking decisions). This is reinforced by the legal status of development plans and decision notices. It is essential, therefore, that the planning process is characterised by open and transparent decision-making.

One of the key purposes of the planning system is to ensure development takes place through a framework whereby the public interest is well represented at every point from the preparation of Development Plans and policies, the determination of planning applications and in undertaking enforcement action. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. It is important, therefore, that planning authorities should make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable planning reasons. The process should leave no grounds for suggesting that a decision has been partial, biased or not well-founded in any way.

This Planning Code applies to both Councillors and planning officers who become involved in operating the planning system – it is not therefore restricted to professional town planners and Planning Committee members (and substitutes). The successful operation of the planning system relies on mutual trust and understanding of each other's role. It also relies on both Members and Officers ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so.

**The aim of this Code of Conduct:** to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way and provide the public with a transparent explanation of the planning process and the roles and responsibilities within that process.

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

A summary of the planning process and a planning process flowchart is appended at Appendix 1 and Appendix 2 respectively.

**Our role as a Local Planning Authority (LPA):** the National Planning Policy Framework says that local planning authorities should approach decision-taking in a positive way to foster the delivery of sustainable development. The relationship between decision-taking and plan-making should be seamless, translating plans into high quality development on the ground.

Further, the Framework states that Local Planning Authorities should look for solutions rather than problems, and decision-takers at all levels should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure development that improves the economic, social and environmental conditions of the area.

In addition, the Human Rights Act provides additional safeguards for citizens, and encourages the application of best practice. Article 6 is concerned with guaranteeing a right to procedural fairness, transparency and accountability in the determination of civil rights and obligations.

Councillors and Officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate, whilst Officers are responsible to the Council as a whole.

**Your role as a Member dealing with planning matters:** to conduct yourself fairly and transparently in representing the views of local constituents and declare any interest you may have, in accordance with this Code and the Members' Code of Conduct.

**Your role as a Member of the Planning Committee:** to make planning decisions openly, impartially, with sound judgement and for justifiable reasons. In particular, Members should not favour any person, company, group or locality, nor put themselves in a position where they appear to be doing so.

**The role of a Planning Committee member (and substitute) involves:**

- Attendance at Planning Committee meetings
- Helping to build and protect the reputation of the planning committee by acting reasonably and on planning merits
- Taking into account all the material considerations;
- Understanding, and being able to interpret, all the plans and policies that are relevant to making your decision. This includes national and local plans, policies and guidance. This will require Planning Committee members and substitute members to have initial, and on-going training;
- Having regard to wider Council strategic plans and objectives, and financial aspects e.g. economic growth strategies, any proven need for house building and numbers;

- Arriving at a decision that is sound and can be justified – especially at appeal;
- Listening to people on both sides and being fair to all;
- Being aware of the duty to objectors and the duty to applicants as well;
- Making a balance between all you have heard and read, including views of Officers and your Councillor colleagues and making a sound reasonable and justifiable decision;
- Determining cases in a consistent manner

**The role of officers:** to handle applications in a professional and balanced way. They will visit the site and consider all representations made about an application. Officers involved in the processing of applications must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct.

As a result, planning officer's views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

Every application is dealt with by a case officer who will handle the application from validation through to determination and beyond. Members will be advised who the case officer is through the weekly list of planning applications; this is emailed to all members.

Members should not put pressure on officers to put forward a particular recommendation but are encouraged to discuss proposals with the case officer should they wish to ask questions, to ask for clarification on relevant issues or gain professional advice on matters relating to the receipt and consideration of planning applications and the process of considering applications through delegated decisions or Planning Committee.

Officers will always prepare a report and recommendation for members and will also attend the Planning Committee meeting to answer questions and support their recommendation

**When the Code of Conduct applies:** this Code applies to Members at all times when involving themselves in the planning process. (This includes, where applicable, when part of decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

**If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or one of their staff, and preferably well before any meeting takes place.**

## 1. Relationship to the Members' Code of Conduct

### Applicable to ALL members

- **Do** apply the rules in the Code of Members' Conduct first, which must always be complied with.
- **Do** then apply the rules in this Planning Code of Conduct, which seek to explain and supplement the Code of Members' Conduct for the purposes of planning control. If you do not act in accordance with this Code of Conduct, you may put:
  - the Council at risk of proceedings on the legality or maladministration of the related decision which may lead to that decision being quashed; and
  - yourself at risk of either being named in a report made to the Standards Committee, Council or the Local Government Ombudsman or, if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Monitoring Officer.
- **Do** raise and escalate concerns in relation to potential breaches of the Code of Members' Conduct or this Planning Code of Conduct. Officers and Members at all levels of an organisation need to be prepared to speak up and challenge inappropriate behaviour where the authority's integrity is at risk.

## 2. Development Proposals and Interests under the Code of Members' Conduct

### Applicable to ALL members

- **Do not** use your position improperly for personal gain or to advantage your friends or close associates.
- **Do** keep your register of interests up-to-date
- **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter.
- **Do** then act accordingly:  
Where you have a Disclosable Pecuniary Interest (as defined within Appendix A of the Member's Code of Conduct):
  - Disclose the Disclosable Pecuniary Interest to the Committee, unless the Monitoring Officer considers it to be sensitive in nature
  - Leave the meeting

- **Do not** vote on the matter, participate (or further participate) in the discussion of the matter unless a dispensation has been granted

Where you have an Other Interest:

- Disclose the Other Interest to the Committee
- Leave the meeting and **do not** vote on the matter, participate (or further participate) in the discussion of the matter, if the matter affects:
  - o your well-being or financial position;
  - o the interest you hold that constitutes an Other Interest;
  - o the well-being or financial position of a member of your family or a person with whom you have a close association;
  - o a person with whom you, a close member of your family or a close associate have a contractual relationship; or
  - o the determination of an application submitted by you, a close member of your family or a close associate; and a reasonable member of the public knowing the facts would reasonably regard the interest as so significant that it is likely to prejudice your judgement of the public interest

unless a dispensation has been granted.

- But, **do** attend the meeting for the purpose of making representations only and after making your submission, immediately leave the meeting.

You may apply to the Monitoring Officer for a dispensation. If granted, this will allow you to participate in a discussion and vote on a matter notwithstanding a Disclosable Pecuniary Interest or Other Interest as set out above

For full details, please refer to the Code of Members' Conduct adopted 25 June 2012 and taking effect on 1 July 2012

- **Do not** get involved in the processing of the application.
- **Do not** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have an interest under the Code of Members' Conduct in a proposal, using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.

- **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have an interest under the Code of Members' Conduct to an appropriate officer, in person or in writing, the Code places greater limitations on you in representing that proposal than would apply to a normal member of the public. (For example, where you have an interest under the Code of Members' Conduct in a proposal to be put before a meeting, you may address the Committee but only to make a presentation in the same manner that would apply to an ordinary member of the public, after which you must leave the chamber while the meeting considers it, you may not observe the meeting's consideration of it from the public gallery.)
- **Do** notify the Monitoring Officer in writing where you are making an application for planning permission and note that:
  - notification to the Monitoring Officer should be made no later than submission of the application;
  - the proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers; and
  - it is advisable that you employ an agent to act on your behalf on the proposal in dealing with officers and any public speaking at Committee (where permitted).

### 3. Relationship with Officers

#### Applicable to ALL members

- **Do not** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Head of Planning or the relevant case officer, which may be incorporated into any committee report).
- **Do** recognise that officers are employed by the Council, not by individual Councillors. A successful relationship between Councillors and officers can only be based upon mutual trust, respect, courtesy and understanding of each others positions. This relationship, and the trust which underpins it, should never be abused or compromised.
- **Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding

obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

#### **4. Engagement - Contact with Applicants, Developers, Supporters and Objectors**

##### Applicable to ALL members

- **Do** refer those who approach you for planning, procedural or technical advice to officers. Planning is a constantly changing arena in the technical context any queries on such matters must be referred to your professional officers.
- **Do not** give separate advice on the development plan or material considerations and do not become involved in negotiations; this should be done by officers to ensure that the authority's approach is coordinated.
- **Do not** agree to any formal engagement with applicants, developers or groups of objectors where you can avoid it. To maintain impartiality, and its appearance it is preferable that members do not take part in meetings to discuss applications outside the public decision making process. However, exceptionally where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself, but should request the Head of Planning to organise it. Participation in such meetings should be authorised on a case by case basis by the Chairman and Vice-Chairman of the Planning Committee and the Head of Planning. The Chairman of the Planning Committee is usually the most appropriate member representative, accompanied by local ward members. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.
- **Do**
  - follow the rules on lobbying contained in this Code;
  - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
  - report to the Head of Planning any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.
  - raise any issues upon which you think clarification is needed with the Head of Planning and / or the case officer for the application.
  - forward any information received which the case officer may not already have so that all information is duly considered.

Applicable to members (and substitutes) of the Planning Committee  
In addition in respect of presentations by applicants/developers

- **Do not** attend a planning presentation unless an officer is present and/or it has been organised by officers and/or it is open to the public.
- **Do** ensure that any presentation attended is in accordance with the guidance appended at Appendix 4
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the appropriate Committee of the planning authority.
- **Do** be aware that a presentation is a form of lobbying and you must not express any strong view on a proposal which indicates a closed mind or state how you or other Members might vote.
- Members and officers should ensure that any contact they have with the press should accord with the principles of this Code and should not affect the integrity of the planning system. In particular, Members should ensure that they do not create the impression that they have predetermined the application and officers should restrict their comments to factual matters and should ensure that they do not prejudice the Council's position with regard to an application.

## **5. Fettering Discretion in the Planning Process**

Applicable to members (and substitutes) of the Planning Committee

- **Do not** fetter (that is limit) your discretion and therefore your ability to participate in planning decision making at this Council by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the planning authority and of your hearing the officer's presentation and evidence and arguments on both sides.

**Fettering your discretion** in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

- **Do** be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have

acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)

- **Do** also be aware that, whilst the Code of Members' Conduct provides for a presumption that you may regard yourself as not having an interest automatically barring participation in matters which relate to the organisations mentioned below, you must exercise your discretion in deciding whether or not to participate in each case and where:
  - you have been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of:
    - another local or public authority of which you are a member; or
    - a body to which you have been appointed or nominated by the Council as its representative
  - where you are a trustee or a company director of the body submitting the proposal and were appointed by the Council

then as already set out in Section 2 above in respect of all Members, you should always disclose this as an interest barring participation and act accordingly as set out in that section.

- **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (for instance where you are also a member of the parish council, for example, or both a borough and county councillor), provided:
  - the proposal does not substantially effect the well being or financial standing of the consultee body;
  - you make it clear to the consultee body that:
    - 
    - your views are expressed on the limited information before you only;
    - you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Committee and you hear all of the relevant information; and
    - you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee; and

- you disclose the interest regarding your membership or role when the Planning Committee comes to consider the proposal.

Where you have fettered your discretion as above but you do not also have an “other” interest under the Code of Members’ Conduct barring participation

- You may exercise speaking rights in the same manner that would apply to a member of the public. Where you do so:
  - advise the proper officer or Chairman that you wish to speak in this capacity before commencement of the item;
  - remove yourself from the member seating area for the duration of that item; and
  - ensure that your actions are recorded.

## 6. Lobbying of Councillors

### Applicable to members (and substitutes) of the Planning Committee

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and therefore your ability to participate in the Committee's decision making to express either;
  - an intention to vote one way or another or,
  - such a firm point of view that it amounts to the same thing.
- **Do** remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Do** note that, unless you have an interest under the Member’s Code of Conduct , you will not have fettered your discretion or breached this Planning Code of Conduct through:
  - listening or receiving viewpoints from residents or other interested parties;
  - making comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
  - seeking information through appropriate channels; or
  - being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

- **Do** make clear that if you do express an opinion to objectors or supporters, that you will only be able to take a final decision after having heard all of the relevant arguments and taken into account all relevant material planning considerations at Committee.

Applicable to **ALL** members

- **Do not** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and remember to make a declaration to the Monitoring Officer where you estimate the market value or cost of the gift or hospitality is £25 or greater, in accordance with the provisions of the Code on Gifts and Hospitality at Part 5F of the Constitution.
- **Do** pass on any lobbying correspondence you receive to the Head of Planning at the earliest opportunity.
- **Do** promptly refer to the Head of Planning any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.

## 7. Lobbying by Councillors

Applicable to members (and substitutes) of the Planning Committee

- **Do not** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and will be prevented from participating in the debate and vote. In those circumstances you would be required to withdraw from the committee but may observe from the public gallery.
- **Do** join general groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society, but disclose the interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Planning Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal.
- **Do not** excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to

vote in advance of the meeting at which any planning decision is to be taken.

- **Do not** decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue.
- **Do not** make planning decisions on a Party political basis in response to lobbying. The use of political whips to seek to influence the outcome of a planning decision is likely to be regarded as maladministration.

## 8. Site Visits

### Applicable to members (and substitutes) of the Planning Committee

As part of the Councils process of fulfilling its duties of Planning Committee all Planning Committee members and substitutes are encouraged to take part in a monthly 'planning view'. This is a structured site visit organised by officers, it is an invaluable tool in the decision making process. . Planning view provides members with an opportunity to view and enter application sites (and neighbouring sites where necessary) and also consider the surrounding context in advance of the Planning Committee meeting. It is a structured site visit accompanied by officers and members should try to attend;

Planning view is an opportunity to seek information and observe the site. When on site, members can ask questions or seek clarification on matters relevant to the site but it is not an opportunity to express opinions or views on the development proposed. In particular planning view offers the opportunity to:

- consider the impact of the proposed development if difficult to visualise from the plans and any supporting material, including photographs taken by officers
- more appropriately consider the comments of the applicant and objectors when these cannot be expressed adequately in writing

It is important to ensure that planning view does not become an impromptu lobbying opportunity for the applicant or objectors. If members are approached on site by the applicant or third parties, you should advise that they may make representations in writing to the authority and then direct them to officers present. Members should not discuss applications with the applicant or third parties and should be aware of the provisions of the 'Lobbying of Councillors' section found elsewhere within this Code of Conduct.

Members should not enter a site which is subject to an application other than on planning view as this may give the impression of bias. If you do consider it essential to enter the site, or a neighbouring site, other than through planning view, please advise the Head of Planning of your intention to do so and the reasons why. If you do intend to conduct such a visit, again it is important to

be aware of the provisions of the 'Lobbying of Councillors' section found elsewhere within this Code of Conduct.

Any such visit made outside of planning view will be recorded and should be declared by the member at the relevant Planning Committee

A Site Visits Practice Note is appended at Appendix 3 and shall be complied with at all planning view site visits.

## **9. Public Speaking at Meetings**

Applicable to ALL members

- **Do** ensure that you comply with the Council's procedures in respect of public speaking.

Applicable to members (and substitutes) of the Planning Committee

- **Do not** allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- Members should not cross-examine or ask leading questions of the public or officers as a way of introducing new facts to the debate, only planning-related questions should be posed and late evidence should not be introduced by speakers at Committee.
- Messages should never be passed to individual Members from other Member or the public. This will create a perception of bias that will be difficult to overcome.

## **10. Decision Making and the Voting Process**

Applicable to ALL members

- **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your reasons are recorded and repeated in the report to the Committee.

Applicable to members (and substitutes) of the Planning Committee

- **Do** come to the meetings having considered all the relevant information provided in the Planning Committee pack. Officers are available prior to the meeting to answer any questions in advance of Planning Committee.
- **Do** come to meetings with an open mind and demonstrate that you are

open-minded.

- **Do** make decisions in accordance with the Development plan unless material considerations indicate otherwise.
- According to the National Planning Policy Framework proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused, unless material considerations indicate otherwise. The National Planning Policy Framework is a material consideration in planning decisions.
- The purpose of the planning system is to contribute to the achievement of sustainable development, in assessing and determining development proposals, the presumption in favour of sustainable development should be applied. There are three dimensions to sustainable development: economic, social and environmental. Plans and decisions need to take local circumstances into account so that they respond to different opportunities for achieving sustainable development in different areas.
- **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse. Although there will be occasions when it will be legitimate to abstain from a vote, all members of the Planning Committee should take part in the making of decisions by the Planning Committee.
- **Do not** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter. This may be an occasion where it would be legitimate to abstain from the vote on a matter.
- **Do** have recorded the reasons for Committee's decision to defer any proposal.
- Before making a decision which differs from the officer recommendation or the development plan, the Committee may wish to take the following steps:
  - Discuss the areas of difference and the reasons for that difference with officers beforehand
  - Record the detailed reasons as part of the mover's motion
  - Where there is concern about the validity of those reasons, consider deferring to another meeting to have the putative reasons tested and discussed. **Do** consider deferring an item to a later meeting where there is concern about the validity of reasons for making a decision contrary to officer

recommendation in order that reasons can be tested and discussed.

- Before Members vote on a motion to determine an application contrary to officer recommendation, an officer should be given an opportunity to explain the implications of the contrary decision including an assessment of a likely appeal outcome and the chances of a successful award of costs against the authority should one be made.
- If the Committee makes a decision contrary to officer recommendation or the development plan (whether for approval or refusal or changes to conditions or planning obligations) a detailed minute of the Committee's reasons should be made. Members should be prepared to explain in full their planning reasons for the decision they are making. Pressure should never be put on officers to 'sort out the planning reasons' following the meeting.

## 11. Training

A forward plan of a minimum of 3 training events for members will be organised annually. Planning Committee Members and substitutes will be required to attend a minimum of 2 training sessions each financial year. Members who fail to attend the minimum training will be excluded from meetings of Planning Committee until appropriate training has been completed. This training will include a balance of the following:

- Organised visits to review permissions granted, providing an opportunity for both Members and Officers to reflect on the details of the completed schemes and consider lessons learned;
- Topics of interest and or to consider issues in depth or where overturns have indicated problems with planning policy;
- Formal training by external speakers;

New Planning Committee and substitute members must have attended initial induction training before they sit on the Planning Committee

### Applicable to members (and substitutes) of the Planning Committee

- **Do not** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory initial induction planning training prescribed by the Council.
- **Do not** participate in decision making at meetings dealing with planning matters if you have not attended the minimum additional yearly training

- **Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.
- **Do** request any training that you consider you need.

## **Appendix 1 –Summary of the Planning Process**

### **1. When Planning Permission is Required**

The carrying out of development (which includes operations and material changes in use) usually requires an express planning permission from the local planning authority.

### **2. Pre-application consultation or advice**

While pre-application consultation and seeking pre-application advice on the part of applicants is not a legal requirement in the majority of cases (pre-application consultation is required in respect of the construction of certain wind turbine developments), it is generally encouraged.

The pre-application advice process will depend upon the nature of the proposed application:

- Enlargement, improvement or other alteration to a dwelling house or to a dwelling which is a listed building – there will be a site visit and written response within 10 days.
- For all other applications – if necessary there will be a site visit and a meeting(s) will be arranged to discuss the application. An initial written response will follow within 15 working days.

Any advice given is informal and will not commit the Council to a particular decision on any subsequent planning application.

### **3. Submission of Application**

There are various types of applications that the local planning authority may deal with (including: full applications, outline applications, reserved matter approvals, discharge of condition applications, householder and minor commercial applications, listed building consents, non-material amendment applications, retrospective applications, applications to develop otherwise than in accordance with conditions previously attached and renewal applications).

Each have different requirements as to the documents that must be submitted with them, the notices that will be required to be given by the applicant, the publicity the local authority has to give to the application, the consultations to be undertaken and the timescales within which determinations are to be made.

### **4. When will an application go to Planning Committee?**

The responsibility for the determination of most planning applications has been delegated to officers, but will come to the Planning Committee where it falls outside the scheme of delegation, a member has requested (having given reasons for the request) that the application be determined by the Committee or the Head of Planning considers that the application should be considered by the Planning Committee.

Further in certain circumstances the Secretary of State may call-in a planning application for determination by himself instead of the local authority.

The officer will prepare a detailed report for each application to be considered by the Planning Committee including an assessment of the proposal, comments from consultees and written submissions from the public. The

report will give the officer's recommendation to members. Where members propose to determine an application contrary to the officer's recommendation, they must provide valid planning reasons for doing so.

The Planning Committee is open to the press and public, save for certain exempt items which will be considered in closed session. There is a public speaking scheme applicable to the Planning Committee.

## **5. Decision**

Where permission is granted, the notice will include details of any conditions and full reasons why each condition has been imposed. Where permission is refused, the notice will give full reasons and cite all policies and provisions of the development plan relevant to the refusal. In both instances, the applicant will also receive details of how to appeal to the Secretary of State against the authority's decision or conditions imposed.

## **6. Appeal**

The applicant may appeal the following decisions of the local planning authority:

- Refusal of permission
- Grant of permission subject to conditions
- Failure to notify the applicant of its decision within the appropriate time limit

Any appeal will consider the merits of the application and costs may be awarded against parties that have caused unnecessary costs to be incurred due to unreasonable behaviour. Unreasonable behaviour may be either procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).

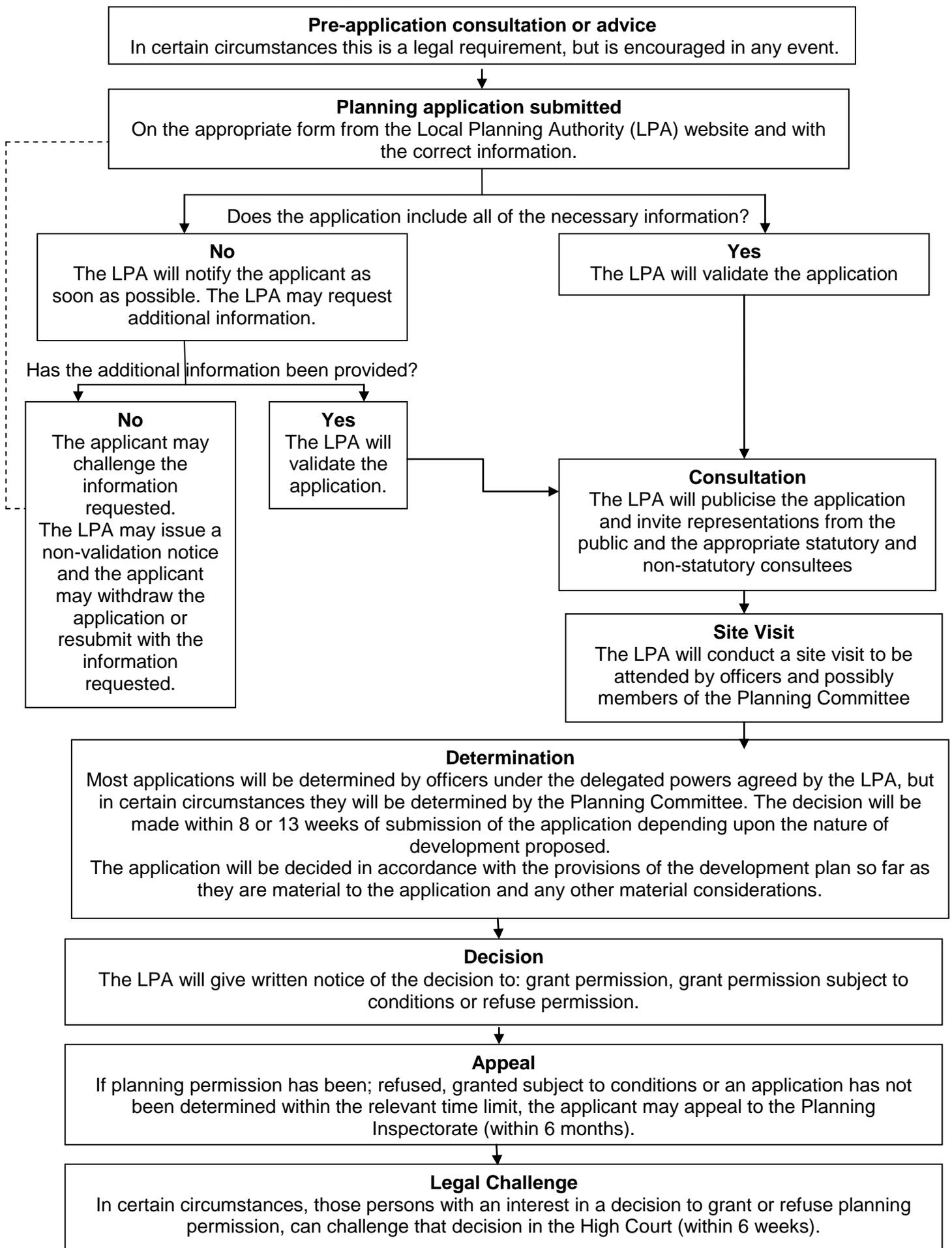
Examples of unreasonable behaviour which may result in an award of costs include:

- Providing information that is shown to be manifestly inaccurate or untrue
- Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations
- Failure to produce evidence to substantiate each reason for refusal
- Not determining similar cases in a consistent manner
- Refusing planning permission on a planning ground capable of being dealt with by conditions

## **7. Other Legal Challenges**

A decision of the local authority or the Secretary of State may be challenged in the High Court on the basis of whether it was properly and legal made. Such challenges may include questions of procedure and whether or not irrelevant considerations were taken into account or relevant consideration were not taken into account).

## Appendix 2 – Planning Process Flowchart



## **Appendix 3 - Site Visits Practice Note**

### **1. Who may be present and take part in the proceedings:**

- all Planning Committee members and Planning Committee substitutes
- relevant officers (including highways authority officers)

General onlookers, supporters and objectors will not be allowed to participate. An applicant, agent or landowner may be present, but is not to address any Planning Committee members (or substitutes) directly.

### **2. Conduct of Site Visits**

- Site Visits will be conducted in a formal manner
- Officers will highlight the site factors and site issues relevant to the site visit
- Members may ask questions and seek clarification of Officers as to the physical characteristics and surroundings of the site
- If necessary, Officers may speak to the applicant, agent or landowner to seek information on such points
- There will be no debate about the merits of the application
- No hospitality will be accepted

### **3. General**

- The Officer shall record who attends each site visit, where was visited and at what time
- If it is decided not to visit a particular site, this shall be on the basis of a consensus decision and the reason for not visiting the site shall be recorded.
- It is not appropriate for member to take part in a specific site visit if the application is one where they will be prevented from participating in the debate and voting on the application when it is considered at the Planning Committee (whether due to an interest under the Code of Members' Conduct or due to a fettering of their discretion). The member should make contact with the relevant case officer as soon as the member is aware that this will be the case, so that appropriate arrangements can then be made.

## **Appendix 4 – Pre-application Developer Presentations to Members and Stakeholders**

Pre-application developer presentations may be made to members and stakeholders in accordance with this guidance. Such presentations will normally be major development proposals but, may exceptionally (at the Officers and the Planning Committee Chairman's discretion) relate to other development proposals.

### **Stage in Process**

A developer presentation is an opportunity for the developer to explain his proposals and to be asked questions by Members and stakeholders. It is important that presentations take place at an early pre-application stage in the development process so that developers may address certain aspects of their proposals as a result of questions asked during the presentation.

**Presentations by developers will not be appropriate after a planning application is submitted to the authority.** This is because at that stage there may be third party interest (e.g. objecting to the proposal) and third parties will not have the same opportunity to be able to present their ideas to members.

### **Arrangements for the pre application presentation**

The presentation arrangements will be confirmed by the Planning Officers. Presentations will normally take place in the Council Chamber. The developer should be made aware that it can take a while to find a time for the presentation.

The invitees should include:

- All Members of Cheltenham Borough Council (invites will be forwarded by Planning Officers by way of letter, e-mail or member updates/briefings)
- The Planning Case Officer and any other Cheltenham Borough Council Officers who will have a significant role in the case.
- A representative of the Highway Authority
- The Chairman of the relevant Parish / Town Council and a deputy (or their substitutes).
- As the Head of Planning considers appropriate, a representative of any other authority/person that would be a consultee with a duty to respond under the Town and Country (Development Procedure) (England) Order 2010 (as amended or replaced from time to time) in respect of any planning application relating to the proposal. For example, this may include a representative of the Environment Agency or English Heritage.

## Form of the pre-application presentation

The meeting is introduced by the Head of Planning (or the relevant delegated officer).

The presentation will normally comprise:

- (a) Officer's introduction, including the standard information below and advising that the order of the meeting will be as (b) to (d) as follows,
- (b) Planning Officer to provide a planning policy context for the development
- (c) The developer to outline their proposals (roughly 10 to 15 minutes)
- (d) Questions and answers (roughly 30 minutes)

## Standard information

When introducing a Developer Presentation to Members and stakeholders, to ensure that no issues of pre-determination can arise, the following information should be presented by the Head of Planning (or the relevant delegated officer):

*"This is a Developer Presentation to Members and Stakeholders and is being conducted under our guidance for such meetings.*

*The following stakeholders have been invited [names]*

***Planning Committee members (and substitutes) should remain open minded about development proposals and should not reach a firm view of the merits or otherwise of a proposal as a result of this presentation.***

*There will be a question and answer session at the end of the meeting.*

*All Members are requested to not make statements that indicate a closed mind about the development proposals and are advised to restrict themselves to questions. It would be helpful for stakeholders to do the same. "*

## Other issues

Formal minutes will not be taken of the meeting, but it will be noted on the pre-application file that a developer presentation has taken place.

Developers should not by themselves arrange a Developer Presentation for Members and stakeholders. This can only be done by officers. If developers do want themselves to arrange a meeting (whether pre-application or post-application) where they can present their ideas to members and stakeholders, this should, take the form of a public meeting. The key differences are:

- (a) The public meeting should be held local to the development site
- (b) The general public should be invited
- (c) Planning Committee members (and substitutes) should not be specifically targeted as the invitees (rather it would be the local ward Members who would be invited or all Members).

A behind closed doors meeting between a Developer and Members of the Planning Committee, outside of any meeting arranged in accordance with this guidance, would not be acceptable.

## Post Application Presentation

Applicants may wish to make a developer presentation to members and stakeholders after their planning application has been received by the Local Planning Authority. **This type of meeting is not acceptable because third parties have no right to make such presentations.** Instead, the Planning Case Officer may arrange to make a presentation on the planning application. The key features of the presentation are:

- (a) The invitees will be the same as with developer presentation except that the applicant and his advisers will not be allowed to be present.
- (b) The meeting will operate in the same way as the developer presentation, except that the Case Officer will outline the proposal
- (c) Formal minutes will not be taken of the meeting. The Case Officer can provide some feedback to the applicant following the meeting. For instance, this could be the case if questions have been asked on technical subjects and the answers are not apparent from the scheme submission.