

**COUNCIL BUSINESS
COMMITTEE**

4.30 P.M.

15TH NOVEMBER 2007

PRESENT:- Councillors Susan Bray (Chairman), Morgwn Trolinger (Vice-Chairman), Shirley Burns, Geoff Knight, Karen Leytham, Joyce Pritchard and Rob Smith

Officers in attendance:-

Sarah Taylor	Head of Legal and Human Resources (Minute 21 only)
James Doble	Principal Democratic Support Officer
Jenny Kay	Democratic Support Officer
Suzanne Smith	Senior Democratic Support Officer

20 MINUTES

The Minutes of the meeting held on 13th September, 2007 were signed by the Chairman as a correct record.

21 REVIEW OF PROTOCOL ON PLANNING PROCEDURE (Pages 1 - 11)

Members considered a report submitted by the Standards Committee which requested Council Business Committee to adopt the revised version of the Protocol on Planning Procedure. It was reported that it had been necessary to make a number of amendments to the Protocol to ensure it was consistent with the revised Code of Conduct that had been adopted in May 2007.

The recommendation set out in the report was unanimously agreed by Members.

Resolved :

That Council adopts the revised version of the 'Protocol on Planning Procedure' as set out in Appendix 1 to the Minutes.

22 UK NATIONAL HONOURS AWARDS

The Committee considered a report of the Head of Democratic Services on ways in which the City Council could increase awareness of the UK National Honours system.

Members unanimously agreed to the recommendation as set out in the report.

Resolved:

That the City Council include a link on the Ceremonial pages of the City Council's website, and issue press releases from time to time to increase awareness of the UK Honours system and provide details of how to apply.

23 CIVIC REVIEW - CITIZENSHIP AWARDS

Members considered a report of the Head of Democratic Services which outlined the proposal that had arisen out of the Civic Review undertaken by Overview & Scrutiny, to establish a Citizenship Panel who would be responsible, amongst other things, for running a Citizenship Award Scheme.

The report set out a number of options in this respect. The Committee discussed the composition of the Citizenship Panel at length and went on to consider the proposed nomination form.

It was proposed by Councillor Knight and seconded by Councillor Burns:

- “(1) That the Council establish the Lancaster City Council Citizenship Panel which will comprise of the Mayor, the Father/Mother of the Council and 9 Members of the public over the age of 11, plus the Chairman of Council Business Committee who would be a non voting appointment.
- (2) That applications be invited for appointment to the Panel through the local press and that the Head of Democratic Services in consultation with the Chairman agree the press release.
- (3) That applicants provide details of themselves in less than 50 words.
- (4) That Council Business Committee agree the appointments to the Panel, based on creating a Panel that represents a broad cross section of the community.
- (5) That the members of the Panel be appointed for one year in the first instance with a review of membership after the first year.
- (6) That the Committee approve the nomination form with the addition of a 100 word maximum limit for each answer.”

Upon being put to the vote, the Chairman declared the proposition clearly carried.

Resolved:

- (1) That the Council establish the Lancaster City Council Citizenship Panel which will comprise of the Mayor, the Father/Mother of the Council and 9 Members of the public over the age of 11, plus the Chairman of Council Business Committee who would be a non voting appointment.
- (2) That applications be invited for appointment to the Panel through the local press and that the Head of Democratic Services in consultation with the Chairman agree the press release.
- (3) That applicants provide details of themselves in less than 50 words.
- (4) That Council Business Committee agree the appointments to the Panel, based on creating a Panel that represents a broad cross section of the community.
- (5) That the members of the Panel be appointed for one year in the first instance with a review of membership after the first year.
- (6) That the Committee approve the nomination form with the addition of a 100 word maximum limit for each answer.

24 REVIEW OF THE MEMBER DEVELOPMENT STRATEGY AND TRAINING PRIORITIES

Following the informal workshop which had been held for all members on 1st November 2007 the Council Business Committee was reminded of the need to review the Member Development Strategy and agree the training priorities for Councillors for the remainder of 2007/08 through to 2010/2011 which would inform the training programme.

The Committee considered the information that had been gathered from the one to one interviews and the workshop on Member Development. Further evidence had also been gathered from evaluation of training events, anecdotal comments and Members suggested that this should be used to determine the delivery methods for the key priorities such as timings, training methods and venues.

Members discussed the themes that had emerged and how these fitted within the corporate priorities.

Members considered the training priorities that had emerged and agreed that the following key 6 priorities should be taken forward and developed within the budgetary constraints for Member Development :

- Local Government Finance
- Overview and Scrutiny
- Communications (including media)
- IT training
- Decision Making Process (including County Council functions)
- Ward and Community Leadership

It was also recognised that there were several other topics that had been identified in the one to one interviews and workshop that should be included in the Training Programme but were considered to be lower priority areas. It was agreed that these priority areas should be used to develop the Member Training Programme for the years ahead.

The Committee recognised that the support for newly elected Councillors, Cabinet Members and those with full time commitments were cross cutting themes and should be reflected within the 6 key training priorities that had been identified.

They recognised that Member Development should not focus just on training, but also the support provided to Members in their roles as democratic representatives and as Community Leaders. In particular Members acknowledged that the key priority of Ward and Community Leadership could be addressed by means of a project to develop the access to Ward and Council information and this would complement any formal training in this area.

In relation to the key priority of IT training, it was agreed that a further project area be developed to increase the use of IT by Members and the promotion of web pages for Councillors, and that the next meeting of the Business Committee would include a webpage training session and would be a paperless meeting as part of the project to increase the use of IT by Members.

Members agreed that there was a need to develop the facility for other types of learning and development resources such as shadowing, mentoring, online e-learning and the development of the Member library to include a wider range of topics.

It was further agreed that the Strategy should include the successes of the last year in terms of Member Development, budget and resources available to Members and would be reviewed in April 2008.

Resolved:

- (1) That the following key 6 priorities should be taken forward and developed within the budgetary constraints for Member Development :
 - Local Government Finance

- Overview and Scrutiny
 - Communications (including media)
 - IT training
 - Decision Making Process (including County Council functions)
 - Ward and Community Leadership
- (2) That the revised Elected Member Training and Development Programme be produced incorporating the above priorities and the discussions outlined above.
- (3) That the revised Member Development Strategy be updated to reflect the discussions outlined above and submitted to Council for endorsement.
- (4) That the next meeting of the Business Committee include a webpage training session and be a paperless meeting as part of the project to increase the use of IT by Members.
- (5) That the Strategy be reviewed again in April – May 2008 to ensure that it continues to be adequately aligned to the Council's Corporate Priorities and that the annual review takes place at that time of year in the future.

25 CITY COUNCIL MEETINGS TIMETABLE AND MEETING TIMES - 2008/09

The Committee considered a report of the Chief Executive which set out the proposed Council Meetings Timetable for 2008/09 and included the results of a survey of all Councillors on start times and venues of meetings. Members were requested to make any amendments they felt were required.

Members unanimously agreed to submit the timetable to Council for consideration.

Resolved :

That the Council Business Committee refer the Timetable of Meetings 2008/09 to Council for approval.

26 CORPORATE GOVERNANCE – CONSTITUTIONAL AMENDMENT

The Principal Democratic Support Officer presented a report regarding the addition of a new Council Procedure Rule 15.3 which set out the procedure for Officer Briefing Notes to be included in the Council agenda for Motions of Notice.

Members unanimously agreed the recommendations as set out in the report.

Resolved :

That a new Council Procedure Rule 15.3 (with subsequent re-numbering of 15.3 and 15.4) be included in the Constitution with immediate effect as follows:

“15.3 Officer Briefing Note

Where a Motion for which Notice has been given is included on the Agenda, an officer briefing note will be included on the Agenda to accompany that motion setting out in particular any key risks and potential financial and legal implications for the Council should the proposed motion be carried.”

27 RESPONSE TO CONSULTATION ON PROPOSED CLOSURE OF SCHOOLS

The Committee considered a report of the Head of Democratic Services recommending a variation to the process for responses to consultations to enable the Overview and Scrutiny review of secondary education report to be agreed by the Chief Executive as the Council's response to the County Council's consultation on secondary education.

Members unanimously agreed the recommendation as set out in the report.

Resolved:

That the Chief Executive be authorised to agree that the Review of Secondary Education Task Group's report be utilised as the City Council's response to the County Council's consultation on secondary education.

28 CHANGES TO MEMBERSHIP OF COMMITTEES

It was reported that, further to Minute 58 of Council on 26th September when Councillor Peter Robinson was appointed as the non-aligned Member on Planning and Highways Regulatory Committee, he and Councillor Paul Woodruff (who had been away on holiday at the time) had now had the opportunity to discuss the allocation of seats to non-aligned members and had agreed to 'share' the 2 available seats on the Planning Committee and Licensing Act Committee. The Committee was therefore asked to approve the necessary change to take effect from 1st February 2008.

Group Administrators were invited to put forward any other nominations for changes to membership of Committees. It was agreed that further changes by the Labour group with regard to the vacancy on the Local Governance Committee and the substitute on Overview and Scrutiny Committee would be delegated to the Head of Democratic Services to agree in consultation with the Chairman.

Members went on to discuss the role of Councillors on outside bodies. It was reported that a review of the role of Members on outside bodies was outstanding, and it was agreed that Group Administrators would request feedback on the attendance of Councillors on outside bodies and that the full list of appointments to outside bodies would be sent to Members of the Committee.

Resolved :

- (1) That the following nominations to Committees be accepted:

Planning & Highways Regulatory Committee

Delete June Ashworth and add Roger Dennison

Delete Peter Robinson and add Paul Woodruff (with effect from 1st February 2008)

Licensing Act Committee

Delete Paul Woodruff* and add Peter Robinson (with effect from 1st February 2008)

*Councillor Woodruff initially declined to take up his seat on the Licensing Act Committee and this has been held as a vacancy temporarily.

Overview and Scrutiny Committee

Add Rebekah Gerrard (to fill the Labour Group vacancy)

- (2) That acceptance of further changes by the Labour group with regard to the vacancy on the Local Governance Committee and the substitute on Overview

and Scrutiny Committee be delegated to the Head of Democratic Services in consultation with the Chairman.

- (3) That Group Administrators request feedback on the attendance of Councillors on outside bodies and that the full list of appointments to outside bodies be sent to Members of the Committee.

Chairman

(The meeting ended at 6.13 p.m.)

**Any queries regarding these Minutes, please contact
Gillian Noall, Head of Democratic Services - telephone: 01524 582060 or email
gnoall@lancaster.gov.uk**

PART 5, SECTION 4 - PROTOCOL ON PLANNING PROCEDURE

1 Introduction

The purpose of this protocol is to provide Members with guidance regarding their role in determining planning applications, in particular, when interacting with applicants, objectors or developers. Ward members, who are not members of the Planning Regulatory Committee but who want to address the Committee, also require guidance on interaction over their contact with applicants developers and objectors.

The protocol is designed to offer that guidance and help Members understand their role and the responsibilities associated with that role, and 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.

In addition, the Audit Commission has also raised the need for a protocol on planning in its document, "Probity in Planning".

This protocol sets out detailed guidance for Members, but, in summary, the most important issues for Members to consider are as follows:

- The Code of Conduct, and in particular whether a Member has a personal interest, and if so whether that personal interest is also a prejudicial interest
- Aside from the Code of Conduct, whether there is any legal reason why a Member should not participate in a particular decision
- The need to exercise care and caution in any contact with applicants, developers and objectors
- The dangers of lobbying or being lobbied

2 Natural Justice

These principles apply throughout public administration. They are fundamental principles of administrative law and should be adhered to when determining any planning application.

The two principles of Natural Justice are :-

- (a) The rule against bias
- (b) The duty to act fairly/duty to hear both sides or the other side.

3 The Rule Against Bias

The first principle means that no Member should remain and be a party to a decision which affects their own interests. This is largely the process by which Members declare interests.

In addition to the common law rule against bias, Members must be mindful of the provisions of the Council's Code of Conduct with regard to personal and prejudicial interests, referred to below.

If Members are in any doubt about the application of the Code of Conduct, they should seek advice early, from the Monitoring Officer, Deputy Monitoring Officer or one of their staff.. Failure to comply with the Code of Conduct may have implications for the individual Member, as there may be a complaint to the Standards Board. There may also be implications for the decision making process, with criticism of the Committee and possible challenge to the decision on the basis that a Member with an interest remained within the Council Chamber and tainted the integrity of the decision.

4 **The duty to act fairly/hear both sides or the other side - Predetermination and Predisposition**

"Predetermination" is where a Member is closed to the merits of any arguments relating to a particular application, and makes a decision without taking them into account.

"Predisposition" is where a Member holds a view in favour of or against an application, but has an open mind to the merits of the argument before making a final decision.

Predisposition is acceptable; predetermination is not.

Both sides, applicant and objector, should have an opportunity to put their view forward and the decision making body must consider both sides before coming to its decision. The Member's mind should not be closed until the final decision is made. A Member's mind will be closed if they have already come to a decision on an application prior to entering the Council Chamber. This is predetermination. A decision will be open to challenge if a Member appears to have already decided how they will vote at the meeting so that nothing will change their mind. This impression can be created in a number of different ways such as quotes given in the press, and what they have said at meetings or written in correspondence.

However, simply listening to or receiving viewpoints from residents or other interested parties, seeking information through appropriate channels, or making comments to residents, interested parties or other Members or appropriate officers will not constitute predetermination, provided that the Member makes it clear that they are keeping an open mind.

It is not a problem for Members to be "predisposed", holding a view but having an open mind and being open to persuasion against that view. This includes having formed a preliminary view about how they will vote before they attend the meeting, and/or expressing that view publicly, provided it is clear that their mind is not closed to countervailing arguments.

5 **Example of Maladministration**

The Local Ombudsman some time ago made a finding of maladministration against a Merseyside Council because a Member failed to declare an interest and leave the meeting. The Member had a house that was situated near to and affected by a planning proposal. The Member did not declare an interest and remained in the Chamber and voted on the application.

It is important to the integrity of the Planning process and to open and honest governance that justice must not only be done to the planning application – but also that it is seen to be done, thereby giving the public confidence in the system.

There have also been examples of maladministration where Members have encouraged their colleagues to set aside the advice of professional officers by introducing factors which do not amount to material planning considerations. These can include personal circumstances, or land ownership issues. Members should always be cautious and stick only to valid planning considerations.

6. **Declarations of Interest and Leaving the Chamber**

Personal interests and prejudicial interests are defined in Part 2 of the Council's Code of Conduct. It is important to note that if an interest does not fall within the definition of a personal interest, it cannot be a prejudicial interest.

Under the Code of Conduct, where a decision might reasonably be regarded as affecting the well-being or financial position of a Member, or that of a relative or close associate of theirs, or of a body to which the Member is appointed by the Council, or a body of which the Member is a member which exercises functions of a public nature, is directed to charitable purposes, or whose principal purposes is the influence of public opinion or policy the Member must declare a personal interest. The phrase "close associate" is not defined in the Code, but covers both social and business associations. The Code of Conduct also requires Members to declare a personal interest in any matter that relates to an interest included in their register of interests.

Where a Member has a personal interest as set out in the Code of Conduct, they must give careful consideration as to whether that interest is also a prejudicial interest (that is, one which a member of the public with knowledge of the facts would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest). In other words, the interest must be perceived as likely to harm or impair the Member's ability to judge the public interest. Simply knowing the Applicant does not necessarily equate to a prejudicial interest.

The Code of Conduct provides that a prejudicial interest does not arise where the decision does not affect the financial position of the Member or their interests, or does not relate to a licensing or regulatory matter affecting the Member or a person or body in which they have a personal interest.

If the personal interest is not a prejudicial interest, the existence and nature of the interest must be disclosed to the meeting.

Where a Member has a personal interest which is also a prejudicial interest under the Code of Conduct, the general rule is that they must leave the chamber – they are not permitted to return to the public gallery for the debate and they should not be seen by other Members when they are making the decision. This is a requirement of the Code of Conduct. If a Member who had declared an interest was present or could be seen to watch the proceedings, this could be sufficient to taint the process.

However, as an exception to the general rule, the Code of Conduct does now allow a Member who has a personal and prejudicial interest to participate in the same manner that would apply to an ordinary member of the public, that is, in the public participation part of the meeting, but the Member must then leave the room immediately after making such representations. This reverses the decision of the Court of Appeal in Richardson -v- North Yorkshire County Council, and means that Members are no longer placed in a more disadvantageous position than ordinary members of the public.

Dispensations from the Standards Committee are available in limited circumstances, where the existence of prejudicial interests would mean that the meeting could not otherwise be quorate.

When declaring interests at meetings, Members should make it clear what level of interest they are declaring, and whether the interest prevents them from taking part in the decision making process.

7. **Party Politics**

A Member must not blindly follow the recommendations of their political party. A decision on a particular planning application should not be dictated to by party politics. Party whips should never be used. The Member is part of the decision making body. As far as planning applications are concerned the decision making body is the Planning Regulatory Committee. That Committee sits in a quasi-judicial manner and each decision is made on its own merits, within the Development Plan framework, supported by legislation, government advice and other Council land use policies. Therefore each decision has to be made on the information put before the Committee and should take into account the development plan, the impact of the individual development and any individual site characteristics – not party politics.

8. **Allegations of Bias**

As a Member of the Planning Regulatory Committee the time for decision making is after the Members have heard all relevant considerations i.e. after the application has been presented to the Members in the Committee meeting and when the presentation of the application is completed. Therefore, a decision should not be made before the agenda is sent out, at a site visit or immediately before the meeting begins. If a Member has made their mind up before the application is fully presented then this renders the decision open to challenge. This would be on the basis that the application was predetermined, was not considered fairly and that the Member's conduct showed bias. To predetermine an application flies in the face of the principle of the rule 'to hear both sides'.

Where the Council is the applicant or the landowner, and a Member is both a Member of the Planning Committee and also a Cabinet Member with ongoing land-owning responsibilities, it is arguable that the issue of predetermination may arise as a result of the Member's perceived proximity to the proposal through discussions in Cabinet. There is a risk that even an apparently genuine consideration of the planning application by such a Member may be perceived as a sham. In the event of such a Cabinet Member choosing to participate in the Planning Committee decision, and in order to avoid the possibility of a real risk of a perceived closed mind, the Member should be able to demonstrate that they have approached their dealings with the proposal with particular scrupulousness, and should spell out at the outset of any debate at Planning Committee that, notwithstanding their Cabinet role, responsibilities and other decisions in Cabinet, here only planning functions are exercised and planning considerations relevant. They should also make it clear that they approach the application debate with a wholly open mind and a preparedness to be persuaded either way.

However, the simple fact that a Member has been involved in a decision to promote the development of land in the public interest, does not necessarily prevent them from making decisions on the matters of detail. Members approving specific land use allocations in a Local Development Framework for example, would not be prevented from deciding subsequent planning applications. They would be expected to use their decision making abilities to ensure that schemes conform with the requirements of the Framework.

9. **Media Exposure**

A Member should never make any public declaration on an application until the application has been determined. If a Member makes an announcement (that is one sided) prior to the application being determined then that Member is at risk from an allegation of bias i.e. they have not kept their mind open until all matters are before them. In these circumstances it may be inappropriate for the Member to take part in the decision making process to ensure the decision is not tainted. This will be particularly important where there is adverse public reaction to a planning application in the local press some time before the application has received a recommendation from Officers.

10. **Parish Councillors**

A Member of the Planning Regulatory Committee who is also a parish councillor may speak and vote at both parish and City Council level on the same planning issue. Members who take this course of action will need to declare membership of the parish council as a personal interest at City Council level.

As indicated above, Members are under an obligation to approach decision-making with an open mind, prepared to listen to all sides of the argument. Dual-hatted Members who choose to speak and vote at parish and City Council level will need to make it very clear that their vote at parish level represents a preliminary view and that they will reconsider the matter afresh at City Council level. Failure to do so may result in a challenge on the grounds of predetermination.

Different considerations will apply if the parish council is the applicant in relation to a particular planning application. In that situation a parish councillor would be likely to have a prejudicial interest at the Planning Regulatory Committee.

It must always be remembered that debate at parish council meetings takes place without professional advice from a Chartered Town Planner. It is likely, therefore, that considerations may involve matters not properly restricted to planning considerations. City Council Members involved in such discussions should take specific care to qualify their views accordingly.

11. **Lobby Groups**

A Member of the Planning Regulatory Committee who is a member of a lobbying group which has publicly expressed support for or against a planning application will need to consider whether they have a personal and prejudicial interest, and whether there is any other reason outside the Code (such as bias or predetermination) why they should not participate in the decision.

Members are required to declare a personal interest if they are a member of a group that lobbies or campaigns about an issue that comes up for discussion or decision. However, a member will not have a prejudicial interest in a developer's planning proposals against which they and their lobby group campaigned if they or any other person or body in which they have a personal interest are not affected financially by the matter. It is not relevant for the purposes of the revised Code that the planning proposal will impact on the aims of the lobby or campaign group the member belongs to. The Code is focused on the actions of individuals and as such is about preventing improper personal advantage.

A Member who belongs to a general interest group, such as a local civic society, should disclose a personal interest where that organisation has made representations on a particular proposal, and should make it clear that the Member has reserved judgement and the independence to make up their own mind on each separate proposal.

Further guidance can be obtained from the Standards Board publication “Lobby groups, dual-hatted members and the Code of Conduct”, and the Standards Board Occasional Paper “Predisposition, Predetermination or Bias, and the Code”.

12. **Contact by an Applicant Agent or Developer**

It is inevitable that Planning Regulatory Committee Members will be approached frequently by a variety of people during the planning process. It is therefore important that Members of the Committee are clear on the nature of the advice and the comments that they give.

Members of the Planning Regulatory Committee should avoid giving any commitment or the impression of any commitment or view that is held regarding any particular planning application yet to be determined or any matter that may result in the submission of a planning application. It is inappropriate for a Committee Member to meet with the Applicant or Developer to discuss the proposals. Instead they should be directed to the Head of Planning Services and his staff. Equally, any Member of the Committee requiring further information about the application should contact the Head of Planning Services and his staff.

If a meeting or telephone call does take place then Members of the Committee are advised to avoid comments which infer predetermination such as:

- ‘I am completely against any development there’
- ‘I am all for any kind of economic regeneration’
- ‘The developer X normally builds to a high standard’

In the very rare circumstances where a meeting does take place between a Member of the Committee and the Applicant or Developer it is essential that an officer is present and the meeting properly minuted. The Audit Commission states that in these circumstances “all meetings should be attended by officers, fully minuted and reported to Committee in order to ensure transparency”. Therefore those minutes should be reported to the Planning Regulatory Committee prior to any decision being made.

Any significant contact with the applicant or other parties should be reported to the Head of Planning Services, explaining the nature and purpose of the contacts and the member’s involvement in them.

13. **Presentations by applicants/developers**

A Member of the Committee should not attend a planning presentation unless an officer is present and/or it has been organised by officers. A Member should be aware that a presentation is a form of lobbying and should not express any strong view or state how they or other Members might vote.

Where a public meeting is arranged by a developer to present to local residents a scheme which the developer intends to submit, there is nothing to prevent Members attending to obtain information, but they should not make any comment.

14. **Approach by a Constituent**

If a constituent approaches a Member about an application Members can give advice on planning procedure rules and policy so far as they are able but it is always advisable to direct the constituent to staff of the Planning Service in any event. When speaking to constituents Members must not give any impression of any commitment to the application itself.

15 **Approach by a Non-Constituent**

If a non-constituent approaches a Member, Members can advise the person on planning procedure rules and policy as far as they are able or alternatively ask them to contact their own Ward Member or the Head of Planning Services and his staff.

16 **Disclosure of Information**

It is important that Members are clear on what information is a matter of public record and what information is not. Details contained within the planning application are open to the public and the planning process and planning policies are all within the public domain. However, informal observations of the Planning staff will not be information available to the public. If a Member wishes to rely on the observations or comments of the officer then the Member must ask the officer if the information is of a public or confidential nature. If the Member intends to refer such information to a member of the public i.e. not a Council Member, they must make this clear to the officer.

17 **Hospitality Offered to Members**

It is advisable in all circumstances to simply refuse any hospitality. To accept creates the risk that there has been undue influence on the planning process. In the rare event that the hospitality of an estimated value in excess of £25 is accepted it must be registered as a personal interest under Paragraph 8 of the Council's Code of Conduct. It must also be declared as a personal interest at any meeting within the next three years where an item of business relating to the source of the hospitality is considered..

18 **Lobbying of Planning Officers**

Members must recognise that they are part of the organisation which employs professional staff who will make their recommendations on planning applications. Public confidence in the planning system is dependant on planning officers being able to reach open and impartial recommendations on applications, based on lawful planning considerations only, without being improperly influenced in reaching their conclusions by political pressure. Whilst it is entirely proper for Members to enquire about progress on applications and to ask for clarification about the reasons for any recommendation, they must take particular care to ensure that they do not give the impression of applying pressure to officers to make any changes to their recommendations. To do so would leave them open to accusations of applying inappropriate pressure in the form of lobbying.

19. **Lobbying of the Planning Regulatory Committee by other Members**

Members should not give an impression of any commitment or view on the application itself and Planning Regulatory Committee Members must consider all matters before forming a view. If the lobbying Member is an applicant the Committee Member must critically assess their relationship to the Applicant-Member. The test is to ask yourself 'is the relationship such that a reasonable person would consider that remaining in the Planning Regulatory Committee meeting when the decision is made would give the impression of bias'. Simply being a member of the same political party does not necessarily equate to a personal or prejudicial interest but Members must ask themselves about their relationship, e.g. Are they close associates outside the political arena? Do they socialise with each other? .

20. **Social Contact**

Members of the Planning Regulatory Committee should minimise their direct social contact with known Developers and Agents, especially when developments are contemplated or applications are being proposed or when controversial decisions are likely to be needed.

21. **Site Visits – Informal or Formal**

Again, if Members of the Planning Regulatory Committee, whether or not on a site visit, enter any premises which –

- are the subject of/ affected by a planning application or
- are known to be likely to become subject to or affected by a planning application

for any purpose in connection with such an application/proposed application, the Member should be careful to use the inspection purely as a fact-finding exercise and not express any opinion on the merits of the application. Members must not give any kind of indication of what their views of the application are at this stage as they would be at risk of predetermining the issue.

It is recommended that a member of the Planning Regulatory Committee should not enter a site which is subject to a proposal, other than as part of an official site visit, unless the member feels that it is essential to visit the site other than through attending the official site visit, and the member has first spoken to the Planning Officer about their intention to do so and why (which will be recorded on the file).

22. **Purpose of Formal Visits**

The purpose of a Committee site visit is to give Members the opportunity to see the prospective development site and to see it in context, in relation to the surrounding areas and the neighbouring uses. The Planning Officer will normally identify the site and make a short factual presentation explaining the proposed development and perhaps highlighting issues which initially prompted the site visit. The Planning Officer will answer, where possible, questions raised by the Committee.

Site visits are not intended to pre-empt the debate. Questions should therefore relate to matters of factual information about the site, the development and the surrounding area rather than a detailed debate regarding the principle or merits of the proposal. Any detailed debate regarding the above should await the formal Committee meeting when all Members of the Committee and members of the public who attend can hear the arguments in a proper setting.

23. **Public Attendance at Formal Site Visits**

Members will often be met by numbers of local residents at a site visit as they are often high profile cases which are under consideration. It is important that the Planning Officer or the Committee Clerk explains clearly the purpose of the site visit to residents before the site visit commences. Members of the public can listen to the officers' presentation but should not join in any subsequent discussion. Public views or objections will be fully presented or reported at the Committee meeting and should properly form part of the overall debate and discussion at that time.

Members should avoid getting into individual dialogue with local residents, although it is appreciated this can be difficult to avoid. The Chairman can invite a spokesperson for the residents to answer any specific questions Members may have but this should not become a general debate about the proposal. If there is a request to visit the site from a particular

position or location this can be undertaken at the Chairman's discretion. If it is agreed, all Members should accompany the Chairman if possible.

The applicant or his representative will also be invited to attend the site visit. They are present simply to answer any questions the Committee Members may have but should not address the Members on the general merits of the case. Again the Planning Officer or Chairman should explain this situation to the applicant or representative if necessary.

None of the above text on site visits is intended to stifle debate or prevent local residents from having their say. The proper place for such a debate is however at the Committee meeting when neighbour/local views will be properly reported and a proper discussion in a public forum can take place.

24. **Ward Members Speaking at Planning Regulatory Committee who are Not Members of the Planning Regulatory Committee – Contact by the Applicant, Developer or Objector**

When a Ward Member speaks at a Committee it is important that they make it clear whose views they are expressing. Are they speaking for themselves only? Are they speaking on behalf of their Ward? Are they speaking on behalf of a group of residents? An important difference between Planning Members and Ward Councillors who are not Members of the Planning Regulatory Committee is that Ward Members are permitted to express a view prior to entering the Council Chamber. Also, a Ward Member can inform other Members of their own view. If they are asked to meet with a party who has an interest in an application it should be made clear to that party that the Ward Member cannot lobby Members of the Planning Regulatory Committee – they can inform the Members of their concerns etc but they cannot lobby.

If the applicant/objector/third party asks for information Members should advise them to contact the Planning Service staff. The Ward Member can comment on how they would like the decision to be determined but must not give any impression of interfering with the normal democratic process. Comments like 'I will have a quiet word with the Chairman' 'the Group will all vote together' or 'it will be sorted' are unacceptable. They infer predetermination and interference, which at the very least is against an open and transparent planning system.

Instead the Member should make it quite clear that they are able to express an opinion to the Committee but the final decision will be made by the Members when they have considered all matters including the Local Development Plan.

When a non Planning Regulatory Committee Member addresses the Committee, it is advisable that they disclose to the Committee any contact they have had with the applicant and/or agent and/or interested party. For example if a Ward Member meets with a Developer and is in favour of an application they should state 'I am the Ward Member and I am here to represent my own views on this matter. I have spoken to the Developer and I have looked at the plans in detail. I am for the application and consider the benefits are ...'. Or 'I am the local Ward Councillor and I am here to represent the views of what I consider is the majority of the residents of my Ward. I have had numerous telephone calls and letters complaining about this. I have met with local resident groups and I am unhappy with the proposal before Members because ...'

A member of the Planning Regulatory Committee may take the opportunity to exercise separate rights as a Ward Councillor where the Member has fettered his/her discretion to participate in the decision making. However, the Member should make it clear before commencement of the item that they are speaking in this capacity, and should remove themselves from the Committee seating area for the duration of that item.

25. **The Public Participation Process**

With the introduction of the public participation process members of the public now have the opportunity to address the Planning Regulatory Committee. Each individual has 3 minutes to speak. Ideally the person would refer only to planning issues. However realistically speaking this is unlikely to occur and in practice they may refer to non-planning and land use matters.

Planning Regulatory Committee Members need to sift through such presentations and concentrate on the land use principles, distinguishing between issues that are and are not relevant to the planning decision. Issues that are not planning matters need to be dismissed or given very little weight, while land use issues should be taken into account and given great weight.

Personal circumstances and financial details are rarely, if ever, determining issues. Members have to give proper weight to the Development Plan and other material land use considerations.

As indicated above, a Member with a personal and prejudicial interest may take part in the public participation process, but must withdraw from the meeting immediately after they have addressed the Committee.

26. **The Decision Itself**

In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 a planning application made under the Planning Acts shall be determined in accordance with the Development Plan unless material considerations indicate otherwise.

Material considerations are anything that relates to the use and the development of land. "Material considerations must be genuine planning considerations, i.e. they must be related to the purpose of planning legislation, which is to regulate the development and use of land in the public interest." PPG1 para. 50. 'In the public interest' does not mean determining planning applications on the view of the local residents. Local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless that opposition or support is founded upon valid planning reasons which can be substantiated" para. 60 of PPG1.

If there is public opinion against an application then Members must ask themselves "are the objections based on planning grounds?" and if they are "is there evidence to support them?" If the answer to one or both of these questions is 'no', then Members should not permit the objections to determine the outcome.

A Member who is proposing, seconding or supporting a decision contrary to officer recommendations or the development plan should clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. It may be necessary to justify the resulting decision by giving evidence in the event of any challenge.

27. **Code of Conduct**

This guide is ancillary to the Council's Code of Conduct and is designed to help Members understand their role in the Planning process. Its production is recommended by District Audit ('Probity in Planning').

28. **Enforcement of the Protocol**

Members need to be aware that this Protocol is for guidance. The breach of its terms will not necessarily result in the decision being invalidated, but may well lead to a decision being challenged.

A breach of the Council's Code of Conduct may lead to a complaint, currently to the Standards Board for England. A breach of this Protocol which is not a breach of the Council's Code of Conduct Code could not be referred to the Standards Board, but may be investigated by the Monitoring Officer and subsequently reported to the Council's own Standards Committee.

If Members have any concerns about the above they should contact the Head of Legal and HR and/or the Head of Planning Services.