

Hastings Borough Council

Planning Protocol

Introduction

1. This Protocol replaces and updates that which was adopted by Council on 18th December 2013.
2. Planning has a positive and proactive role to play at the heart of local government. The planning system works best when Councillors, officers and all other parties essential to its effective operation clearly understand their roles and responsibilities and the context and constraints in which they operate. The purpose of this Protocol is to give clear guidance to Councillors about how they should carry out their duties in relation to planning and development proposals. This Protocol seeks to ensure openness, transparency, fairness and consistency in planning decisions and to ensure that the planning process operates properly, legally and effectively. Planning decisions should be made openly, impartially, with sound judgement and for justifiable reasons. The process should leave no grounds for suggesting that a decision has been partial, biased or not well-founded in any way.
3. Planning decisions involve balancing:
 - a. the needs and interests of individual constituents and the community, with
 - b. the need to maintain an ethic of impartial decision making on what can be highly controversial proposals.

This Protocol provides guidance on achieving this balance. It reflects the enhanced role for Councillors as champions of their local communities and recognises their ability to participate in discussions prior to the receipt of a planning application on behalf of their communities. Councillors may be contacted by members of the public and asked to advise them how to make representations on planning applications or if they would address the Planning Committee on their behalf in their role as Ward Councillor. This Protocol provides guidance on how to avoid predetermination or bias in decision making.

4. This Protocol applies to Councillors at all times when involved in the planning process. This includes taking part in decision making meetings of the Planning Committee, or when involved on less formal occasions, such as meetings with officers or the public. It applies equally to planning enforcement matters or the making of compulsory purchase orders.
5. If in any doubt about the application of this Protocol, take immediate advice from the Monitoring Officer or Deputy Monitoring Officer, preferably well before any meeting takes place.

The Relationship to the Council's Code of Conduct for Councillors

6. This Protocol is a Council Protocol under Part 5 of the Constitution of the Council. Breach of this Protocol could lead to a complaint being made to the Council's Standards Committee.

7. This Protocol supplements the Council's Code of Conduct for Councillors (the Code). It is unlikely that there will be any conflict between the two but, if there is, the provisions of the general Code of Conduct will take precedence.
8. Councillors must apply both the general Code of Conduct and this Protocol in dealing with all planning issues. Failure to do so may place the Council at risk of legal challenge or a finding of maladministration by the Local Government Ombudsman.

The General Role and Conduct of Councillors and Officers

9. Councillors and Officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate, whilst officers are responsible to the Council as a whole. Officers advise Councillors and the Council and carry out the Council's work. They are employed by the Council, not by individual Councillors. It follows that instructions may only be given to officers through a decision of the Council or its Cabinet or a Committee. A successful relationship between Councillors and officers can only be based upon mutual trust and understanding of each others positions. This relationship, and the trust which it underpins, must never be abused or compromised.
10. The Code sets out the requirements on Councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to Council business, including the need to register and declare interests, as well as appropriate relationships with other Councillors, staff and the public.
11. In planning terms there is a presumption in favour of sustainable development which must be balanced with that of the wider interest. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst Councillors should take account of these views, all Councillors should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.
12. Following the Cabinet meeting on 4th July 2016, the Chair of Planning Committee requested that the following paragraph be added to the Planning Protocol after paragraph 11. "The Council's Standing Instructions to Authorised Officers (Part 8 of the Constitution of the Council) sets out the functions and responsibilities in respect of Planning and list the circumstances under which applications as specified in Part 3b paragraph 43 of the Standing Instructions are determined by the Planning Committee and not under delegated authority including (but not limited to) where:
 - (a) The application has attracted three or more letters of objection from different households or businesses, or a petition as defined in Standing Orders where the Assistant Director Housing and Built Environment or his nominee intends to recommend permission, consent or approval, or
 - (b) The Chair of the Planning Committee has referred any application to the Planning Committee within 21 days after registration of an application or 21 days after any press advertisement whichever is the later giving clear planning reasons for the referral, or
 - (c) Any Member of the Council with the consent of the Chair or a Ward member, has given written notice to the Assistant Director Housing and Built Environment within 21 days after registration of an application or 21 days after any press advertisement whichever is the later requiring that application to be considered by the Planning Committee, giving clear planning reasons for the referral.

Gifts or Hospitality

13. Councillors shall not accept gifts or hospitality from developers or from any person involved in or affected by a planning proposal, including pre-application proposals. A gift or hospitality might be considered to influence a Councillor's judgment and it is important that there can be no justifiable grounds for suggesting a decision either has been, or appears to have been, influenced or biased in any way. The Code, in any event, requires that the Councillor must within 28 days of receiving any gift or hospitality over the value of £50, provide written notification to the Monitoring Officer of the existence and nature of that gift or hospitality. A gift over £50 will constitute a personal interest and be registerable as such. All details will go on the register of gifts and hospitality, which is open to public inspection and will remain on the register for 3 years. Councillors must consider whether any gift or hospitality over the value of £50 constitutes a prejudicial interest.

Registration and Declaration of Interests

14. The Local Government Act 2000 and the national code place requirements on Councillors on the registration and declaration of their interests, as well as the consequences for the Councillor's participation in consideration of an issue, in the light of those interests.
15. Both Councillors and Officers are required to observe codes of conduct and statutory provisions; the aim of which is to ensure the integrity of the Council and individual Councillors. These require the open disclosure of any personal and/or prejudicial interests in issues being considered by the Council, its Cabinet or any of its Committees. The Code requires that Councillors register their financial or other interests in the Register of Members' Interests held by the Monitoring Officer. This is in addition to the requirement for Councillors to declare any personal interests as defined in the Code. If a Councillor has a personal interest, they should consider whether that interest is prejudicial as defined in the Code.
16. The Council's Monitoring Officer has provided all Members with detailed guidance on the Code and in particular, declaration of interests. This is regularly updated. Members of the Planning Committee must ensure they are familiar with the Code. The requirements must be followed scrupulously and Councillors should review their situation regularly. It is the personal responsibility of individual Members to ensure they comply with the Code and make all appropriate declarations at Planning Committee meetings. Members should take advice early, from the Monitoring Officer or the Solicitor to the Planning Committee, and preferably well before any meeting takes place, if they are in any doubt as to their position.
17. The provisions of the Code are an attempt to separate out interests arising from the personal and private interests of the Councillor and those arising from the Councillor's wider public life.
18. The Register of Members' Interests is maintained by the Monitoring Officer and is available for public inspection. An interest can either be personal, prejudicial or pecuniary. The Code defines these terms and should be referred to for the appropriate detail. If Councillors have an interest in any matter, they must disclose the existence and nature of their interest at any relevant meeting, including informal meetings or discussions with Officers and other Councillors. Councillors are advised to disclose their interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter. Councillors can still declare an interest which only

comes to mind or light after declarations of interest have been considered on the agenda at any point prior to discussion of that particular matter. The obligation to disclose the existence and nature of an interest applies to **all Councillors attending the Planning Committee meeting, whether sitting as a Member of the Planning Committee or as a Councillor addressing the Planning Committee or sitting in the public gallery**. The responsibility rests with individual Councillors to ensure that they indicate to the Chair that they have an interest to declare.

19. Where a Councillor has a personal interest in a matter they must always declare the existence and nature of their interest. They can participate in the discussion and be involved in making the decision.
20. If a Councillor has both a personal and prejudicial interest in a matter they must always declare the existence and nature of their interest. They cannot participate in any discussion or be involved in making the decision, either formally or informally and must not seek to influence the decision in any way. They must withdraw from the room during discussion of the matter and cannot remain even as a member of the public. This applies to all Members with a prejudicial interest regardless of whether they are members of the Planning Committee, which is making the decision. A prejudicial interest would require withdrawal of the Councillor from the Committee during consideration of that item.
21. If in any doubt about Registration and Declaration of Interests, take immediate advice from the Monitoring Officer or Deputy Monitoring Officer .

Predetermination, Predisposition or Bias

22. In addition to declaring personal or prejudicial interests, members of a Planning Committee need to avoid any appearance of bias or of having predetermined their view before taking a decision on a planning application. A useful test to determine whether a position or view could be considered to be biased is to think about whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias. Predetermination goes beyond predisposition and essentially evades the process of weighing and balancing relevant factors and taking into account other viewpoints.
23. Section 25 of the Localism Act 2011 introduced provisions for dealing with allegations of bias or pre-determination where the Councillor had or appeared to have a closed mind when making the decision. The Councillor is considered not to have a closed mind "just because" they had previously done anything relevant to the decision, that directly or indirectly, indicated what view the Councillor took, or would or might take, in relation to a planning decision.
24. The fact that a Councillor may have campaigned for or against a proposal does not automatically mean that they have a closed mind. Councillors will need to be careful to consider, and ensure that it is apparent that they have considered, all relevant considerations and made their decision in accordance with their statutory duty. Councillors must be prepared to change their view right up to the point of making the decision. Councillors can listen to applicants and objectors, and indicate their view, but must not be biased in their consideration of the issues. Councillors can support or oppose an application and represent the views of their constituents in their role as a Ward Councillor. To do so as a Planning Committee Member MIGHT compromise their role on the Committee and Councillors are advised to seek advice from the Monitoring Officer or Deputy Monitoring Officer..

Predisposition

25. A distinction is drawn by the Courts between a Councillor having clearly expressed an intention to vote in a particular way before a meeting (pre-determination) and a predisposition to an initial view. Where the Councillor is clear they have an open mind and are willing to listen to all the material considerations presented at the Planning Committee before deciding on how to exercise their vote, there is no predetermination.

Predetermination

26. If a Planning Committee Member has been lobbied by friends or others and wishes to promote or oppose a planning application, they will need to carefully consider whether this has become a personal interest or not. In addition, they also need to consider if their view is likely to be regarded as predetermined. In other words whether they have already made up their mind and are not prepared to listen to the material considerations presented at the Planning Committee before making their decision. If a Councillor has predetermined their position they should not take part in the decision making for that application as to do so will be a breach of the Code of Conduct and leave the decision open to legal challenge by way of judicial review.

Bias

27. Councillors should not participate in the consideration of a planning application if to do so would give the appearance of bias. The test for bias is: "Would the fair-minded observer, knowing the background, consider that there was a real possibility of bias?" It is not the Councillor's view of whether they are biased that is relevant but the view of the independent observer. Perception is important and can lead to judicial challenge in the High Court. If a Councillor believes that their participation would lead a fair-minded observer to consider that there is a real possibility of bias, they should not participate in making the decision and should withdraw from the room. The Courts have held that it is primarily a matter for the Councillor to judge whether to withdraw, but given the scope for challenge the Councillor should always err on the side of caution. Whilst not every application will raise the question of bias, there will be occasions when a member of the public in possession of all the facts might consider that there is a real risk of bias. In these circumstances, the Councillor should seek the advice of the Monitoring Officer or Deputy Monitoring Officer..
28. Councillors do not have to have a personal interest in order to come within the definition of bias. There may not be specific consequences for the Councillor who has failed to acknowledge and respond to their bias, as opposed to failing to declare a personal or prejudicial interest under the Code. Councillors must be aware that in failing to consider the issue of bias there are consequences for the decision, which may be challenged on the grounds of bias in the High Court.
29. If in any doubt about the issue of bias, take immediate advice from the Monitoring Officer or Deputy Monitoring Officer..

Development Proposals Submitted by Councillors and Council Development

30. . Planning applications submitted by the Council are considered by the Planning Committee in a public meeting rather than by Officers under delegated authority in accordance with the Council's Standing Instructions to Authorised Officers.
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Planning applications submitted by Councillors can easily give rise to suspicion of impropriety. Whilst it is perfectly legitimate for such proposals to be submitted it is vital to

ensure they are handled in such a way that gives no grounds for accusations of favouritism. All proposals submitted by Councillors are for this reason determined by the Planning Committee. Current Councillors who submit their own proposals or act as agents for people pursuing planning matters, should not play any part in the decision making process for those proposals.

32. The consideration of a proposal from a Councillor in such circumstances would be considered as a prejudicial interest under the Code, and as such the Councillor would be required to withdraw from any consideration of the matter. The Code also provides that the Councillor should “not seek improperly to influence a decision about the matter”. It is important to emphasise that “improperly” does not imply that a Councillor should have any fewer rights than a member of the public seeking to explain and justify their proposal to an officer in advance of consideration by a Committee.
33. A Councillor submitting a planning application has a prejudicial interest but may address the Planning Committee where members of the public enjoy the same public speaking rights i.e. as the applicant. The Councillor should consider whether it would be wise to address the Planning Committee given all the circumstances of the case, which could include the nature of the prejudicial interest and the relationship of the Councillor with the remainder of the Planning Committee. If the Councillor as an applicant decides to address the Planning Committee they must leave the room once they have made their presentation.

Lobbying of and by Councillors

34. Lobbying of Councillors for or against proposals is a normal part of the planning process. Those who may be affected by a planning decision will often seek to influence it by approaching their elected Ward Councillor or a Member of the Planning Committee. Lobbying can lead to the impartiality and integrity of a Councillor being called into question, unless care and common sense is exercised by all the parties involved.
35. It is important in maintaining the integrity of individual Councillors and the Council as a whole that Members of the Planning Committee (or Members who may end up acting as substitutes on the Planning Committee) should take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such situations, Councillors should:-
 - a. If lobbied, explain that, whilst they can listen to/receive viewpoints from residents or other interested parties, they cannot decide or indicate before the relevant Planning Committee meeting which way they intend to vote as it would prejudice their impartiality. They should also explain that it is necessary for them to hear all the arguments both for and against the proposal before making up their mind.
 - b. Avoid giving members of the public planning advice except in relation to general planning procedures and often it may be wise to direct any such request to an appropriate Planning Officer.
 - c. If approached by residents or other interested parties, they should be referred to the appropriate Planning Officer in order that advice can be given and their opinions can be included in the Officers report to the Planning Committee. Copies of any correspondence or other written material received by a Member should be forwarded to the Planning Officer without delay.

36. Councillors should be aware of the need to act fairly and without bias towards every application. Councillors must keep an open mind upon an issue upon which they will be asked to vote, up until the moment that they vote upon it. Failure to keep an open mind may result in an application for judicial review of the decision reached. Any interested party may apply for judicial review of a planning decision. One of the grounds being that a Councillor who voted in favour of the decision to approve or refuse the application had approached the issue with a closed mind, and so had failed to take all relevant considerations into account. Failure to maintain an open mind may invalidate the entire decision-making process.

Pre-application Discussions

37. Discussions between a potential applicant and Hastings Borough Council prior to the submission of an application can be of considerable benefit to both parties.
38. With the recognition of the need to allow and encourage Councillors to be champions of their local communities it is now accepted that Lead Councillor and Ward Councillor engagement in pre-application discussions on major development is necessary to allow Councillors to fulfill this role. Councils have not previously involved Councillors in pre-application discussions for fear of them being accused of predetermination when the subsequent planning application came before the Planning Committee for determination. In order to avoid perceptions that Councillors might have fettered their discretion in any pre-application discussions, all Councillors should enter into such discussions within clear guidelines, and include:
- a. Clarity at the outset that any discussions will not bind the Council to make a particular decision and that any views expressed are personal and provisional.
 - b. Advice given by Officers should be consistent and based on the Development Plan and material considerations. Officers should be present where practicable when Councillors attend any pre-application discussions. Councillors should not become drawn into any negotiations and should ask Officers to deal with any necessary negotiations to ensure that the Council's position is co-ordinated. Councillors should complete the attached form following any pre-application discussion which will be attached to the Planning file in the interests of openness and transparency.
 - c. Pre-application discussions should be arranged by Officers where practicable. A written note should be made by Officers of all meetings and the matters discussed should be confirmed by letter which should be placed on the file as a matter of public record. If there is a legitimate reason for confidentiality regarding the proposal, a note of the non-confidential issues raised, or advice given, should be recorded on the file in the normal manner.
39. If Councillors are invited to, or asked to arrange, a formal meeting with applicants, developers or groups of objectors (for instance, residents' associations) or supporters, they should inform the case officer dealing with the application. This applies to meetings at all stages of the planning process, including the pre-application stage.

Presentations of Development Proposals

40. The Council does, on occasion, allow presentations of development proposals. Presentations are to keep Councillors informed generally on matters, which appear to have or are likely to have strategic importance for the Borough. Presentations will not be allowed in relation to any matter which is the subject of a current planning

application to the Council. At such presentations Councillors must try to maintain an impartial role, listening to what is said and asking appropriate questions but not expressing a fixed opinion, and keeping an open mind on the issues at all times. This applies to pre-application public consultation meetings arranged by Developers in accordance with the Council's Statement of Community Involvement.

Pre-Application Consultation Forum

41. The Council has introduced a Pre-Application Consultation Forum to consider significant major developments, prior to them being submitted as planning applications. Significant development proposals are defined as residential schemes of 30 units or more, employment/industrial scheme of 5,000 m² or more, retail schemes of 2,500 m² or more and leisure schemes of 1,000 m² or more. The Council reserves the right to seek wider community involvement on other applications which do not fall within these thresholds if they consider that they are likely to be particularly sensitive or will have a very significant impact on the local community.
42. A Forum is a meeting held in public where a developer is able to explain proposals directly to Councillors, the public and key stakeholders at an early stage about a development site. The purpose of the Forum is to:-
 - a. enable the developer to explain development proposals directly to Councillors, the public and key stakeholders at an early stage.
 - b. identify any issues that may be considered in any formal application.
 - c. inform Councillors and the public of a development proposal at an early stage in the pre-application process.
 - d. inform officer pre-application discussions with the developer.
 - e. enable the developer to shape an application to address community issues.
43. The Chair of the Forum is the relevant **Lead Member** or their nominated substitute, who is not a member of the Planning Committee, who will introduce the Forum and explain who is going to speak. The planning officer will provide a background to the proposal. The developer explains the proposal (this may involve contributions from several people). Those persons specified in paragraph 44, then have the opportunity to speak and raise any issues, observations and comments. The developer has an opportunity to respond to what has been said by invited speakers. Councillors present at the Forum may ask questions of the developer. The planning officer summarises the main points raised during the Forum, which is then closed by the Chair of the Forum
44. Forum meetings will be held in public, but only those invited to speak on behalf of recognised key stakeholder groups will be able to raise issues at the Forum. Groups invited to ask questions and express their views at the Forum will be restricted to properly constituted residents' groups covering the area of the proposed development, traders' groups for the immediate area, local campaign groups that have emerged specifically to comment on the development (only one of this type of group will be allowed to ask questions although more than one representation may be received) and properly constituted Borough wide bodies which could include business organisations.
45. Properly constituted is defined as those groups with a published constitution, has an open membership and a democratic election of officers. In addition, registered social landlords will be allowed to ask questions. Individuals do not have an automatic right to speak at the Forum unless invited to do so. Attendees can then make written

comments to officers who will forward any comments received to developers. The Forum will not affect any rights to make representations when a formal planning application is submitted. All Councillors are invited to attend the Forum, including those who are on the Planning Committee.

46. 4. After the Forum, the main points will be recorded and passed to the developer for their consideration during further pre-application discussions with officers and in putting the application together. A copy will be passed to all interested parties and placed on the planning application file. The Planning Committee will in due course consider an application based on the facts, issues and advice and nothing said at the Forum will prejudice that consideration.

Chair's Briefings

47. 46. The purpose of Chair's Briefings will be to brief the Chair and Vice Chair on applications to be brought to the next meeting of the Planning Committee.. The purpose of the Briefing is for Officers to explain the forthcoming agenda, consider whether a site visit is required in respect of a particular application and consider administrative arrangements. Chair's Briefings are not to discuss the planning merits of the application or to make decisions **Officer Reports to Committee**

48. All matters requiring a decision by the Planning Committee should be the subject of a written report from Officers, which should be accurate and cover all relevant planning issues. In particular, it should include a clear outline of the site history, the relevant development plan policies, the response of consultees and the nature of objections (electronic links to objection letters and correspondence will be provided to Councillors prior to the Planning Committee Meeting). The report shall include a clear recommendation with a technical appraisal justifying it. Any objections or other relevant issues arising after the report is published shall be reported verbally to the Planning Committee at the meeting. Councillors shall not put improper pressure on Officers to make a particular recommendation and should not do anything which compromises, or is likely to compromise, the officers' impartiality.

49. The Courts and Ombudsman have advised that officer reports on planning applications must have regard to the following points:

- a. Reports should be accurate and cover the substance of any objections and the views of those consulted.
- b. Relevant information should include a clear exposition of the Development Plan; relevant parts of the National Planning Policy Framework (NPPF); site or related history; and any other material considerations.
- c. Reports should have a written recommendation of action. Oral reporting (except to update a report) should be avoided and carefully minuted when it does occur.
- d. Reports should contain technical appraisal which clearly justify a recommendation.
- e. If the reports recommendation is contrary to the provisions of the Development Plan, the material considerations which justify the departure must be clearly stated.
- f. Any oral updates or changes to the Report should be recorded.

50. It is important that the report covers these points, not only as a matter of good practice, but because failure may constitute maladministration or give rise to judicial review on the grounds that the decision was not taken in accordance with the Development Plan

and the Council's statutory duty under Section 38A of the Planning and Compulsory Purchase Act 2004 (see paragraph 66 below).

51. Officers must always act openly and impartially and provide consistent professional advice, in accordance with the rules of their professional body, based on planning policies and procedures, ensuring Councillors are aware of all relevant material planning considerations before decisions are made.
52. Councillors shall give due regard to recommendations and professional advice given by Officers. Councillors are not bound to follow recommendations or advice received, but may depart from this where there is justification to do so, based on clear and legitimate planning grounds which must be recorded in full when making the decision having regard to the relevant planning policy where appropriate.

Public Speaking at Planning Committee

53. Members of the Planning Committee shall not allow members of the public to discuss planning applications with them during the course of the Meeting itself other than through the procedure for public speaking. The procedure for public speaking set out below does not apply to the Pre-Application Consultation Forum.
54. All planning matters will be considered in public session, unless there are specific reasons for dealing with an item as exempt under the provisions of the Local Government Act 1972 (as amended) in which case the public will be asked to leave the room. Whilst this will be rarely exercised it may be necessary for example in consideration of enforcement matters.

Petitions

55. The procedures for public speaking allow members of the public to address the Planning Committee where a petition of objection against the recommendation of the planning officer is received **at least three clear working days** before the Planning Committee considering the item is due to sit. A standard form of petition is available to view on the Council's website. Petitions must contain a minimum of ten signatories.. Each page of the petition must clearly state the planning application to which it is referring, giving the address and the reasons for the objection. Petitions must contain names, addresses and signatures. Petitions submitted must be the original document as photocopies are not accepted. Electronic petitions are not acceptable.
56. Where there is a petition against the proposed development the lead petitioner is invited to attend the Planning Committee meeting. Petitions should clearly state who the lead petitioner is and provide their full name and contact details. They (or their representative) will be invited to address the Planning Committee. Where the lead petitioner (or their representative) fails to attend the scheduled Planning Committee meeting the Chair will ask if there is anyone else present in the public gallery who wishes to address the Planning Committee on behalf of the petition. The applicant or their agent has a right to speak in response to the petition. Each person making representations may speak for up to a maximum of five minutes and may be asked questions by Members of the Planning Committee.
57. The procedure for public speaking allows for an applicant (or their agent) and a petitioner to speak for and against the application respectively. . If two petitions are received and petitioners are making similar points, the Chair (or Vice Chair in his/her absence) will exercise his/her discretion and preference will be given to petitions from the immediate locality of the neighbourhood. Where the petitions are making different points the Chair (or Vice Chair in his/her absence) may exercise his/her discretion and

allow both petitioners to speak. Each person may speak for up to a maximum of five minutes. Where there are two petitioners, the applicant may speak for up to a maximum of ten minutes in the interests of natural justice.

Ward Councillors addressing the Planning Committee

58. If a Ward Councillor wishes to address the Planning Committee about a matter in their ward being considered at the Planning Committee they should advise the Chair (or Vice Chair in his/her absence) and the Committee Administrator prior to the meeting itself and will be entitled to speak after the petitioner and applicant have addressed the Committee. Ward Councillors should comply with the procedure for declaration of interests if they speak at a Planning Committee meeting in the same way as members of the Committee. A Ward Councillor may address the Planning Committee for a maximum of five minutes but may not be asked questions by Members of the Planning Committee. County Councillors should direct any County related queries they have in respect of a planning application to East Sussex County Council. Where the Ward Councillor has a prejudicial interest they may only address the Planning Committee if they are the applicant or lead petitioner and must withdraw from the room once they have made their representations.

Submission of Documentation

59. Documents must be submitted **at least three clear working days** before the Planning Committee meeting. For example if the Planning Committee was held on a Wednesday, documents should be received by the Council by 3pm on the previous Friday. Any late documents should not be circulated to the Planning Committee as all parties may not have time to react to the submissions, and members of the Planning Committee may not be able to give proper consideration to the matter. Officers may not be able to provide considered advice on any material considerations arising. This must be made clear to those who intend to speak. Members of the Planning Committee should not read emails or correspondence received after the deadline for submission of documents. The acceptance of circulated material could imply a willingness to take the necessary time to investigate any issues raised and lead to the need to defer the application or risk a complaint about the way the material has been considered. This care needs to be taken to avoid the perception of external influence or bias.

Decision Making

59. A decision on a planning application must not be made before the Formal Planning Committee Meeting scheduled to determine the application. **Political group meetings shall not be held prior to a Committee Meeting**, as Group Meetings can give the appearance of bias. The fair-minded observer may perceive that Group Meetings behind closed doors are likely to affect the decisions of those Members attending. The holding of Group Meetings may therefore give rise to judicial challenge. The use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration by the Local Government Ombudsman. Councillors will be seated alphabetically and shall not sit according to their political groups in order to avoid the appearance of group decision-making. Section 38A of the Planning and Compulsory Purchase Act 2004 requires that decisions are made in accordance with the Development Plan unless material considerations indicate otherwise. If the Officer's report recommends a departure from the Development Plan the justification for this must be contained in the report. Such applications must be advertised in the local paper in advance of consideration by the Committee.

60. Decisions must be made on planning merits and the reasons for making a decision should be clear and supported by material planning considerations. The reasons for refusing an application shall always be recorded, as should any conditions attached to an approval. If the Planning Committee wish to refuse an application contrary to Officer recommendations or impose additional planning conditions the reasons for doing either must be clearly stated when this is proposed. 61. Councillors are advised to take the following steps before making a decision which differs from the officer recommendation:

- a. Discussing the areas of difference and the reasons for that with planning officers prior to the Planning Committee meeting.
 - b. Recording the detailed reasons as part of the mover's motion.
 - c. Adjourning for a few minutes for those reasons to be discussed and then agreed by the Planning Committee.
62. If a Member of the Planning Committee proposes to refuse or grant an application contrary to the Officer recommendation, they should give justification for doing so, based on clear and legitimate planning reasons and having regard to the relevant planning policy where appropriate. . Where Councillors are proposing to vote against the Officer recommendations, the Chair (or Vice Chair in his/her absence) shall make sure that the reasons are clearly stated before a vote is taken. These reasons must be recorded in the minutes if the officer recommendations are not agreed and a copy placed on the application file. The reasons given by Councillors should be clear, observe the principles of reasonableness, take into account all relevant information (i.e. material considerations) and ignore all irrelevant information (i.e. non material matters). The officer should be given the opportunity to explain the implications of the proposed decision. .63. Councillors must attend meetings with an open mind and shall demonstrate through their conduct at the meeting that they are giving careful, fair and balanced consideration to the applications under discussion. Councillors shall make a decision only after they have considered all the relevant information needed to make a decision.
64. Councillors shall not vote or take part in the meeting's discussion on a proposal unless they have been present to hear the entire debate, including any petition, representations made by the applicant and the officers' introduction to the matter. Councillors who leave the room will be advised by the Chair (or Vice Chair in his/her absence) that they cannot vote or take any further part in the discussion. The rules of natural justice mean that planning applications should be determined in an open and fair manner taking account of relevant information and arguments. It is only at Planning Committee meetings that members of the Planning Committee will have, and be able to consider, all the relevant information and arguments about an application. Failure to take account of relevant considerations or to take account of irrelevant considerations is a ground for judicial review in the High Court.

Site Visits

65. Site visits shall be organised by Officers of the Planning Department. All Members of the Planning Committee will be invited to attend the site visit. The site visit will be guided by the Planning Officer who will point out matters of material relevance to the application and answer Councillors' questions. Formal site visits by Members of the Planning Committee should be made only in exceptional circumstances. For example, where the

impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by Officers, where the proposal is particularly contentious and where the site cannot adequately be viewed from the road. A record is maintained of who attended the site visit and recorded in the minutes.

66. A site visit is not a meeting to discuss the planning merits of the application or to make decisions. The purpose of the inspection is to gather factual information about the site and visually assess the likely or actual impact of the proposal. It is not to debate the merits of the application or the Officers' recommendation. During the formal site visit detailed discussions and/or negotiations must not be conducted with the applicant or third parties by either Councillors or Officers. All discussion and debate should be undertaken at the Planning Committee itself when the application is presented for formal consideration. Any arguments applicants or third parties wish to put forward can be heard at that stage through the public speaking arrangements. Councillors should be aware of the appearance of bias should they be seen in conversation with an applicant or objector.

67. Members of the Planning Committee are expected to attend the organised site visit. Councillors not attending an organised site visit are expected to sit back from the table and not take part in debate and voting on the matter when it comes up for consideration.

Deferred Applications

68. Applications may be deferred to a future meeting if there are valid reasons for doing so. Consideration must be given to the procedures for public speaking where petitioners and the applicant have addressed the Planning Committee at the previous meeting. There may be occasions when there are a number of petitioners raising different objections to the application and the applicant must have the chance to respond. A judgement has to be made whether it is in the interests of good decision making to re-hear all oral representations again or to restrict the Planning Committee to its constitution at the earlier meeting. That is a decision for the Chair at the Chair's Briefing (or Vice Chair in his/her absence). It may be necessary (in exceptional circumstances such as public disturbance) to adjourn the Planning Committee meeting and re-convene in another room.

Substitutions

69. Substitutions have implications where applications are deferred from a previous Planning Committee meeting. Where the petitioner/s and applicant have previously addressed the Planning Committee and the application is deferred to another meeting, any Councillors substituting on the Planning Committee will not have heard all the representations which will form some part of the basis for the decision. Where the petitioner/s and applicant are given the opportunity to address the Committee a second time, there is not a problem with substitutes since the matter is heard afresh. Where applications are not deferred but a continuation of the earlier meeting no substitutions are permitted. Group Leaders/authorised persons should be informed where substitutions are not to be permitted on a particular item as soon as practicable after the Chair's Briefing. Where applications are deferred into a new municipal year the application will have to be considered afresh and petitioner/s and the applicant given the opportunity to address the Planning Committee again as there may be a change in membership of the Planning Committee.

Annual Review of Decisions

70. On an annual basis, arrangements will be made for members of the Planning Committee to review a sample of implemented planning permissions to assess the quality of the decisions made. The Planning Services Manager will arrange for members of the

Planning Committee to visit a number of sites where development is either completed or near to completion. As this is part of the continuing programme of training for members no decisions are taken during the visit. A record is kept of the sites visited but no record is kept of any discussions that take place. 71. The Planning Committee will consider the review and decide whether it gave rise to the need to reconsider any policies or practices. Such a review should improve the quality and consistency of decision making, strengthening public confidence in the planning system and can help with reviews of planning policy. It will also assist Planning Committee members to refine their understanding of the impact of their decisions from the visiting of completed developments.

Training of Members in Planning Law and Procedure

60. Planning decisions are often complex and differ in nature from some of the other decisions taken by the Council. It is crucial that planning decisions are based on legitimate planning grounds. For this reason, Members shall not sit on the Planning Committee or act as a substitute on the Planning Committee without having previously undertaken recent training in planning law and procedures.
61. The Planning Services Manager, Monitoring Officer and Deputy Monitoring Officer will arrange suitable training opportunities at regular intervals and will supplement this with written guidance. All Members of the Planning Committee must attend training sessions provided. The Committee Administrator will maintain a register of attendance which will be copied to political group leaders annually. Members of the planning Committee are expected to attend all training sessions but must attend a minimum of two training sessions within each municipal year. If a Councillor has not attended a minimum of two training sessions within the municipal year they will not be allowed to sit on the Planning Committee until they have attended the next quarterly training session to bring their planning training up to date. One to one training will not be provided except in exceptional circumstances.

Appendix 1

PLANNING APPLICATIONS: DECLARATION OF LOBBYING

- Name of Member making the declaration

- Planning Application Number (where known)

- Application Site / Address

- Name(s) of persons undertaking lobbying and a note of their interest in the application (applicant, objector etc)

- Date of lobbying

- Brief details of the nature of the approach to the Member

Upon completion of this form please submit immediately to the Planning Services Manager at Aquila House to be placed on the planning application file.