

**AGENDA ITEM NO.**

<b>ISLE OF ANGLESEY COUNTY COUNCIL</b>	
<b>Report to</b>	<b>Standards Committee, The Executive &amp; Full Council</b>
<b>Date</b>	<b>Standards Committee 12.09.13 Executive 21.10.13 Full Council ...12.13</b>
<b>Subject</b>	<b>To Make Changes to the Constitution (3.5.3.15.5) and to Planning Procedure Rules (Section 4.6 of the Constitution)</b>
<b>Portfolio Holder(s)</b>	<b>Councillor J. Arwel Roberts</b>
<b>Lead Officer(s)</b>	<b>Head of Service (Planning and Public Protection) Legal Services Manager</b>
<b>Contact Officer</b>	<b>Robyn Jones (x2134)</b>
<b>Nature and reason for reporting</b>	
<p>1.1 To make changes to the Constitution, one to paragraph 3.5.3.15.5 and the other to section 4.6: Planning Procedure Rules (the Rules):</p> <p>1.1.1 <u>Change 1</u> (paragraph 3.5.3.15.5) - That, in future, departure applications made by councillors, relevant officers or their close family or friends can, rather than being referred to the Planning Committee (the Committee) as at present, be refused by planning officers under delegation and then subject to a full report to the next Committee meeting. Where officers would want to approve such a departure application then it could only be approved by the Committee.</p> <p>1.1.2 <u>Change 2</u> (section 4.6) - The Rules be amended to reflect the legal position and to take account of section 25 of The Localism Act 2011. In short, that members of the Committee are allowed to express an opinion on the merits of an application even before it comes to the Committee for a decision provided the opinion they express is a predisposition and not a predetermination. This would include allowing members of the Committee who are also members of a Town or Community Council to participate in a planning matter at meetings of their Town or Community Council.</p> <p>1.2 All of the proposed changes are set out in tracked changes to the documents attached to this report.</p> <p>1.3 The Standards Committee are consulted on these proposals.</p>	

1.4 The Executive is asked to make a recommendation to the full Council in respect of the proposed changes, and

1.5 The full Council is asked to take a decision to make the changes as shown in the Appendices to this report.

## **A – Introduction / Background / Issues**

The current Constitution provides as follows.

### 2.1 Change 1

2.1.2 Planning officers are not allowed to make decisions on planning applications submitted by councillors, relevant officers (senior officers and those directly involved in the planning process) and their close family and friends. Such applications at present are decided by the Committee. However, there is a loophole, in respect of departure applications. A departure application is one contrary to the (statutory) development plan. The development plan is the primary tool for making decisions on planning applications and applications must be decided according to that plan's provisions in most cases.

2.1.3 Departures are decided by officers where they want to refuse the application but all departures must go to the Committee where officers want to approve the application. The loophole arises where a departure application made by a councillor, relevant officer or their close family or friends goes straight to Committee for a decision whereas such an application made by other people would, most likely, be refused by officers under delegation.

2.1.4 To close this loophole, it is proposed that all departure applications made by councillors, relevant officers, or their close family or friends can be determined by officers under delegation where they wish to refuse the application. Such a refusal would then be subject to a full written report to the next meeting of the Committee to ensure transparency and accountability. Where the planning officer wants to approve the departure application then, like all other departures, the matter will still need to go to the Committee for approval.

### 2.2 Change 2

2.2.1 The present Rules take an unduly narrow approach to what a member of the Committee may do and say outside the confines of the Committee meeting. For example, they prevent a Committee member from expressing any views on the merits of an application before it comes to the Committee and they also prevent Committee members from participating on planning matters in their capacity as members of a Town or Community Council in meetings of those councils. These rules are unnecessarily restrictive in the light of section 25 of The Localism Act 2011.

2.2.2 Whilst it has always been the case that to express a predisposition on a matter was legally permissible, to express predetermination is not. In simple terms, it is permitted to indicate what your view is at a particular point in time provided that you give a clear indication that you have not closed your mind to making a decision on the merits of that matter at a later date. Section 25 of the Localism Act 2011 has sought to reinforce that position and a copy of that section is attached. No doubt the present Rules were drafted back in 2001 based on the situation then perceived as prevailing in fact as well as, perhaps, in law.

2.2.3 However, in light of section 25 and the election of a new Council, it is now thought appropriate to change the Rules so that they better reflect the position in law. The changes to the Rules in the Appendices now allow members of the Committee to give a public view on the merits of an application subject to the safeguards mentioned, demonstration that the view is provisional and that a final decision will be made on the merits as they are then known. Whether members on the Committee wish to take advantage of these provisions will be a matter for each individual, but the changed Rules gives them a range of options for the future.

## **B - Considerations**

3.1. Change 1 – The current Rules provide for a loophole and mean that departure applications made by councillors, relevant officers, or their close family or friends are treated differently to departure applications made by other applicants. As planning is a high-profile subject for all Councils it is better that all applicants who make departure applications are seen to be treated the same subject to certain safeguards. In this case the safeguard is the need to submit a written report to the next meeting of the Committee where a departure application by a councilor, relevant officer, or their close relatives or friends is refused by officers under delegated powers.

3.2. Change 2 – The current Rules are likely to be a reflection of the times during which they were drafted. They are, by now, unduly restrictive and prevent members of the Committee from expressing any view on the merits of an application before it comes to the Committee. Likewise, members of the Committee are prevented from participating in planning matters in their capacity as Town or Community Councillors. These restrictions are not a reflection of the legal position which allows members of the Committee to express a predisposition but not to be predetermined. The Rules can be changed and advice included so as to allow members of the Committee the discretion to play a more active part in public matters outside of the confines of the Committee.

<b>C – Implications and Impacts</b>		
<b>1</b>	<b>Finance / Section 151</b>	
<b>2</b>	<b>Legal / Monitoring Officer</b>	The Committee’s legal adviser is a co-author of the report and the legal view is expressed in it
<b>3</b>	<b>Human Resources</b>	Not applicable
<b>4</b>	<b>Property Services</b> (see notes – separate document)	Not applicable
<b>5</b>	<b>Information and Communications Technology (ICT)</b>	Not applicable
<b>6</b>	<b>Equality</b> (see notes – separate document)	These changes will not have a differential impact on any of the groups protected under the Equality Act 2010.
<b>7</b>	<b>Anti-poverty and Social</b> (see notes – separate document)	Not applicable
<b>8</b>	<b>Communication</b> (see notes – separate document)	No comments
<b>9</b>	<b>Consultation</b> (see notes – separate document)	All elected members were consulted on the proposals. Responses received will be reported to the meeting.

<b>C – Implications and Impacts</b>		
<b>10</b>	<b>Economic</b>	Not applicable
<b>11</b>	<b>Environmental</b> (see notes – seperate document)	Not applicable
<b>12</b>	<b>Crime and Disorder</b> (see notes – seperate document)	Not applicable

<b>CH - Summary</b>
<p>4.1 The new Rules will:</p> <p>4.1.1 Mean that any departure application made by a councillor, relevant officer, or their close family or friends can now be refused by planning officers under delegated powers but subject to a full, written report being presented to the next Committee meeting for transparency and accountability. Where officers want to approve such a departure application then only the Committee may grant such approval. This brings the treatment of these departure applications into line with those made by other applicants and closes a potential loophole in the Rules.</p> <p>4.1.2 Clarify that members of the Committee will be able to express a view on the merits of planning applications before they come to the Committee for a decision. This will be subject to safeguards to ensure that members may express a predisposition (which is allowed) but fall short of expressing a predetermination (which is not allowed). Members on the Committee will, likewise, be able to participate in planning matters in their capacity as Town or Community Councillors should they wish. The changes allow members a greater range of options on how to deal with planning matters but how they choose to deal with matters will be a matter for the discretion of individuals who may, of course, seek advice as they see fit.</p> <p>4.1.3 To make the above changes and other minor and consequential changes to the Constitution as shown in the Appendices to this Report.</p>

## D - Recommendation

5.1 The recommendations are as follows:

To the Standards Committee

5.2 For any comment as a consultee.

To the Executive:

5.3 To recommend to the full Council that the changes to the Rules in the Council's Constitution as detailed in the the Appendices to this report are made.

To the Full Council:

5.4 To make the changes to the Rules in the Council's Constitution as detailed in the the Appendices to this report, and

5.5 To delegate to the Head of Function (Legal and Administration) the power to make the necessary changes to the Constitution to implement the Council's decision.

**Name of author of report: Robyn W. Jones**

**Job Title: Legal Services Manager**

**Date: 06 August 2013**

### Appendices:

Copy of the Rules showing the proposed amendments.

### Background papers

None.

Extract from Constitution showing proposed changes in red:

“3.5.3.15.5 all functions relating to town and country planning and building control as contained within the following Acts :

- The Town and Country Planning Act 1990
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- The Planning (Hazardous Substances) Act 1990
- The Caravan Sites and Control of Development Act 1961
- The Environment Act 1995
- The Planning and Compensation Act 1991
- Land Compensation Act 1961
- The Building Act 1984

NB The above provides that determining all planning applications, with the exception of the following, is delegated to Officers:

(i) applications which are considered Departures from the Development Plan on which the recommendation is to approve the proposal.

(ii) applications which are accompanied by an Environmental Impact Assessment,

(iii) applications submitted by or on behalf of the County Council or involving land owned by the County Council,

(iv) applications for consent to erect electricity lines which have a capacity of 132 kV or above,

(v) applications where the Councillor in whose ward the proposed development is located submits a written request to the Head of Development Control within the established time scale, that the matter be referred for determination to the Planning and Orders Committee.

The right granted by this paragraph shall not apply to any planning application which is deemed by or on behalf of the Head of Planning Service to be a departure from the development plan unless that application either:

amounts to or includes the creation of five or more new dwellings, or  
amounts to or includes the direct creation of five or more new jobs.

(vi) applications including Lawful Development Certificate applications submitted by serving Members of the Council or Officer of the Council who may be seen to be involved in processing and / or determination of planning applications (ie staff employed in the Planning Service, Chief Executive, **Deputy Chief Executive**, Corporate Directors, Heads of Service and other Officers who regularly have an input into the planning system – eg highways and drainage, legal, environmental health, housing officers, economic development or their close relatives (defined as spouses / partners, parents, children, brothers and sisters) or a close friend of a serving councillor or such officer).

**The provisions of this paragraph shall not apply to such applications as are deemed to be departure applications. Those departure applications may be refused by officers under delegated powers and then subject to a full written report to the next meeting of the Committee so as to ensure the transparency and accountability of the decision taken. Where officers wish to approve such a departure application then that approval must be granted by the Committee.”**



## **4.6 Planning Procedure Rules**

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### **4.6.1 Introduction**

4.6.1.1 Determining planning applications is an important duty undertaken by the County Council. These rules set out how the Council as local planning authority will deal with planning applications. The rules apply to councillors and officers as the context requires.

4.6.1.2 Most applications will be determined by planning officers acting on behalf of the local planning authority and the Planning and Orders Committee (the Committee) will determine all other applications. The rules as to whether officers or the Committee will determine applications are contained in Part 3 of this Constitution. Of those instances where the decision may be made by the Committee, the potentially most significant is where the local councillor (that is any one of the councillors in whose ward the proposed development site is located) may require that the application (which would otherwise be decided by officers) should be submitted to the Committee for determination. In these cases, the local councillor must 'call-in' such application in writing addressed to the Chief Planning Officer within 21 days of the date of the letter notifying him / her of the application. In the case of those applications classified as 'fast-track' economic ones, the period within which to refer it to the Committee will be only 14 days. The local councillor(s) who called-in the application may withdraw their call-in at any time before the Committee Agenda is published by notifying to the case officer and confirming the withdrawal in writing.

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

4.6.1.4 One of the key purposes of the planning system is to control development in the public interest. In performing this role, planning necessarily affects land and property interests, the financial value of landholdings and the quality of the environment. It is important, therefore, that local planning authorities should make planning decisions affecting these interests, openly, impartially, with sound judgement and for justifiable reasons. The process should leave no justifiable grounds for suggesting that a decision has been partial, biased or not well-founded.

### **4.6.2 Decision Making on Planning Applications**

4.6.2.1 Decisions on planning applications are sometimes referred to as regulatory or quasi-judicial decisions and this means that those making such decisions must

4.6.2.1.1 take into account all relevant planning considerations

4.6.2.1.2 ignore irrelevant or non planning considerations

4.6.2.1.3 act impartially, fairly and not take into account any political considerations

4.6.2.2 Planning law requires local planning authorities to determine planning applications in accordance with the Statutory Development Plan unless material planning considerations indicate otherwise. The emphasis in determining applications is upon a 'plan-led' system.

4.6.2.3 The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process and opposing views are often strongly held by those involved.

4.6.2.4 Those persons determining planning applications have a duty to take into account representations made to the local planning authority as a result of consultation with interested bodies or as a result of public notice or neighbour notification. In doing so it is necessary to decide which representations are material to the decision to be made, and, if so, what weight to attach to them. This conclusion should not be reached by the Committee until all the facts have been presented in the officer's report to the Committee.

4.6.2.5 Councillors must not give a commitment in relation to any planning matter prior to its consideration at Committee. It is recognised, however, that councillors will from time to time be approached individually by applicants, agents and objectors in relation to planning proposals. These rules are intended to assist councillors in dealing with these approaches and is designed to ensure that the integrity of the decision making process is preserved.

4.6.2.6 Failure to follow these rules without good reason could be taken into account in investigations into possible maladministration and any investigation regarding the conduct of councillors and / or officers.

### 4.6.3 Pre-determination Discussions by Officers with Applicants

4.6.3.1 In any discussions on planning issues, it will always be made clear at the outset, that such discussion:

- will not bind the local planning authority to make a particular decision, and
- that any views expressed are based on the officers' provisional professional judgement but do not commit the local planning authority to any particular decision.

4.6.3.2 Any advice given will:

- be consistent and based upon the Development Plan and other material considerations,,
- be impartial and the best that the officer can give in the circumstances, and
- try to highlight any apparent problems.

4.6.3.3 No Councillor - whether they serve on the Committee or not - shall take part in the officers' discussions with applicants at any stage prior to determination of the application. ~~Where this does occur, a complaint may be made against the councillor to the Council's Monitoring Officer.~~

### 4.6.4 Lobbying of and by Councillors

#### 4.6.4.1 Councillors who are Members of the Committee

4.6.4.1.1 Councillors who are members of the Committee are likely to be approached by applicants, objectors and others interested in the outcome of planning applications. Because of the quasi-judicial or regulatory nature of planning decisions, councillors on the Committee should not allow themselves to be lobbied by anyone - whether for or against an application. If approached they should inform the person seeking to lobby them that if they discuss the application with that person, this may disqualify them from taking part in the decision on the application. Instead potential lobbyists should be advised to contact either their local councillor (see 4.6.4.3 below) or an appropriate officer within the Planning Department.

4.6.4.1.2 Councillors who are on the Committee should not organise local support or opposition to a planning proposal if they later wish to take part in the discussion on the application.

4.6.4.1.3 In taking into account the need to make decisions impartially, councillors on the Committee should not favour or appear to favour any person, company, group or locality and should not declare which way they intend to vote in advance of the meeting. To do so without all relevant information and views would be unfair and prejudicial. If the councillor feels that the public would believe he/she had come to a conclusive view on the planning matter or application before the meeting, or that he/she has been lobbied by an interested person then he/she should not take part in the debate, nor vote on the issue - this is without prejudice to his/her right to address the committee as provided for in section 4.6.5.2 of these rules.

4.6.4.1.4 Where the Monitoring Officer or his/her representative believes that a councillor has prejudiced his/her position by expressing a conclusive view on an application before its determination by the Committee, the Monitoring Officer or his/her representative will advise the councillor that it would be inappropriate for him/her to take part in the debate, or vote on the application. The final decision, however, rests with the councillor - subject to any external scrutiny.

#### **4.6.4.2 ~~Councillors who are not members of the Committee~~**

Councillors who are ~~not~~ members of the Committee should not be lobbied or allow themselves to be lobbied, whether by applicants, objectors or anyone else interested in the outcome of a planning application. Councillors - whether or not they are on the Committee - should not lobby councillors who are on the Committee. If approached such councillors should inform the person seeking to lobby them that they should either contact one of their local councillors (see 4.6.4.3 below) or an appropriate officer in the Planning Department. If such a councillor is lobbied he/she should not lobby councillors who are members of the Committee and he/she will not be entitled to speak at meetings of the Committee.

#### **4.6.4.3 Local Councillors**

4.6.4.3.1 There are differences to the rules set out in 4.6.4.1.1 and 4.6.4.2 in relation to the 'local councillor' i.e. any of the councillors in whose ward the proposed development is located.

4.6.4.3.2 If the local councillor is not a member of the Committee then he/she can legitimately be lobbied by an applicant, objector or anyone else interested in the outcome of a planning application. If such councillor is lobbied then, provided that he/she does not have an interest to declare in accordance with the Council's Code of Conduct for Councillors, he/she will be entitled to make representations to and address the Committee. However he/she must not themselves lobby, whether directly or indirectly, councillors who are on the Committee.

4.6.4.3.3 If a local councillor is a member of the Committee then, the provision of rule 4.6.4.3.2 above will also apply to them and he/she may address the Committee but will **not** have the right either to propose or second any recommendation or to vote on the application. But he/she may should they so wish, refer the person seeking to lobby them to another councillor who is not on the Committee and, for the purpose of these rules, such a councillor will be regarded as a local councillor.

4.6.4.3.4 Local councillors may not become involved in making any representations at meetings of the Committee or participating in decision making on planning applications if they have an interest to declare in accordance with the Council's Code of Conduct for Councillors. This is so regardless as to whether or not they are on the Committee. If a local councillor is in this position he / she should refer any potential lobbyists to another councillor who is not on the Committee and, for the purpose of these rules, such a councillor will be regarded as a local councillor.

4.6.4.4 Where letters of 'neighbour notification' of a planning application are sent to properties not in the same ward as the application site, then the councillors who

represents those properties may also speak as local councillors at the Committee. This rule only gives the right to speak at the Committee and confers no other rights on that councillor as a local councillor.

#### **4.6.5 Seating and Speaking Arrangements at Meetings of the Committees**

4.6.5.1.1 When attending meetings of the Committee, councillors who are not members of the Committee should sit quite separately from councillors who are on the Committee - whether or not they intend addressing the Committee. They should not communicate with those councillors who are on the Committee and who will be making decisions. The objective of this rule is to emphasise the quasi-judicial nature of the Committee's proceedings when considering planning applications.

4.6.5.1.2 Other than speaking as local councillor, members of the Committee may only participate on an application where they have been present at all previous substantive considerations of that application by the Committee. Substantive consideration means where there has been a presentation by the officer on the application, any discussion by the Committee on the merits of the application or an official site visit of the application site.

4.6.5.2 The right to address the Committee shall apply to any member of the Planning and Orders Committee (including a local councillor) who:

- has been lobbied, or
- who may have already expressed a conclusive view on an application, or
- who has spoken on the application at Town or Community Council level or the local councilor, or
- is a councillor who represents another ward as referred to in 4.6.4.3.3.

However if this right is exercised, the councillor on the Committee should comply with paragraph 4.6.5.1 above when consideration is given to the particular matter and may not participate in the decision making and should declare at the meeting why he/she is not participating in the decision.

4.6.5.3 The Committee Chairperson will conduct business at the meeting in accordance with the attached Appendix.

## 4.6.6 Public Meetings Relating to Development Proposals

4.6.6.1 Officers involved in the processing or determination of planning matters should not attend public meetings in connection with development proposals or submitted planning applications, unless those meetings have been arranged by or with the express agreement of the Authority. To do so could lead to allegations of bias or prejudice in relation to a particular point of view. If put in such a position of attending meetings arranged by, or with the consent of, the Authority, or by accident, then officers should take great care to maintain impartiality, concentrate on providing factual information, listen to comments and avoid giving views on the merits or otherwise of the proposal.

4.6.6.2 Similarly, councillors involved in the determination of planning applications should take great care to maintain impartiality when attending public meetings in relation to planning matters. At such meetings those councillors should be cautious in expressing their views on the merits of proposals. They may express a predisposition but should not express what can be interpreted as either predetermination or bias towards or against the proposal. Councillors who wish to comment are advised to clearly state that their view is provisional, based on their knowledge as at that date, and that they will be called upon to consider the matter anew and in the light of all relevant matters when making a decision on the proposal. no view on the merits or otherwise of a proposal should be given. Where a councillor who is a member of the Committee indicates that they have a closed mind on a particular proposal (i.e. they are predetermined) or that they are biased on the proposal then the law prohibits them from participating in the decision-making process.

## 4.6.7 Councillors who are Members of the Committee and who are also Town or Community Councillors

~~These councillors should make a choice in relation to every planning application which may be considered by a Town or Community Council (or a committee or subcommittee of the same). The choices are either:~~

~~4.6.7.1 Participate in the discussion at Town or Community Council level and then, if they wish, speak at the Committee as provided for in of these Rules but not otherwise take part in the deliberations of the Committee or vote on the application, or~~

~~4.6.7.2 Take no part in discussions at Town or Community Council level (and preferably not be in the room when the matter is discussed) and then participate fully at the Committee.~~

~~4.6.7.3 **NB:** those councillors who sit on the Committee but who are **not** members of the Town or Community Council have, like any other member of the public, the right to attend public meetings of that Council. In these cases those councillors should only observe proceedings at the Town or Community Council and not take part in them.~~

~~4.6.7.1 In law there is nothing in principle to prohibit a councillor who has participated in a planning matter at a Town or Community Council meeting from then participating on that matter as a member of the Planning Committee **provided that the councillor is not predetermined on or biased as regards that application.**~~

~~4.6.7.2 Councillors are entitled to demonstrate a predisposition on a matter but they must ensure that they are not predetermined (i.e. that they have closed their mind on the merits of the proposal) on that matter. In other words, a councillor who sits on the Planning~~

Committee may publicly give an indication of their view on any application before they are called to make a decision on it but their view must be couched in reasonable terms and they must acknowledge that they have not closed their minds to making a decision on the merits of the matter at a future date.

4.6.7.3 Any councillor who sits on the Planning Committee and who feels the need to make a public statement on an application before it comes to that Committee is strongly advised to specifically indicate that their view is provisional; based on what they know at that point in time; and that they will need to consider the matter anew in the light of all the relevant matters relating to that application when it comes to making a decision on the application (see also 4.6.6.2 above).



#### **4.6.8 Correspondence Received by Councillors**

Should councillors receive directly any correspondence from persons interested in the outcome of a planning application they shall ensure that a copy is forwarded to the Development Control Section. The Section will then:

4.6.8.1 if time permits, send a copy to the applicant or his/her agent so as to allow him/her an opportunity to respond,

4.6.8.2 place a copy of all representations on the Planning file,

4.6.8.3 if time permits ensure that the report to Committee refers to the correspondence received.

#### **4.6.9 Registration and Declaration of Interests**

The Law and the Council's Code of Conduct for both councillors and officers in relation to these matters is of particular relevance to those dealing with planning applications and must be followed at all times.

#### **4.6.10 Development Proposals Submitted by Councillors and Officers**

4.6.10.1 Proposals by serving councillors (whether or not they are councillors on the Committee), certain categories of officers and their close friends and relatives can easily give rise to suspicions of impropriety. It is vital that they are handled in a way which gives no grounds for accusations of favouritism. In these rules "relatives" encompass spouse or partner, parent, grandparent, child, grandchild, brother or sister.

4.6.10.2 Planning applications falling within the following categories will be reported to the Committee for consideration and not dealt with by officers under 'delegated powers':

- those where the applicant is a serving councillor or the relative of a serving councillor,
- those where a serving councillor acts as agent or has prepared any part of the application or plans,
- those where the applicant is a relevant officer or their relative. In this rule "relevant officer" means the Chief Executive, all Corporate Directors, all Heads of Service, all officers working in the Planning Department and all other officers whose work is directly linked to the development control process (such as officers in Highways and Environmental Health who are consultees or lawyers who advise and represent the Planning Department in development control matters),
- those where the applicant is a close friend of a serving councillor or relevant officer.

In this rule "planning application" shall mean all applications required by statute to be made and which (apart from this rule) would fall to be determined under the Council's Constitution by the Head of Planning Service. These would include applications for outline consent, reserved matters approval, listed building consent, conservation area consent, consent under Tree Preservation Orders and so forth.

4.6.10.3 Planning officers shall endeavour to identify and highlight such applications and shall accordingly inform the Head of the Planning Service and the Authority's Monitoring Officer. Serving councillors who make applications, who act as agents or who prepare plans or whose relatives make applications, should play no part in the decision-making

process for that proposal.

4.6.10.4. The Monitoring Officer should confirm in the Committee report that such application has been processed normally and must, therefore, be given the opportunity to review the file.

4.6.10.5 Officers involved in the development control process must not prepare plans or act as agent for any person or body (including their relatives) pursuing a planning matter with the Council. If they submit a proposal on their own behalf, they should take no part in the processing of that application.

#### **4.6.11 Officers' Report to the Committee**

4.6.11.1 All planning applications reported to the Committee will have a full written report including a reasoned assessment of the proposal and a justified recommendation.

4.6.11.2 Any new matters which have arisen between the preparation of the report and the date of the Committee will be reported orally and references to this will be included in the minutes.

4.6.11.3 Every planning application file will contain an accurate account of events throughout its life, particularly the outcome of meetings or significant telephone conversations.

4.6.11.4 The same principles of good record keeping will also be observed in relation to enforcement matters. Monitoring of record keeping will be undertaken on a continuous basis by managers within the Development Control Section.

#### **4.6.12 Decisions Contrary to Officer Recommendation**

4.6.12.1 Where the Committee are mindful to either approve or refuse a proposed development contrary to an Officer recommendation, the item shall be deferred until the following meeting so as to allow the officers to report further on the matter. The Committee must set out the reasons for wishing to decide against the officer recommendation. Committee members should adhere to these Rules when making planning decisions and take policy guidance from planning officers into due regard and only vote against their recommendations where genuine and material planning reasons can be identified. A detailed minute of the Committee's reason(s) shall be made and a copy placed on the application file. Where deciding the matter contrary to the recommendation may risk costs on appeal the Committee will take a recorded vote when deciding the application irrespective of the requirements of paragraph 4.1.18.5 of the Constitution.

4.6.12.2 The officer's further report shall detail the reasons put forward by the members, indicate whether such reasons are, in their view, genuine and material planning reasons and discuss the land use planning issues raised.

4.6.12.3 In the case where councillors wish to add or amend conditions which are recommended by officers, the officers should be invited to draft such a condition and bring this back for approval at the subsequent meeting unless the drafting is straightforward and can be agreed at the initial meeting.

4.6.12.4 Where planning officers are unable to defend such decisions on appeal (due to requirements of the professional conduct rules of the Royal Town Planning Institute - RTPI) they shall make this point known to the Committee before the final vote is taken. In such cases the Committee shall nominate (at least) two of its members who voted contrary to the recommendation to appear at any appeal and explain the Committee's decisions and the reasons for them. These should, normally, be the proposer and seconder of the proposal which was contrary to the officer's recommendation.

#### **4.6.13 Appeals Against Council Decisions**

4.6.13.1 Officers will organize and generally appear as witnesses at planning appeals and other proceedings on behalf of the Council. In some circumstances it may be necessary to appoint consultants to appear for the Council.

4.6.13.2 In giving evidence, officers will present the best possible case on behalf of the Council whilst complying with the RTPI Code of Professional Conduct.

4.6.13.3 Where a decision contrary to officer recommendation is subject to an appeal and officers have previously made known to the Committee that they are unable to defend such decisions, officers shall report the appeal to the next Committee meeting. Councillors will then be responsible for presenting the Council's case at the appeal.

#### **4.6.14 Conduct of Officers**

4.6.14.1 Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute Code of Professional Conduct. All officers whether members of the Institute or not shall abide by the same principles namely they -

4.6.14.1.1 Shall act with competence, honesty and integrity;

4.6.14.1.2 Shall fearlessly and impartially exercise their independent professional judgement to the best of their skill and understanding;

4.6.14.1.3 Shall discharge their duty to their employers, clients, colleagues and others with due care and diligence in accordance with the provisions of this Code;

4.6.14.1.4 Shall not bring the profession or the Royal Town Planning Institute into disrepute;

4.6.14.1.5 Officers shall not disclose or use to the advantage of themselves or the Authority information acquired in confidence in the course of their work;

4.6.14.1.6 Officers shall decline any discounts, gifts or commissions offered by any third parties in connection with their work as professional planners.

#### **4.6.15 Councillor / Officer relationship**

4.6.15.1 In order to engender a committed professional relationship between both officers and councillors, each shall have respect and regard for the roles both play within the decision making process.

4.6.15.2 Councillors shall respect the advice given by officers at Committee or when dealing with delegated applications and shall not place pressure on officers for a particular recommendation or decision. Any officer who considers that this has happened should deal with the matter as set-out under section 5.3.4 of this Constitution (Bullying, Intimidation and Harassment).

#### **4.6.16 Site Visits by the Planning and Orders Committee**

4.6.16.1 The protocol on site visits is attached as an Appendix to these Rules.

#### **4.6.17 Gifts and Hospitality**

4.6.17.1 Advice to councillors on registration of gifts and hospitality is contained within the Council's Code of Conduct for Members and shall be accordingly observed.

4.6.17.2 Officers during the course of carrying out their duties may be offered hospitality from people with an interest in a planning proposal. Officers should refuse offers of hospitality of any kind. If the receipt of hospitality is unavoidable officers must ensure that the absolute minimum level is accepted and declare its receipt as soon as possible to the Monitoring Officer.

## **4.6.18 Training**

4.6.18.1 No member may sit on the Planning and Orders Committee unless and until they have attended Induction Training. The contents of the Induction Training shall from time to time be determined by the Head of Service (Planning and Public Protection). Updating training thereafter will be provided at least twice a year to include changes in legislation or procedure.

4.6.18.2 Councillors shall ensure that they attend a minimum 3 training events over a two year period in order to keep abreast of planning matters and thus provide a positive input into the decision making process. Attendance records will be monitored and reported to the Council. Any member of the Planning and Orders Committee who fails to attend the stated minimum number of training sessions shall be removed or suspended from the Committee by vote of the full Council at such time as when the attendance records are reported.

## **Appendix**

### **4.6.19 Protocol Regarding Site Visits by the Planning and Orders Committee**

#### **4.6.19.1 Criteria for Site Visits**

4.6.19.1.1 It is important that criteria should be set out for deciding when a site visit is justified and consider the procedure for such visits. In this respect account should be taken of the following points:-

(i) site visits can:

- cause delay to the decision making process,
- possibly lead to an appeal to The Planning Inspectorate on the basis of 'non-determination',
- affect the Service's performance in respect of its 8 week target, and
- lead to additional costs both to the Service and possibly to the applicant(s).

(ii) there needs to be consistency both in the way that it is decided that a site visit should take place and in the conduct of such visits. Otherwise it may leave the Authority open to the accusation that site visits are arbitrary or possibly a lobbying device.

(iii) site visits should be carefully organised and well-attended to ensure that the purpose, format and conduct are clearly established at the beginning and subsequently adhered to.

(iv) site visits should be used only where the expected benefits are substantial. The 'substantial benefit' test should apply in every case. Site visits should only be necessary if the impact of the proposed development is difficult to visualise and comprehend, i.e. where lack of clarity with the application makes visual assessment necessary

(v) site visits may be appropriate to consider large, more complex applications.

(vi) if the Committee are of a view that the site needs to be visited and seen before the application can be determined, then only those members who attended the official site visit may participate in and vote on the application when it is further considered by the Committee.

Recommendation of site visits by officers shall be referred to within the report to Committee.

4.6.19.1.2 Site visits should **not** apply in the following cases:

(i) to solely consider boundary or neighbour disputes,

(ii) to consider objections issued on competition grounds,

(iii) to consider objections raised on the ground of loss of property values,

(iv) to consider any other issues which are not material planning considerations,

(v) where councillors have already visited the site within the last 12 months, except in exceptional circumstances

#### **4.6.19.2 Requests for Site Visits**

In order to adopt a structured approach to site visits the following format should be adhered to:-

4.6.19.2.1 All requests for site visits must be made in writing to the Chief Planning Officer/ Planning Control Manager by 1.00pm on the final working day prior to the Committee meeting. Any verbal request received prior to the Committee meeting must be followed up in writing before the Planning Committee commences. The reason for the 'site visit' shall be clearly stated and accordingly reported to the Planning Committee.

4.6.19.2.2 If a request is made for a 'site visit' during the Planning and Orders Committee Meeting once again the reasons for the visit shall be recorded in the minutes.

#### **4.6.19.3 Procedures at the Site Visit**

4.6.19.3.1 The applicant shall be informed that a site visit will take place but will not be allowed to be present during the visit to make any representations.

4.6.19.3.2 The primary purpose of the site visit will be for the planning officers to explain the planning issues relating to the case and for councillors to view the site.

4.6.19.3.3 There shall be no discussions at the site visit as regards the merits of the application. The site visit shall not be used as a forum for debate.

4.6.19.3.4 The Chairperson or Vice-Chairperson shall conduct and lead the site visit. If either the Chairperson or the Vice-Chairperson is absent, councillors shall vote for one of their number to act as Chairperson.

4.6.19.3.5 The Chairperson shall formally open the meeting and set out the reasons for the visit.

4.6.19.3.6 The planning officer shall be requested to outline the proposal and the main issues.

4.6.19.3.7 The councillors shall view the site, relevant buildings and surroundings as necessary.

4.6.19.3.8 Councillors shall be offered the opportunity to raise questions or seek clarification of points of fact with the planning officer and/or local councilors.

4.6.19.3.9 All local councillors in whose Ward the application site is located (if present) shall be offered the opportunity to comment on the proposal.

4.6.19.3.10 Notes shall be made of the site meeting and these shall be accordingly minuted at the following Planning Committee Meeting when the application is discussed.

#### **4.6.19.4 Regular Review of Decisions**

4.6.19.4.1 The Audit Commission's Report 'Building Quality' recommends that councillors should visit a sample of implemented planning permission to assess the quality of the decision. Such a review should improve the quality and consistency of decision-making, thereby strengthening public confidence, and assist with reviews of planning policy.

4.6.19.4.2 The review should be undertaken annually. It should include examples from a range of categories of development including applications which officers have determined under delegated powers.

#### **4.6.20 Role of the Committee Chairperson and Conduct of Business at the Committee**

##### **4.6.20.1 Election of the Chairperson / Vice-Chairperson**

4.6.20.1.1 The Chairperson shall be elected to his/her post by the councillors on the Committee at its first meeting following the annual Council meeting. The councillors shall at the same time elect a Vice-Chairperson for the same period of office or until such time as either or both of them step down.

4.6.20.1.2 In the absence of the Chairperson for the whole or part of the Committee meeting, the Vice-Chairperson shall be the Chairperson. If the Vice-Chairperson shall be absent, the Committee shall choose one of their number present to be Chairperson for that meeting or part of it until the Chairperson (or Vice-Chairperson) returns.

#### **4.6.20.2 Responsibility of the Chairperson**

The Chairperson shall have the following responsibilities:

4.6.20.2.1 to preside over meetings so that Committee business can be carried out efficiently and with regards to the rights of councillors, officers and the interest of the community as a whole.

4.6.20.2.2 to ensure that the Committee meeting is properly conducted as a forum for debate on planning matters and statutory orders only.

4.6.20.2.3 to ensure that the business of the meeting is carried out in accordance with the relevant provisions contained within the Council's Constitution.

4.6.20.2.4 to support the planning officers and the Monitoring Officer's representative in reminding members about their duty to adhere to genuine and material planning discussions in their decision making process.

#### **4.6.20.3 The Role of Officers at Committee Meetings**

4.6.20.3.1 Officers shall provide professional advice to the Chairperson in order to ensure that he/she is able to discharge the duties of the post.

4.6.20.3.2 Officers shall provide advice as follows:

(i) at pre-Committee meetings so that the Chairperson is fully briefed on issues that may arise at meetings

(ii) at any post-Committee meetings (if relevant)

(iii) during Committee meetings where questions are directed towards the Chairperson for response

(iv) during any meetings which may be convened by officers in order to discuss issues relevant to 'planning' or 'orders' issues



#### **4.6.20.4 Conduct of Committee Meetings**

4.6.20.4.1 Each agenda item for discussion or for information shall be introduced by the Chairperson.

4.6.20.4.2 Once introduced the Chairperson shall ensure that the officer is allowed to report on the item. Where the public speaking procedure applies to a particular application, this shall occur before the officer reports on the item.

4.6.20.4.3 The Chairperson shall allow the local councillors to speak first after the officer's report. This is whether the local councillors wish to speak for or against the item and whether or not they are on the Committee.

4.6.20.4.4 The Chairperson shall then allow the councillors to participate in the discussion in the order in which he/she acknowledges their wish to speak.

4.6.20.4.5 The Chairperson will ensure that all councillors shall abide by the provisions of the Council's Constitution and by the relevant provisions of these Procedure Rules.

4.6.20.4.6 All those councillors wishing to speak shall be allowed an opportunity to do so. Councillors shall refrain from making speeches and shall address the Committee on 'planning' (i.e. material planning considerations) and 'orders' matters only. The Chairperson may intervene and curtail councillors who are making repetitions or irrelevant statements.

4.6.20.4.7 Where officers need to respond to comments or questions from councillors then the Chairperson shall ensure that officers are given that opportunity.

4.6.20.4.8 If the Chairperson wishes to speak as a local councillor on an item then the provision of the Constitution shall apply equally to him/her as they apply to all councillors.

4.6.20.4.9

(i) At the conclusion of the discussion the Chairperson shall request councillors on the Committee to vote on the matter under discussion. Unless councillors disagree with the officers' recommendation they shall indicate their voting intention through the showing of hands.

(ii) Should an amendment be proposed and seconded to the officer's recommendation that amendment will be voted on first.

4.6.20.4.10 All councillors and officers shall respect the position of Chairperson. The ruling of the Chairperson on all questions of procedure at the Committee shall be final and not open to discussion. The Chairperson shall ensure that at all times regard is had by all councillors (including himself/herself) and officers to the protocol on Member/Officer relationship and that respect is shown to the advice given by officers at the Committee.

#### **4.6.21 Public Speaking**

##### Eligibility to Speak

4.6.21.1 The planning application concerned must be on the agenda of the Planning and Orders Committee meeting in question. In the event of an application being deferred, public speaking will not be allowed if an opportunity has already been given at a previous Committee meeting when the application has been fully considered.

4.6.21.2 Both applicants (or their agents) and objectors (or their agents) can speak and there are no other qualifying criteria other than compliance with the Council's procedure.

4.6.21.3 Normally only one person can speak for and one person against an application. Very exceptionally the Chair of the Committee may exercise his/her discretion to allow one additional speaker per 'side'. This discretion will usually only be exercised for major applications where there are significant differences of view within one 'side' (e.g. two people speaking against an application for a large supermarket where one represents the views of retailers and the other the views of nearby residents). In such cases the 'other side' will be allowed 2 speakers or twice the normal time, if they wish to use it.

4.6.21.4 Anyone requesting to speak must allow the Council to give their name and contact number to other people (of the same view) wishing to speak so that they can agree on a spokesperson, the issue to raise etc. If they cannot agree, the first person who notified the Council of his/her intention to speak will normally be chosen to speak.

4.6.21.5 Requests to speak must be made to the Administrative Officer in the Planning Department before the deadline referred to in the notification letters sent to applicants and neighbours.

##### Time allowed to Speak

4.6.21.6 The spokesperson will be allowed up to 3 minutes to address the Committee.

##### Visual Aids

4.6.21.7 The spokesperson may not circulate or display written material in the Committee meeting. Any written representations should have been submitted to the Council during the statutory publicity period and will be summarised in the Officer's report.

##### Procedure

4.6.21.8 The procedure for public speaking at Committee is described in the appropriate documents.