

Scrutiny Standing Panel Agenda



Planning Services Scrutiny Standing Panel Thursday, 12th February, 2009

Place: Committee Room 2, Civic Offices, High Street, Epping

Time: 7.30 pm

Democratic Services Officer: Mark Jenkins - Office of the Chief Executive
Email mjenkins@eppingforestdc.gov.uk Tel: 01992 564607

Members:

Councillors Mrs L Wagland (Chairman), K Chana (Vice-Chairman), A Boyce, M Colling, Mrs A Cooper, R Frankel, J Hart, Mrs C Pond, W Pryor, P Spencer and H Ulkun

A BRIEFING FOR THE CHAIRMAN OF THE PANEL WILL BE HELD AT
7.00 PM PRIOR TO THE MEETING

1. **APOLOGIES FOR ABSENCE**
2. **DECLARATIONS OF INTEREST**
3. **NOTES FROM THE LAST MEETING - 18.11.08 (Pages 5 - 12)**

The last meeting of the Panel was scheduled for 6 January 2009, but was cancelled. The attached minutes are from the previous meeting, 18 November 2008.
4. **SUBSTITUTE MEMBERS**
5. **TERMS OF REFERENCE (Pages 13 - 14)**
6. **WORK PROGRAMME (Pages 15 - 18)**
7. **PRESENTATION ON THE PLANNING PORTAL**

S Bacon, Business Manager, to give a presentation on the Planning Portal.
8. **UPDATE INCOME AND EXPENDITURE - REVISED ESTIMATE 2008/09 AND ESTIMATE FOR 2009/10 (Pages 19 - 22)**

Report attached.
9. **SCRUTINY REVIEW REQUEST - COUNCILLOR A. COOPER (Pages 23 - 36)**

Report attached.

10. PLANNING COMMITTEE 3 WEEK CYCLE (Pages 37 - 38)

11. REVIEW OF PLANNING PROTOCOL (Pages 39 - 58)

Recommendation:

To consider whether the Panel should submit any comments to the Standards Committee on the Planning Protocol.

1. (Assistant to the Chief Executive) The Epping Forest District Standards Committee is undertaking one of its regular reviews of the Council's Planning Protocol. The Committee is consulting members of the Council, planning officers, legal staff, planning agents and local councils to ascertain whether they have any new issues which should be cored in the Protocol or any existing provisions which may need revision.

2. The committee plans to undertake its review at its July meeting and are inviting this Panel to comment as it is dealing with an action plan covering all aspects of the Council's planning service.

3. The Committee has itself already identified some aspects of the Protocol and the Assistant to the Chief Executive will describe these at the meeting if required. However it would be helpful if the Panel could describe any points of concern so these may be taken back to the Committee. If the Panel wishes to make any comments in person to the Committee, they are asked to indicate accordingly.

12. STAFFING UPDATE

The vacant positions at present within Planning and Economic Development are:

- (a) Assistant Director Policy and Conservation
- (b) Three Senior Building Control Surveyors
- (c) One Principal Building Control Surveyor
- (d) One Senior Planning Officer – Development Control
- (e) One Rural Officer

It should be noted that the posts within Building Control are being kept vacant to assist the Building Control Account to be kept in balance.

13. ANY OTHER BUSINESS

14. DATES OF FUTURE MEETINGS

The next programmed meeting of the Panel is on 12 March 2009.

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**EPPING FOREST DISTRICT COUNCIL
NOTES OF A MEETING OF PLANNING SERVICES SCRUTINY STANDING PANEL
HELD ON TUESDAY, 18 NOVEMBER 2008
IN COMMITTEE ROOM 1, CIVIC OFFICES, HIGH STREET, EPPING
AT 7.30 - 9.45 PM**

Members Present:	Mrs L Wagland (Chairman), K Chana (Vice-Chairman), A Boyce, Mrs A Cooper, R Frankel, Mrs C Pond, P Spencer and H Ulkun
Other members present:	Mrs A Grigg and Mrs P Smith
Apologies for Absence:	M Colling and W Pryor
Officers Present	D Macnab (Deputy Chief Executive), J Preston (Director of Planning and Economic Development), S G Hill (Senior Democratic Services Officer), R Sharp (Principal Accountant) and M Jenkins (Democratic Services Assistant)

23. SUBSTITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)

There were no substitute members present.

24. DECLARATIONS OF INTEREST

There were no declarations of interest made pursuant to the Council's Code of Member Conduct.

25. NOTES FROM THE LAST MEETING

The Chairman and Members felt that, following on from the last meeting of the Panel, the notes from that meeting had not reflected accurately that the updated Best Value in Planning, prepared for the Task and Finish Panel, should be submitted to the Overview and Scrutiny Committee without further work, but with an explanation from the Chairman as to why this had been appropriate in these particular circumstances.

AGREED:

That, the notes of the meeting held on 9 September 2008 be agreed subject to the amendment of Note 17, to reflect the Panel agreement to submit the Value for Money Best Value Review report without amendment, to the Overview and Scrutiny Committee.

26. ANY OTHER BUSINESS

There was no other business.

27. TERMS OF REFERENCE

It was suggested that the Improvement Plan should be added to the Terms of Reference of the Standing Panel under item 7 and the terms to be amended in line with the Work Programme.

28. WORK PROGRAMME

The following items from the Work Programme were discussed by the Panel:

Item 1 (i) New Local Development Scheme and East of England Plan

The Director of Planning Services, Mr J Preston, advised the Panel that the final version of the East of England Plan was currently incomplete. There was a legal challenge to the East of England Plan of which the District Council was awaiting the results.

The Gypsy/Traveller consultation had begun and was concluding in early 2009. Mr J Preston told the Panel that the Gypsy and Traveller Consultation had started two weeks previously. The Consultation was taking up an enormous amount of time for both Council officers and elected members. Extra resources had been put into the consultation process, for example provision of staff at public exhibitions. Mr J Preston said that the consultation was causing a certain level of stress for staff.

Councillor Mrs P Smith supported Mr J Preston's comments. She praised the Forward Planning Team for their organisation especially their one on one dialogue with residents in explaining the consultation process to them.

Councillor Mrs A Cooper informed the Panel that there was concern that notices had not been issued regarding a Gypsy/Traveller Consultation event in Nazeing, she also felt that extra staff were needed in Planning Services.

Mr J Preston informed the Panel that at a recent Examination in Public, other Local Authorities had objected to the District Council revealing information from an ongoing update of Gypsies and Travellers' needs assessments. The District Council's consultant, Mr A Lainton, had suggested that other districts such as Uttlesford with only 15 proposed sites, could have a higher number. He had argued that Epping Forest District Council, with 49 proposed pitches, should have had, perhaps, 30 pitches.

Councillor H Ulkan thought that a nationwide strategy integrating Gypsies and Travellers into conventional, settled society, was a better solution to the current problem. Mr J Preston stated that he could not comment on the wider political and social dimensions of integrating Gypsies and Travellers. However he echoed Councillor H Ulkan's opinions that those Gypsies and Travellers who lived on authorised sites were not a problem to other residents, their children went to local schools and generally, they had settled well. However they had traditionally found employment in agriculture, a type of work which was becoming increasingly less available, some had formed into large groups and had sometimes occupied land which did not belong to them. When they were evicted, it had been common for them to leave large amounts of rubbish behind. Because of this, local residents had negative rather than positive feelings towards them. An interesting fact that had emerged from the consultation, thus far, had been that many district residents did not know that there were so many Gypsy and Traveller sites already in the district. There was a strong public perception that the settled community were being ignored.

The Chairman commented that the current cycle of occupying land and then being evicted or evading, needed breaking. The District Council had done well with smaller Gypsy/Traveller sites, but had found it harder managing with larger sites.

Item 2 (i) Re-use of buildings in the Green Belt/Traffic Issues in the Roydon and Nazeing Areas, and (ii) To keep an overview on transport matters that were the subject of a focus day in Nazeing In March 2007 and the action plan.

The Panel expressed strong concern about traffic dangers at the Crooked Mile in Nazeing. There was also strong feeling regarding the liaison between the District Council and Essex County Council Highways on road safety issues, particularly its freight transportation strategy, although the Panel did acknowledge that there were staffing problems current within County's Highways. The Chairman suggested that this issue should go before the Environmental Services Scrutiny Panel, Safer, Cleaner, Greener, Mr J Preston confirmed that it should form part of its Work Programme. The Chairman requested that the District Council's Civil Engineering and Maintenance Portfolio Holder, Councillor R Bassett, be asked to write a letter to his opposite number in the County Council, Councillor N Hume, Highways and Transportation Portfolio Holder, regarding the extreme concern there was surrounding the traffic safety at the Crooked Mile in Nazeing.

AGREED:

(a) That, the Safer, Cleaner, Greener Scrutiny Panel be asked to discuss the Essex County Council's Freight Transportation Strategy; and

(b) That, Councillor R Bassett, Civil Engineering and Maintenance Portfolio Holder, be asked to write a letter to Councillor N Hume, Portfolio Holder for Transportation and Highways at Essex County Council, regarding road safety at the Crooked Mile, Nazeing.

Councillor H Ulkan felt that the issue around traffic safety should have been expanded to cover other parts of the district. There were other parts of the district which were probably as dangerous as the Crooked Mile, Nazeing. He suggested that the County Council should furnish the District Council with a map indicating all traffic accidents in the area. The Deputy Chief Executive, Mr D Macnab, advised that Epping Forest had a comparatively high record of killed and injured on the roads. The District Council were attempting to cut traffic accidents, the Local Strategic Partnership had made a successful bid for a driver education programme. The Chairman concurred and suggested that a Driver Plus scheme could be subsidised.

Item (3) Provision of Value for Money

The Chairman was concerned at the delay in the Panel receiving the ICT information promised during the agreed presentation. Councillor Mrs P Smith suggested that a similar presentation should have been included on agendas for the Local Council's Liaison Committee. Councillor Mrs A Cooper congratulated Planning Services on a recent planning portal presentation, it should elevate the District Council's customer satisfaction ratings. Mr J Preston said that a vast volume of material had been scanned in Planning Services for the public to access more easily, he was hoping that links to Mod.Gov and to webcasting could be made. The Northgate Group had taken over Anite Public Sector Limited, the likely result being a significant improvement in the system. The Chairman requested a demonstration for the Panel.

The Chairman reminded the Panel, that they had not discussed Appeals and Building Control, which was on the Panel's terms of Reference. Mr J Preston had reported on this previously, but it needed more detail. Within Provision of Value for Money, the Chairman suggested that the performance of Planning Sub-Committee members and planning applicants, needed careful analysis.

Councillor H Ulkan was concerned about land banking, whereby plots were being bought in areas which had not yet been granted planning permission and in some cases were in Greenfield or Greenbelt zones, for the purpose of development later on. He was concerned that some people may be living on re-developed land and not on better plots of land. Mr J Preston did not know how much land banking there was in the district. He informed the Panel that the recent "Call for Sites" did not impact on what was being done by Registered Social Landlords at present.

29. LOCAL DEVELOPMENT FRAMEWORK - UPDATE

Mr J Preston, presented a report to the Panel regarding an update of the Local Development Framework (LDF). Further progress on a replacement Local Development Scheme had been delayed subject to further discussions with GO East in determining the options available to deliver the policy requirements of the East of England Plan (EEP), this had also delayed progress on the Core Strategy. Technical work creating a robust evidence base continued, this was being undertaken jointly with other relevant authorities where necessary.

A report to the Cabinet in December 2007 identified the funding required to deliver a successful LDF. Expenditure to date, commitments and anticipated work over the rest of the financial year amounted to some £337,000. A further DDF bid had been made for £91,000 in the forthcoming 2009/10 financial year replacing the amount taken from the LDF fund for development briefs in Debden and Epping.

Recent announcements had shown that the Council were receiving £93,284 (£93,469 now had been received) from Housing and Planning Delivery Grant. It was difficult to assess the amounts that may have been forthcoming in future rounds, but an assessment was made of the criteria under which EFDC may benefit in future.

Discussions between the District Council, Harlow District Council, East Herts District Council and GO East were on-going. Matters had been slightly delayed by the additional uncertainty caused by Hertfordshire County Council's application for a judicial review of the East of England Plan. The District Council were receiving notification of a judicial review court date in the autumn, with resolution in early 2009.

Members had previously expressed concern at the length of time it would take to prepare and adopt a Core Strategy, and felt that the feasibility of adopting the document over a two year period, rather than three years, was worth exploring. Changes to the regulations governing the preparation of LDF documents now meant that only two formal rounds of public engagement were required.

Given the current uncertainties, it was too early considering whether further staffing resources were needed in the Forward Planning Team. There were five officers and two support officers in the policy team a further four officers reported to the Forward Planning Manager. However there were three officer vacancies in the entire team. The team was currently supplemented by a consultant working on a short term contract to progress the Gypsy and Traveller Site Allocations Development Plan Document.

Progress on the LDF was limited by issues which were outside of the direct control of the District Council, the challenge to the EEP and co-ordinated working arrangements being entered into. Following resolution of these issues, there should be consideration of available staff resources.

Councillor R Frankel was concerned that delays in the LDF were having an impact on the Local Plan. Mr J Preston told the Panel that there was a three year time limit on the Local Plan Alterations policies from the date of their adoption. This could be extended by a Direction from the Secretary of State, however this had to be supported by reasons. The application needed to be with GO East six months before the expiry date, January 2009.

Councillor R Frankel was also concerned about Policy GB14a – Residential Extensions in the Green Belt. This policy was being deleted because the limit on building of 40% up to a maximum of 50 square metres had been changed to permitted development. This meant that some developments no longer required permission.

The Chairman requested a summary on the changes stemming from deletion of Policy GB14a.

AGREED:

That, a summary of changes be presented to the Panel regarding the changes following Policy GB14a.

The Government changes had led to a reduction in simpler planning applications, however this was not expected to have a huge effect on workload because members of the public were reporting development work to the Enforcement Team, and some building changes were now found to be controlled.

Councillor K Chana said there was an increase in the number of inquiries from the public since the recent change in the law. Mr J Preston said that the notes on the website were being updated. Some householders may think they had permitted development and have increasingly fought a certificate of lawful use.

Mr J Preston advised the Panel that because of the legal challenge to the East of England Plan, the Local Development Framework had slowed down. It was possible that GO East may decide that the local authorities were not moving fast enough. The Panel requested a timetable indicating steps for the LDF process, Mr J Preston replied that he did not have a clear start date, not all items could be dealt with consecutively, however it should be ready by January 2009.

The Chairman asked about the Statement of Community Involvement. Mr J Preston said that Planning Services staff were struggling with this, the regulations were not simple to follow. There was a large amount of material available.

The Chairman said that the consultation was extensive and may distract from other areas. The community aspect of the LDF may ease the process.

Mr R Sharpe, Senior Accountant, said that the District Development Fund had recently been before the Cabinet, and approved with the necessary LDF budget requirements, known at that point in time. The Planning budgets for the current year revised and for 2009/10 estimated were currently being prepared and that the position would be reported to members in January 2009. Mr D Macnab advised that through the Portfolio Holder Advisory Group, there was a regular update on progress.

Members asked about the budget for the Gypsy/Traveller Consultation, Mr J Preston replied that there was in-house expenditure on exhibitions and the like. Public responses were being directed to an external company for electronic analysis.

Councillor H Ulkan asked how many staff were working on the Gypsy/Traveller Consultation. Mr J Preston advised that himself, I White, Forward Planning Manager A Wintle, Planning Officer, K Wright and the consultant A Lainton were directly involved. Other officers were L McGann, Planning Officer, S King, Information and Technical Officer, and A Sleet, Forward Planning Assistant. Exhibition staff included W Gains, Safety Officer, J Kershaw, Building Control Manager, D Baker, Administration Supervisor, Customer Contact Team, a tree officer plus the receptionist. Temporary staff were involved in sending packs to the public. Mr D Macnab advised that Public relations, Democratic Services and Directors were also involved as well. The Chairman expressed her gratitude to staff for their ongoing work.

The Panel spoke next of the planning portal, Mr S Bacon, ICT Business Manager, in Planning Services, was to attend a cycle of planning meetings to explain the latest ICT developments.

RESOLVED:

- (1) That, the progress report and update on the Local Development Framework, be noted; and
- (2) That, the expenditure and further commitments on the Local Development Framework, be noted; and
- (3) That, the Panel support the additional DDF Bid for 2009/10, in the sum of £91,000, be made to replace funding subsequently allocated to development brief projects in Debden and Epping; and
- (4) That, the potential sources of funds, which may be available to add to the Local Development Framework fund in future, be noted; and
- (5) That, the Panel receive further updates on the Local Development Framework at regular intervals including the proposed implementation timetable and key milestones.

30. PLANNING DIRECTORATE IMPROVEMENT PLAN

Mr J Preston, Director of Planning Services, presented a report to the Panel regarding the Improvement Plan for the Directorate of Planning and Economic Development. The Overview and Scrutiny Committee had agreed that the Directorate would produce an Improvement Plan for the following eighteen months. The Panels' investigations had shown there had already been significant change within Planning over the last few years. However, there was scope for further change and improvement. The plan was identifying 13 areas of potential improvement, based on feedback on current performance and proposed action addressing this alongside the resources needed and an timescale.

Mr J Preston said that the process of getting into the top quartile was being picked up by the Key Performance Indicators. There had been concern from members regarding the District Council's use of consultants. Evidence was needed as to the circumstances under which they were hired. In some cases, the Portfolio Holder would be asked to waive the relevant Contract Standing Orders.

Mr J Preston was asked about public feedback on services. A lot of feedback should be done via the website. The Chairman thought more work was needed on website feedback. Mr S Tautz, Performance Improvement Manager had captured some of this information already. It was suggested that by re-visiting 10% of calls made, officers could extract feedback on the service.

The Chairman pointed out to the Panel that the aim of the Improvement Plan was in changing aspirations to actual tasks completed.

31. STAFFING POSITION UPDATE

The Director of Planning Services, Mr J Preston, provided the Panel with an update on the current staffing situation within Planning Services. The Assistant Director, Mr B Land, was still unwell, Mr J Preston was awaiting an updated medical report. The other Assistant Director Post which was vacant, had been advertised and interviews had taken place. The District Council had received ten applications and interviewed six applicants. However it was found that none of the interviewees were suitable for the post. Mr J Preston told the Panel that the Micro Site had indicated that 200 people had looked at the post advert on the internet but most had not applied for the position.

There was also a member of staff on maternity leave within Development Control, and one person had been appointed to fill that vacancy. A Building Surveyor's was also vacant due to maternity leave. The Panel were reminded of the resources employed in mentoring and directing new members of staff. The recruiting of staff had been a problem possibly because of the comparatively lower salaries that the District Council offered. The Chairman commented that there had been huge redundancies in many planning companies and consequently, within a very short period, it was expected that the District Council would be receiving more enquiries about vacant posts.

It was felt that suitable analysis should have been made to find the reasons why some potential applicants had been deterred from applying. The Panel was told that surveying techniques on the internet may have been counter productive, an exit interview on the website would help. Mr D Macnab assured members that the Council's Executive were closely monitoring the volume of business and would adjust the Council's staffing structure to meet any change. Members thought that directorates could have been more creative in attempting to retain existing staff, but did acknowledge that good staff would inevitably leave for better paid work.

32. DATES OF FUTURE MEETINGS

The Panel noted that the dates of the following meetings were as follows:

6 January 2009;

12 February 2009; and

13 March 2009

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TERMS OF REFERENCE - STANDING PANEL

Title: Planning Services

Status: Standing Panel

Terms of Reference:

1. **Regional Planning.** To consider matters which arise as a result of the adoption of the East Of England Plan, the Single Issue Review thereof concerning Gypsies and Travellers, and the review to 2031. In particular, this will consider working in partnership with others to secure delivery of the plan with adequate infrastructure, and will allow the Portfolio Holder for Planning and Economic Development to remain tuned in to local views.
2. **Local Development Framework.** In association with 1, to keep an overview of work associated with securing a sound Local Development Framework; in particular how the core strategy will cater for the adequate delivery of infrastructure of all types, the limited rolling back of the Metropolitan Green Belt to allow the regeneration and expansion of Harlow, the increased provision of affordable housing, and the maintenance of the existing settlement pattern elsewhere in the District.
3. **Metropolitan Green Belt.** To consider what changes are practical and desirable to Council policies including those concerning the extension of existing dwellings, and the reuse of redundant and other buildings; in particular, are further restrictions necessary (changes in policy required) to ensure that such developments are truly sustainable.
4. **Value for Money.** To regularly consider in detail the provision of Value for Money within the Directorate focusing on:
 - Development Control (including Appeals)
 - Forward Planning
 - Building Control
 - Enforcement
 - Administration and Customer Support
 - Economic Development
 - Environment Team
5. To gather evidence and information through the receipt of:
 - performance monitoring documents,
 - Best Value Review of Planning Services (updated version)
 - benchmarking exercises,
 - staffing levels, and
 - annual consultation with Planning Committee Members, customers and IT Suppliers.
6. To review a selection of controversial planning decisions to see if lessons can be learnt from their consideration.
7. To consider whether the reporting arrangements for all of the above matters and those for the Section 106s (including how they are negotiated agreed and

implemented strategically to secure community benefit), and appeals are sufficient (including how new legislation impacts on these) and to recommend accordingly.

8. To evaluate all relevant facts in relation to the topics under review in an objective way and to produce recommendations for future action accordingly;
9. To establish whether there are any resource implications arising out of the topics under review and advise Cabinet at appropriate intervals for inclusion in the Budget Process.
10. To report to the Overview and Scrutiny Committee at appropriate intervals.
11. To monitor actions arising from the Improvement Plan for the Directorate.

Chairman: Cllr Mrs Wagland

Planning Services Standing Panel			
Item	Report Deadline / Priority	Progress / Comments	Programme of Future Meetings
<p>(1) (i) New Local Development Scheme and East of England Plan – EFDC Response to Final Version</p> <p>(ii) To consider matters that arise through the East of England Plan</p> <p>(iii) In association with the above, to keep an overview of work associated with securing a sound New Local Development Framework</p> <p>(2) (i) Re use of buildings in the Green Belt/Traffic Issues in the Roydon and Nazeing Areas.</p> <p>(ii) To keep an overview on transport matters that were the subject of a focus day in Nazeing in March 2007, and the action plan.</p>	<p>Next report at the January 2009 meeting</p> <p>March/April 2009</p>	<p>(i) Final version of the East of England plan incomplete. Awaiting the results of a legal challenge and the results from the gypsy/traveller consultation.</p> <p>(ii) To receive a progress report at each meeting.</p> <p>(iii) To receive a progress report at each meeting.</p> <p>On going – VOSA attended meeting of the old Environment and Planning Standing Panel on 28 Feb 2008.</p> <p>Awaiting Essex C.C. transport freight strategy for the Nazeing area. A review of the action plan will come forward at the March/April 2009 meeting.</p>	<p>15th July 2008</p> <p>9th September</p> <p>4th November</p> <p>6th January 2009</p> <p>12th February 2009</p> <p>13th March 2009</p>

<p>(3) To consider the provision of Value for Money within the following Planning Services:</p> <ul style="list-style-type: none"> • Development Control (including Appeals) • Forward Planning • Building Control • Enforcement • Administration and Customer Support • Economic Development • Environment Team 	<p>Completed (Subject to annual review in August 2009) November 2008 February 2009</p> <p>January 2009 This has had to wait because of staff shortages & work on Gypsy & Traveller issues</p> <p>February 2009</p>	<p>The timetable of review was agreed at the September meeting of the Panel.</p>	
<p>(4) Consultation with Residents and Amenity Groups</p> <p>Direct consultation</p>	<p>To be completed in time for August 2009 review. To be confirmed</p>	<p>Completed June 2008</p>	

<p>(5) To consider in detail the provision of Value For Money within the Development Control (Planning Services) function, focusing specifically on:</p> <p>(a) The success of the 'hit squad' established to focus on the backlog of planning applications;</p> <p>(b) How and to what extent performance in relation to the determination of planning applications has improved as a result of the 'hit squad' and other additional resources such as the new integrated computer system, the restructure of Planning Services and the application of Planning Delivery Grant; and</p> <p>(c) How unit cost and other benchmarking information in relation to the Development Control function can be obtained to increase the effectiveness of the Value For Money Analysis for 2006/07 and future years.</p>	<p>Completed report to November 2008 OSC meeting</p>	<p>COMPLETED</p>	
<p>(6) Update on current staffing situation</p>	<p>Regular agenda item. Next update to November 2008 Panel.</p>		

(7) Improvement Plan	Regular Agenda Item	
(8) Chairmen and Vice Chairmen of Area Planning Cttees to be invited to a meeting to provide feedback.	February 2009	
(9) IT Presentation	February 2009	
(10) Update on Gypsy and Traveller Consultation	February 2009	
(11) Report from legal on performance at planning appeals		

Report to Planning Services Scrutiny Standing Panel

Date of meeting: 12 February 2009

**Subject: Revised Estimate for 2008/09 and Estimate
for 2009/10**

SCRUTINY



Officer contact for further information: R Sharp (Principal Accountant) Ext 4603

Committee Secretary: M Jenkins (Democratic Services Assistant) Ext 4607

Recommendation:

That, the Revised Estimate for 2008/09 and Estimate for 2009/10 for Planning Services, be noted.

Key Points

1. The total portfolio budget, original estimate, for 2008/09 now shown as £2.744m, with revised 08/09 £2.502m and 09/10 £2.940m. A reduction of £136,000 on the published 08/09 budgets has resulted from the exclusion of Countrycare and inclusion of Environmental Co-ordination, both as a result of directorate/portfolio holder changes. The year on year increase on the amended figures of £196,000 is primarily due to a higher level of DDF spending in 2009/10, as this has increased from £427,000 to £644,000.
2. Growth Items – There are no net changes to CSB as this only moves (£7,000) between the years. High level of DDF spending in 09/10, with £432,000 allocated to the Local Development Framework. In view of the costs of lost planning appeals in 08/09 a contingency of £100,000 has been included in the DDF for 09/10.

Detailed Comments

3. Direct Services – There was a net increase of £123,000, year on year, due to work on the Local Development Framework. This is a vast project for the service and in total £1.137million of DDF has been allocated to the LDF to the end of 2011/12. In the revised estimates for 2008/09 Forward Planning also has £66,000 of DDF for design briefs for Loughton Broadway and Epping. The other increase worth noting is on Economic Development where two vacant posts have been filled.
4. Regulatory Services – There was a net increase of £73,000, year on year. An increase has been seen in the number and cost of planning appeals and this has been reflected in the shift in recharges. This has caused a reduction in the Development Control budget but an increase in the Planning Appeals budget. This budget has also been increased by the inclusion of the £100,000 contingency for appeal costs mentioned earlier.
5. The Building Control Ring Fenced account is also shown in this section. This account is required to break even on a rolling three-year basis. To achieve this it is necessary to increase fees by 8% from April 2009, as the account is currently in deficit.
6. Support & Trading Services – There was a net decrease of £23,000, year on year, which was not significant and no CSB growth items.

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Income and Expenditure for all Planning and Economic Development Services

2003/04	2004/05	2005/06	2006/07	2007/08	2008/09			ESTIMATE 2009/10				
					Original Estimate £000	Revised Estimate £000		Gross Expend £000	Gross Income £000	Net Expend £000		
							Direct Services					
	83	131	110	83	122	182	164	Economic Development	218	0	218	
	15	3	17	19	21	23	17	Bus Shelters	19	0	19	
							91	55	Environmental Co-Ordination	55	0	55
	190	203	194	187	188	0	0	Countrycare	0	0	0	
	158	145	186	199	172	209	187	Conservation Policy	214	0	214	
	260	209	365	454	450	688	487	Forward Planning	780	16	764	
	0	13	89	85	124	131	183	Town Centre Enhancements	181	4	177	
	706	704	961	1,027	1,077	1,324	1,093	Total Direct Services	1,467	20	1,447	
								Regulatory Services				
	323	346	290	260	237	240	417	Planning Appeals	454	3	451	
	337	392	390	520	583	521	509	Development Control Enforcement	520	0	520	
	360	681	620	506	598	483	317	Development Control	971	623	348	
	0	0	0	0	0	0	0	Building Control Fee Earning *	642	642	0	
	79	89	130	155	164	176	166	Building Control Non Fee Earning	174	0	174	
	1099	1508	1,430	1,441	1,582	1,420	1,409	Total Regulatory Services	2,761	1,268	1,493	
								Total (Transferred to GF Summary)	4,228	1,288	2,940	
								Support and Trading Services				
	206	181	209	527	528	438	367	Planning Administration	443	12	431	
							341	2/2	325	0	325	
	-145	-154	(173)	(496)	(497)	(733)	(568)	Recharged to this Portfolio	(684)	(11)	(673)	
	-61	-27	(36)	(31)	(31)	(45)	(70)	Recharged to other Portfolios	(84)	(1)	(83)	
	0	0	0	(0)	0	0	0	Total	0	0	(0)	
	1805	2212	2,391	2,468	2,659	2,744	2,502	Portfolio Total	4,228	1,288	2,940	
	1782	1927	2,237	2,310	2,277	2,324	2,207	Continuing Services Budget			2,296	
	115	73	27	19	89	20	90	Continuing Services Budget - Growth			0	
	-71	-25	(65)	(19)	(81)	(27)	(97)	Continuing Services Budget - Savings			0	
	1826	1975	2,199	2,310	2,285	2,317	2,200	Total Continuing Services Budget			2,296	
	64	580	419	286	421	627	564	District Development Fund - Expenditure			644	
	-85	-343	(227)	(128)	(47)	(200)	(262)	District Development Fund - Savings			0	
	-21	237	192	158	374	427	302	Total District Development Fund			644	
	1805	2212	2,391	2,468	2,659	2,744	2,502	Portfolio Total			2,940	
		23	8	3	8	3	(9)	% Year on Year increase in Planning Services			18	

Planning services in relation to ALL EFDC Services Net Cost

17,539	17837	15,076	17,901	19,366	21,554	20,416	Net cost of all EFDC services	21,664
10.30	12	15.86	13.80	13.70	12.73	12.26	Planning as a % of all EFDC services	13.57

2.60	1.80	4.00	3.30	3.30	4.00	4.00	INFLATON RPI	4.00
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*** Building Control Ringfenced Account**

144	197	118	57	15	(15)	(15)	Opening Balance	(15)
53	-79	(61)	(42)	(30)	0	0	Surplus/(Deficit)	15
197	118	57	15	(15)	(15)	(15)	Closing Balance	0

Main Income generating Items - Included above

								Development Control		
491	379	547	535	529	646	614	Fees & Charges	615		
49	71	66	48	33	23	26	Planning Del Grant	9		
								Building Control Fee Earning		
515	543	511	553	621	674	594	Fees & Charges	642		
0	0	0	9	0	0	0	Planning Del Grant	0		

Notes

The 23% increase between 03/04 & 04/05 relates mainly to the start of the new ICT system. Also £116,000 for a Land tribunal case. Increases between 04/05 & 05/06 relate mainly to Local Plan.

Portfolio service changes have moved Countrycare from the Planning & Economic Services Portfolio to the Civil Engineering & Maintenance Portfolio, and include Environmental Co-Ordination in the Planning Portfolio having moved from Environmental Protection Portfolio.

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Report to Planning Services Scrutiny Standing Panel

Date of meeting: 12 February 2009

Subject: Planning Decisions

Officer contact for further information: J Preston, Director of Planning Services

Committee Secretary: M Jenkins, Office of the Chief Executive

SCRUTINY



Recommendations:

- (1) To consider the scrutiny review request set out in this report and the initial response of the Director of Planning & Economic Development; and**
- (2) To consider any further action required or a response.**

1. The Overview & Scrutiny Committee has referred to this Panel a scrutiny request from Councillor Mrs A. Cooper covering a number of questions regarding planning decision making, the possibility of challenge to decisions, the advice of officers, how policy is to be applied, awards of costs and use of consultants and other advice.

2. A copy of Councillor' Cooper's submission is attached as Appendix 1 to the is report. Each section of that submission is dealt with in turn below by way of comments from the Director. Of Planning & Economic Development.

(a) Summary of issue you wish to be scrutinised:

Comment:

3. When Councillors consider reports about planning applications it is important to consider the report, and what is recommended. Indeed, there are legal duties placed on the decision taker including the consideration of Development Plan policies in Regional, saved County and saved Local policies. Given those duties, the relevant protocols and training for members emphasise the importance of this approach.

4. The legal references is Section 38 (6) of The Planning and Compulsory Purchase Act 2004 (previously Section 54A of The Town and Country Planning 1990 as amended). This section states that "If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise." That said, most developments would involve the consideration of several policies, and those policies may not make the decision a simple one; judgements are called for, as is the weighing up of policies.

5. The Planning Protocol deals with the governance issues which planning decisions raise. Paragraphs 14, 15, 16 and 17 in the Protocol refer.

(b) Questions that Arise: "Can Officers/ Councillors disregard policy, if so in what circumstances?"

Comment

6. Planning officers are expected to defend their recommendations if a case is taken to appeal. They will occasionally defend decisions that have gone against their recommendation, particularly if a case was finely balanced and/or planning reasons for the refusal have been given. Sometimes other planning professionals (e.g. consultants) are used to take such appeals.

7. The appeals record of the Authority over many years can be interpreted as showing that;

(a) officer advice is open to challenge in an Inquiry; and

(b) decisions by Councillors contrary to Officer recommendations can withstand a challenge at appeal.

8. It is not a question of policies being disregarded. The Authority's legal duties and the Protocol, mean that the true position must concern the weight that to be given to any particular policy in any one case. This does vary from case to case.

(c) Questions that Arise: "In planning, "Can it (ie (b) above) lead to an unsafe decision?"

9. An unsafe decision could arise, for example, if the decision taken was considered unreasonable, if the legal duty was misquoted or misapplied, or where material considerations that led to a decision were different from those which planning policy and practice might suggest should be applied, (eg if the weight of objections were to be given as the sole basis for the decision).

10. In some circumstances, this situation might lead to the intervention of the Monitoring Officer, lead to a complaint to the Ombudsman, or produce a basis for a Judicial Review of the decision.. More frequently, this might lead to a lost planning appeal and an award of costs against the Authority.

(d) Questions that Arise: "In the event of a claim against this Council can it claim against the County if it is their Officers refusing to stand by their original decision?"

11. EFDC will usually receive the benefit of technical consultation responses from a number of organisations. This advice needs to be weighed with other considerations, but EFDC would be responsible for defending the decision taken..

(e) Questions that Arise: "If this Council is paying for professional advice (i.e. Highways) why should it have to pay for more advice to compensate for the original advice being withdrawn?"

12. Having taken a decision, it is up to EFDC to defend that decision, or, if time allows, to review it. If EFDC is seen to take an unreasonable/undefended case at appeal, it risks having costs awarded against it. Similarly, if it withdraws any part of its case late in the process, then it is similarly at risk. It follows that it will be prudent to see if a separate professional party can support that part of the case, so as to avoid being judged to have acted unreasonably.

(f) Questions that Arise: "In the event of this happening with Planning Applications should they not always be discussed in public?"

13. Planning applications are determined in the public domain, most obviously by Committees. This question appears to be about what to do if part of the determined application is considered vulnerable at appeal. One could be very open about that, but if members adhere to their original decision even where officers have drawn attention to a vulnerability for the council, this might simply emphasise that weakness if aired in a public meeting, even being interpreted by others as unreasonable behaviour.

Appendix 2 shows the "probity in planning" report to the December Area Plans Subs.

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**Request by Member for Scrutiny Review
2008/09 Work Programme**



APPENDIX 1

Please complete the form below to request consideration of your issue by the
Overview and Scrutiny Committee

Proposers Name: Cllr A Cooper	Date of Request: 14 Nov 2008
Supporting Councillors (if any):	
<p>Summary of Issue you wish to be scrutinised:</p> <p>When considering a Planning Application Councillors should be mindful to consider Officers recommendations. They should also consider these recommendations in conjunction with the Council's own policies or the County Council's policies.</p> <p>In the event at a later stage the decisions are to be challenged i.e. at a Public Enquiry or complaint etc the Officers then refuse to support their recommendations made in line with their own policies what are the likely repercussions for Councillors who have made the final decision?</p> <p>Q – Can Officers, Councillors disregard policy, if so in what circumstances?</p> <ul style="list-style-type: none"> - In planning can it lead to an unsafe decision? - In the event of a claim against this Council can it claim against the County if it is their Officers refusing to stand by their original decision? - If this Council is paying for Professional advice i.e. Highways why should it have to pay for more advice to compensate for the original advice being withdrawn? - In the event of this happening with Planning Applications should they not always be discussed in public? 	
<p>NOTE: ENTRIES BELOW RELATE TO ISSUE CATEGORIES OF THE PICK PROCESS. PLEASE REFER TO THE EXPLANATORY NOTES TO THIS FORM FOR FURTHER INFORMATION</p>	
<p>Public Interest Justification:</p> <p>High</p>	

Impact on the social, economic and environmental well-being of the area:	
Could impact on all aspects	
Council Performance in this area (if known: Red, Amber, Green):	
Not known	
Keep in Context (are other reviews taking place in this area?)	
Not known	
Office Use:	
Pick score:	Considered By OSCC:

APPENDIX 2 - Report to Area Plans Sub-Committee South, East and West



**Epping Forest
District Council**

Date of meeting: West – 10-12-08

Planning Officer: Nigel Richardson (Ext 4018) Democratic Services: R Perrin

Subject: Probity in Planning – Appeal Decisions, April 2008 to September 2008.

Recommendation:

That the Planning Appeal Decisions be noted.

Report Detail:

Background

1. (Director of Planning & Economic Development) In compliance with the recommendation of the District Auditor, this report advises the decision-making committees of the results of all successful appeals, particularly those refused by committee contrary to officer recommendation. The purpose is to inform the committee of the consequences of their decisions in this respect and, in cases where the refusal is found to be unsupportable on planning grounds, an award of costs may be made against the Council.

2. To set the context, a Best Value Performance Indicator was for district councils to aim to have less than 40% of their decisions overturned on appeal. The latest known figure for the national average for District Councils is 30.9%. That BVPI was scrapped but recently replaced by one which records planning appeals only (not advertisement, listed buildings, enforcements, telecommunications or tree related appeals) and where the Council sets its own target – set this year to align with top quartile performance at 25%. In fact in recent years the Council has been more successful than the national average with only 18% in 2003/04, 29% in 2004/05, 22% in 2005/06 and 30% in 2006/07.

Performance

3. Over the six-month period between April and September 2008, the Council received 78 decisions on appeals – 75 planning and related appeals and 3 enforcement appeals. Of the 75 planning and related appeals, 24 were allowed (32%) and 2 of the 3 enforcement appeals were allowed – a combined total of 33.33% of the Council's decisions being overturned during this period.

4. For the previous year, 2007/08 as a whole: a total of 132 decisions were received – 120 planning appeals and 12 enforcement appeals. Of the 120 planning appeals 36 were allowed but none of the enforcement appeals – a total of 27.30% of the Council's decisions being overturned.

5. For LPI 45, which only considers appeals against the refusal of planning permission (so does not include advertisement, listed building, enforcement, telecommunications or tree-related appeals, nor appeals against conditions); the performance figure for this 6 month period is 26.86%. The full year target is 25%.

Planning Appeals

6. The proportion of appeals that arose from decisions of the committees to refuse contrary to the recommendation of officers during the 6-month period was 24% and of the 18 decisions that this percentage represents, the Council was successful in sustaining its objection in 7 of them. The following remaining 11 were lost:

EPF/1504/07 – 41 & 43 Epping New Road, Buckhurst Hill - First floor side and two storey side and rear extensions to both properties (revised application) (Area Plans South)

EPF/2217/07 – 31 Amberley Road, Buckhurst Hill – Roof extension to form a 2 bedroom end of terrace bungalow (Area Plans South)

EPF/1581/07 – 154 High Road, Chigwell – Demolition of existing bungalow and construction of 3 apartments and underground parking (Area Plans South)

EPF/1625/07 - 1 Connaught Avenue, Loughton – Two storey side extension for Office use (Area Plans South)

EPF/1783/07 – 1 Connaught Avenue, Loughton - Two storey side and single storey rear extension for office use (Area Plans South)

EPF/2598/07 – 1 Connaught Avenue, Loughton – Single storey side and rear extension (Area Plans South)

EPF/2179/07 – Land Adjacent to Broadbents, south of 4 Buttercross Lane, Epping – single and two storey extensions (Area Plans East)

EPF/1805/06 – Last Compound, Woodside Trading estate, Woodside, Thornwood – Security fencing over 2m high for security of parking cars, vans and lorries and storage container with temporary roof (Area Plans East)

EPF/1553/07 – Land to rear of The Trail, Poplar Row, Theydon Bois – New residential unit adjoining existing barn (Area Plans East)

EPF/1554/07 – Land to rear of The Trail, Poplar Row, Theydon Bois – Grade II Listed Building application for a new residential unit adjoining existing barn (Area Plans East)

EPF/1458/07 – Field Adj. to Friars Lodge, Tylers Road, Roydon – Erection of 4 x loose boxes with tack room and hay storage, wooden construction fixed to concrete base (Area Plans West)]

7. The 7 committee refusals that were sustained were:

EPF/1754/06 – Land to rear of 8 Connaught Avenue, Loughton – Erection of 2 storey detached house with partial basement (Area Plans South)

EPF/0440/07 – 12-14 High Road, Buckhurst Hill – Demolition of 2 bungalows and replacement with 2 blocks of flats (14 total) with 100% parking and disabled bay (Area Plans South)

EPF/2196/07 – Land to rear of 67 Lower Queens Road, Buckhurst Hill – erection of new 3 bedroom dwelling (Area Plans South)

EPF/1876/07 – 126 High Road, Loughton - First floor extension to restaurant (Area Plans South)

EPF/0106/07 – 4 The Heights, Bumbles Green Lane, Nazeing – Erection of a storage building for garden furniture and maintenance machinery (retention of existing but with the reduced ridge height) (Area Plans West)

EPF/2342/07 – Barkers Farm, Mount End Road, Theydon Mount – Change of use from farm office/ice cream parlour to supervisory residential unit to goat farm (Area Plans East)

EPF/2403/07 – 9 Ravensmere, Epping – Ground and First floor extensions, new hipped roof with front and rear dormers and replacement front porch (Area Plans East)

8. Therefore, the committees are urged to continue to heed the advice that if they are considering setting aside the officer's recommendation it should only be in cases where members are certain they are acting in the wider public interest and where the committee officer can give a good indication of some success at defending the decision. The Area Committees were clearly just in refusing planning permission 7 of the 18 above cases, but this was somewhat marred by the costs awarded against the Council in the 3 planning applications at 1 Connaught Avenue, Loughton (see point 9 below).

Costs

9. A full award of costs, a claim of £56,551, were awarded against the Council in respect of three planning appeals relating to 1 Connaught Avenue, Loughton. This appeal took place over 3 days as a public inquiry and the Planning Inspector allowed all 3 appeals relating to extensions to existing offices. In allowing the costs, the Planning inspector concluded that the Council had acted unreasonably in refusing two of the planning applications and in one of the two reasons in the third application, judging that the Council had failed to justify these refusals and therefore caused the appellant to incur and waste expense unnecessarily. With no budget provision for appeal costs, the final negotiated payment of £50,000 represents a substantial sum, plus this does not account for the expense of the council employing a Planning Barrister and an external highway consultant to defend the appeal.

Conclusions

10. The Council's performance for this 6-month period has just fallen short of the Local Performance Indicator and to achieve 25% by the year end, when reported again in 6 months time, requires Planning Officers and Members to consider very carefully whether a refusal of planning permission is likely to be sustained by the Planning Inspectorate.

11. Note must be taken of the costs award in relation to 1 Connaught Avenue, Loughton, plus the award of costs relating to the allowed appeal for Wansfell College, Piercing Hill, Theydon Bois, which is about to be settled at approximately £40,000. We have, however, not had many planning related award of costs against the Council over the years, helped by the fact that the appellant does not often make a claim. However, when it does occur, usually in the case of appeals heard at a public inquiry, then award of costs can clearly be expensive.

12. The decisions are listed in the Council Bulletin from time to time but a full list of decisions over this six month period appears below.

Appeal Decisions April to September 2008

Planning Appeals Allowed:

EPF/1581/07	154 HIGH ROAD, CHIGWELL, ESSEX	Demolition of existing bungalow and construction of three apartments and underground parking.
EPF/0193/07	KINGS HEAD GARAGE, HIGH ROAD, NORTH WEALD EPPING, ESSEX.	Retention of change of use of land from garage to hand car wash business. Stationing of portakabin and storage container on land.
EPF/1191/07	REAR OF 16 NEW FOREST LANE, CHIGWELL, ESSEX	Erection of a detached house.
EPF/2598/07	1 CONNAUGHT AVENUE, LOUGHTON, ESSEX	Single storey side and rear extension.
EPF/1625/07	1 CONNAUGHT AVENUE, LOUGHTON, ESSEX	Two storey side extension for office use.
EPF/1783/07	1 CONNAUGHT AVENUE, LOUGHTON, ESSEX	Two storey side extension and single storey rear extension for office use.
EPF/1748/07	42- 52 COOPERSALE COMMON, COOPERSALE, EPPING, ESSEX	Amendment to dwelling approved (EPF/744/03) with the addition of two front dormers and three rear velux windows and a loft conversion.
EPF/0560/08	HIGHWAYS VERGE TO THE IMMEDIATE NORTH EAST OF THE JUNCTION OF BACK LANE AND THE STREET, SHEERING, ESSEX	Telecommunications installation comprising of one 8 metre `timber effect` pole with one omni antenna and four ground based equipment cabinets (to replace existing installation at nearby Woodlands Farm).
EPF/2187/07	LAND TO REAR OF 6 RED OAKS MEAD, THEYDON BOIS, ESSEX	Erection of dwelling in part of rear garden.
EPF/2217/07	31 AMBERLEY ROAD, BUCKHURST HILL, ESSEX	Roof extension to form a two bedroom end of terrace bungalow.
EPF/1532/07	LAND TO THE REAR OF 165 MANOR ROAD, CHIGWELL, ESSEX	Outline application for the erection of three domestic garages.
EPF/1998/07	26 WOODGREEN ROAD, WALTHAM ABBEY, ESSEX	Single storey rear extension to replace existing conservatory.
EPF/0875/07	107-111 EPPING NEW ROAD, BUCKHURST HILL, ESSEX	Demolition of existing building and erection of a block of eight flats (renewal of planning approval EPF/435/02).
EPF/1187/07	2 QUEENS ROAD, LOUGHTON, ESSEX	Retention of replacement garage and addition of a tiled roof and erection of tool shed (revised application).
EPF/1554/07	LAND TO THE REAR OF 'THE TRAIL' POPLAR ROW, THEYDON BOIS, ESSEX	Grade II Listed Building application for a new residential unit adjoining existing barn (revised application).
EPF/1553/07	LAND TO THE REAR OF 'THE TRAIL', POPLAR ROW, THEYDON BOIS, ESSEX	New residential unit adjoining existing barn (revised application).
EPF/1504/07	41 & 43 EPPING NEW ROAD, BUCKHURST HILL, ESSEX	First floor side and two storey side and rear extensions to both properties (revised application).
EPF/2179/07	LAND ADJACENT TO BROADBENTS, BUTTERCROSS LANE, EPPING, ESSEX	Erection of 1 two storey house.

EPF/0392/07	ORCHARD LEIGH HOUSE, NURSERY ROAD, NAZEING, ESSEX	Security fence.
EPF/2458/07	OAKWOOD PARADE, OAKWOOD HILL, LOUGHTON, ESSEX	Erection of 13 metre high slimline telecommunications column next to road kerb in front of 1 and 3 Oakwood Parade, together with ground level equipment cabinet.
EPF/2488/07	8 SPARELEASE HILL, LOUGHTON, ESSEX	Erection of new front wall.
EPF/1805/06	LAST COMPOUND, WOODSIDE TRADING ESTATE WOODSIDE, THORNWOOD, NORTH WEALD ESSEX	Security fencing over two metres high for security of parking cars, vans and lorries and storage container with temporary roof.

Planning Appeals Dismissed

EPF/0040/08	BARKERS FARM, MOUNT END THEYDON MOUNT, ESSEX	Stationing of caravan for on-site supervision of goat farm.
EPF/1825/06	FAIRLANDS FARM, ROOKWOOD HALL ANCHOR LANE, ABBESS RODING, ESSEX	Change of use of buildings to Class B1 and B8 uses.
EPF/0940/07	1 LARSONS COTTAGE, HAMLET HILL, ROYDON ESSEX	Removal of agricultural occupancy condition.
EPF/0796/07	EAST PARK LODGE, FOREST HALL, NORTON LANE, HIGH ONGAR, ESSEX	Two storey side extension and demolition of existing garage.
EPF/1151/07	8 HOMEFIELDS, CHURCH LANE, MATCHING, ESSEX	Two storey side and rear extensions and porch.
EPF/0902/07	THRESHERS, HASTINGWOOD ROAD HASTINGWOOD, NORTH WEALD, ESSEX	Change of use of disused former agricultural land to storage as part of existing waste transfer station and retention of metal palisade security fencing and gates.
EPF/2342/07	BARKERS FARM, MOUNT END, THEYDON MOUNT, ESSEX	Change of use from farm office/ice cream parlour to supervisory residential unit for goat farm.
EPF/0332/07	ASHVIEW, HAMLET HILL, ROYDON, ESSEX	Certificate of Lawfulness of an existing use for the sighting of a mobile home for residential purposes.
EPF/1772/07	LAND TO THE NORTH BOUNDARY OF GRANGE FARM, OFF HIGH ROAD, CHIGWELL, ESSEX	Outline application for the construction of 116 dwellings (60% for rent and 40% for shared ownership).
EPF/1754/06	LAND TO THE REAR OF 8 CONNAUGHT AVENUE, LOUGHTON, ESSEX	Erection of two storey detached house with partial basement (revised application).
EPF/1274/06	LAND AT THE MEADOWS WALTHAM ROAD, LONG GREEN, NAZEING ESSEX.	Change of use of land to a residential caravan site for twenty-two gypsy families, each with two caravans.
EPF/1762/07	LAND AT BILDAKIN, TATSFIELD AVENUE	Demolition of existing detached bungalow and erection of replacement

	NAZEING, ESSEX	dwelling.
EPF/1745/07	DAHMOI, SEWARDSTONE ROAD, WALTHAM ABBEY, ESSEX	Proposed new roof extension and dormers to front and rear, proposed garage conversion, widening of existing vehicle crossover and new crossover and erection of new boundary wall and electric gates (revised application).
EPF/1860/07	1-3 COOPERS HILL, ONGAR, ESSEX	Change of use for the retention of car valeting & hand car wash and retention of canopy.
EPF/1648/07	64 FOREST EDGE, BUCKHURST HILL, ESSEX	Two storey side and single storey rear extension (revised application).
EPF/2021/07	45 TOWER ROAD, EPPING, ESSEX	Retention of safety railing to rear balcony.
EPF/2124/07	15 LIME CLOSE, BUCKHURST HILL, ESSEX	New attached dwelling.
EPF/1876/07	MINX BAR & SHEESHA RESTAURANT 126 HIGH ROAD, LOUGHTON, ESSEX	Single storey first floor extension to restaurant.
EPF/0440/07	12 -14 HIGH ROAD, BUCKHURST HILL, ESSEX	Demolition of two bungalows and replacement with two blocks of flats (14 in total) with 100% parking and disabled bay.
EPF/0106/07	4 THE HEIGHTS, BUMBLES GREEN LANE, NAZEING ESSEX	Erection of a storage building for garden furniture and maintenance machinery (retention of existing but with reduced ridge height).
EPF/1869/07	12 -14 HIGH ROAD, BUCKHURST HILL, ESSEX	Demolition of two bungalows and replacement with block of flats (12 in total) with 100% parking.
EPF/1147/07	4 FLAGSTAFF ROAD, WALTHAM ABBEY, ESSEX	Two storey side extension.
EPF/0742/07	THEYDON TOWERS, THEYDON ROAD, THEYDON BOIS, ESSEX	Replacement of House 2.
EPF/1589/07	LAND ADJOINING ELMWOOD, COMMON ROAD, ROYDON, ESSEX	Erection of a four bedroom house.
EPF/1851/07	HOPLANDS, RIVERSIDE AVENUE, NAZEING, ESSEX	Conversion of single storey bungalow to two storey dwelling.
EPF/1227/07	CREEDS FARM, BURY LANE, EPPING, ESSEX	Retention of a storage shed.
EPF/2425/07	THE COACH HOUSE, GRAVEL LANE, CHIGWELL, ESSEX	Change of use of existing coach house to dwelling (revised application).
EPF/1669/07	THE YARD, REAR OF 16 SHEERING LOWER ROAD, SHEERING, ESSEX	Erection of detached garage.
EPF/0620/07	LAURELS, SAWBRIDGEWORTH ROAD, SHEERING, ESSEX	Extension to existing conservatory, installation of front gates and post.
EPF/2088/07	33 PATERNOSTER HILL, WALTHAM ABBEY, ESSEX	Loft conversion with rear dormer window and roof extension with hip to gable.

EPF/1881/07	SUTTONS MANOR, LONDON ROAD, STAPLEFORD TAWNEY, ESSEX	Proposed construction of a three storey side extension to provide 3 no. two bedroom self-contained flats.
EPF/1893/07	SUTTONS MANOR, LONDON ROAD, STAPLEFORD TAWNEY, ESSEX	Grade II Listed Building application for proposed construction of a three storey side extension to provide 3 no. two bedroom self-contained flats.
EPF/2446/07	37 MEADOW WAY, CHIGWELL, ESSEX	Replacement of existing roof with mansard roof with front and rear dormer windows.
EPF/2099/07	75 BEAMISH CLOSE, NORTH WEALD, ESSEX	Erection of detached dwelling.
EPF/1405/07	OAK LODGE, WOOLMONGERS LANE, HIGH ONGAR, ESSEX	Two storey side extension.
EPF/0792/07	157 HIGH STREET, ONGAR, ESSEX	Grade II Listed Building application for additional signage to property.
EPF/2384/07	32 SUN STREET, WALTHAM ABBEY, ESSEX	Conversion to form three flats including first floor additions to rear buildings with pitched roof and retention of ground floor shop (revised application).
EPF/1702/07	LAND AT THE JUNCTION OF CHESTNUT AVENUE WITH HORNBEAM ROAD, BUCKHURST HILL, ESSEX	Erection of a four bedroom house and double garage.
EPF/2403/07	9 RAVENSMERE, EPPING, ESSEX	Ground and first floor extensions, new hipped roof with front and rear dormers and replacement front porch (revised application).
EPF/0775/07	KINGS OAK, NURSERY ROAD, HIGH BEACH, WALTHAM ABBEY, ESSEX	Erection of single storey extensions to side and rear.
EPF/2432/07	215A FOREST LODGE, SMART'S LANE, LOUGHTON, ESSEX	Loft conversion with mansard roof.
EPF/2301/07	PASLOWS FIELD, KING STREET, HIGH ONGAR, ESSEX	Erection of stables, barn and ancillary facilities including a manege.
EPF/2417/07	PIGGOTTS CO LTD, 43 LONDON ROAD, STANFORD RIVERS, ESSEX	Retention of two mobile homes for staff accommodation.
EPF/2601/07	LITTLE THORBENS BARN, TOOT HILL ROAD, ONGAR, ESSEX	Double bay extension to existing double garage.
EPF/2726/07	WAITROSE, 27-43 QUEENS ROAD, BUCKHURST HILL, ESSEX	One advertisement measuring 1710mm x 1160mm.
EPF/1837/07	27 UPPER PARK, LOUGHTON, ESSEX	Side dormer window.
EPF/2196/07	LAND TO REAR OF 67 LOWER QUEENS ROAD, BUCKHURST HILL, ESSEX	Erection of new three bedroom dwelling (revised application).
EPF/1871/07	17 BARN HILL, ROYDON, ESSEX	Single storey rear extension (revised application).
EPF/1880/07	136 MANOR ROAD, CHIGWELL, ESSEX	Loft conversion, ground and first floor front extension.

EPF/2097/07	24 SUN STREET, WALTHAM ABBEY, ESSEX	Grade II Listed Building application for a ground floor extension to both shops and first and second floor rear addition to form four flats (revised application).
EPF/2089/07	24 SUN STREET, WALTHAM ABBEY, ESSEX	Ground floor extension to both shops and first and second floor rear addition to form four flats (revised application).
EPF/1858/07	9 NEW FOREST LANE, CHIGWELL, ESSEX	Two storey rear and single storey front extension.
ENF/0337/07	1-3 COOPERS HILL, ONGAR, ESSEX	Change of use of the car park area to a hand car wash centre and the erection of a canopy in connection with the said use.

Enforcement Appeals

1. 1-3 COOPERS HILL, ONGAR – Change of use of car park area to a hand car wash and erection of canopy - DISMISSED
2. LAND AT WILLINGALE AIRFIELD, OFF CANNONS LANE, FYFIELD – Use of land as shooting ground and erection of shooting stands – PART ALLOWED (Use as shooting ground)/ PART DISMISSED (shooting stands)
3. KINGS HEAD GARAGE, HIGH ROAD, NORTH WEALD – Creation of a hand car wash centre and the stationing of portable buildings, erection of a canopy and advertisements – ALLOWED.

Report to Planning Services Scrutiny Standing Panel

Date of meeting: 6 January 2009

Subject: Effect of Change in Committee Cycle on Development Control Performance

Officer contact for further information: J Preston (Director of Planning Services) (Tel: 01992 56 4111)

Committee Secretary: M Jenkins (Tel: 01992 56 4607)



Recommendations/Decisions Required:

To consider the impact of the change to the committee cycles on development control performance.

Report:

1. On 19 February 2008 the Council had agreed to change the 4-week planning committee cycle to a 3-week cycle. It was felt that losing 1 week in the committee cycle would save a week in time taken to determine applications decided at the committee. The change began effectively after the 21 May 2008 committee.

2. The data below covers the period from 22 May to December 2008.

	Before Determined	Before Expiry	%	Area Cttee	Before Expiry	%	Dev Cttee	Before Expiry	%
May 22 - June 30	191	160	83.77%	25	4	16.00%	1	0	0.00%
July 1 - September 30	571	488	85.46%	54	26	48.15%	2	0	0.00%
October 1 - December 31	407	340	83.54%	66	25	37.88%	9	1	11.11%
	1169	988	84.52%	145	55	37.93%	12	1	8.33%

3. The total number of planning applications determined under delegated authority, or by committee, during this period, was 1169. The number of applications determined by committee was 145 and the number determined by the District Development Control Committee was 12.

4. If these applications were moved to the next available date, on a four week cycle, it could be estimated that this number would fall as low as 19 cases reaching a planning committee before their expiry date (13.1%). This figure was probably an under estimate as some of these cases would have gone before a committee at an earlier date than the date under the four week cycle. As such a comparison to 2007/08 would be more instructive. In the period 2007/08, 185 cases had gone before a planning committee, of these only 43 cases (23.2%) were considered before their expiry date.

5. It could be argued that by comparing 2007 to 2008, the percentage of cases considered by a planning committee prior to expiry date, had increased by 63% as a result of this change. 55 of these cases reached committee before their expiry date, which is equivalent to 37.9%.

6. If this percentage was applied to this period in 2007, an additional 27 cases would have reached committee before their expiry date. For the full year this could have reached around 60 cases (based on the figures for the sample period).

7. Given that around 2150 cases were determined in 2007/8, these 60 cases would be equivalent to 2.7% of all applications determined. Given the closeness of the performance figures to the top quartile targets, it is conceivable that had this change been in place in 2007/08 then all three top quartile targets could have been achieved.

**PROTOCOL FOR
COUNCILLORS AND OFFICERS
ENGAGED IN THE DETERMINATION OF
PLANNING APPLICATIONS AND OTHER
PLANNING DECISIONS**

Revised Version: 12.07

Rev 4 (1.08)

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1. Purpose of Protocol

- 1.1 This protocol has been prepared to guide Councillors and officers on the manner in which the Area Plans Sub-Committees, the District Development Control Committee (and where appropriate the full Council) will consider planning applications and related planning matters. It applies whether a Councillor is serving as a member of these bodies, as a substitute or as a non-member in attendance.
- 1.2 The protocol also deals with the involvement of Councillors and officers of the Council in the operation of the planning system outside the formal decision-making process.
- 1.3 This protocol is not part of the Council's Code of Conduct. It is designed to demonstrate how Councillors' duties and responsibilities should be met in the field of planning.
- 1.4 Planning decisions may be interpreted as any decision under planning legislation including planning permission, enforcement and related matters whether delegated to officers or reserved to Planning Committees.

2. Summary of Provisions

- 2.1 As soon as possible after they are elected, all Councillors must receive appropriate training in planning requirements if they are members or substitutes on Area Plans Sub Committees as well as the District Development Control Committee.
- 2.2 All planning decisions should be based only on relevant planning considerations.
- 2.3 Planning officers may give professional advice about any proposal to an applicant or objector subject to the general advice in 2.2 above but must explain that the advice cannot bind the Council in any way.
- 2.4 Councillors and officers should avoid giving a firm indication of the decision on any application during contact with applicants and objectors, especially at site meetings, public meetings and pre-consideration discussions in advance of formal decision.
- 2.5 Councillors should refer at a Planning Committee to significant contact with applicants or objectors (meetings, correspondence or telephone calls which are over and above the normal level of Ward Member contacts) about any planning matter under consideration by a planning body and unless this constitutes a prejudicial interest, shall be disclosed during consideration of that matter.
- 2.6 Prejudicial and personal interests in any matter due to be considered at a planning body shall be declared by members under the standing agenda item for that purpose.
- 2.7 All applications considered by the Planning Committees shall be the subject of full written reports from officers incorporating clear and reasoned recommendations.
- 2.8 The conditions for granting of consent or grounds for refusal by Planning Committees shall be approved by a show of hands for voting purposes set out in the minutes.
- 2.9 Chairmen of Planning Committees shall exercise the casting or second vote in accordance with the Council's constitution.

- 2.10 Councillors who are also members of Parish and Town Councils should declare a personal interest if the Parish or Town Council concerned has submitted representations but are not precluded from consideration of that application at District Council level unless they have another interest which is prejudicial under the Code of Conduct or they have not reserved their position on any application at Parish level.
- 2.11 Councillors must take special care with interests created as a result of being members of lobby or campaign groups.
- 2.12 Planning applications by the Council must be treated in the same way as any other decision.
- 2.13 Special care should be exercised by members and officers of the Council in relation to their own planning applications (or where they are objectors).
- 2.14 Members with a prejudicial interest in a planning application must be careful to ensure that if they intend to exercise their right under the Code of Conduct to make representations on that matter, they should do so in accordance with the advice contained in this protocol.
- ... 2.15 A summary guide to the operation of this protocol is attached at Appendix 1.

3. Status of Protocol

- 3.1 This protocol is purely advisory and designed to help both Councillors and officers. However, it is based on guidance issued by the Local Government Association which itself is based on the provisions of the Code of Conduct for Councillors (as set out in Part 5 of the Constitution), the Royal Town Planning Institute's Code of Professional Conduct, the findings of various Inquiries, together with advice issued by the Audit Commission, the Commissioners for Local Administration in England (the Ombudsman) and the National Planning Forum. Failure to follow the protocol without good reason could be taken into account in investigations into possible maladministration. Likewise, the conduct of any Member would be measured (for consistency) by the Standards Board for England against the requirements of the Code of Conduct.
- 3.2 The Council has decided that the operation of all codes of practice and protocols (such as this one) should be monitored by the Council's Standards Committee and that, if necessary, the Committee should be able to issue advice or adjudicate on disputes relating to their operation.

4. Training Requirements

- 4.1 It is fundamental that Councillors (including Parish and Town Council members) involved in planning should receive appropriate training, before being involved in making planning decisions. The Standards Committee will facilitate such training, which should be regarded as obligatory for all Councillors.
- 4.2 No Councillor should be involved in the planning process (whether at Area Plans Sub-Committees, the District Development Control Committee or the full Council) without having undertaken training in planning procedures; the provisions of this protocol; and attended sessions designed to keep members abreast of new developments, as specified by the Authority. This training will also be required for substitutes at the District Development Control Committee meetings.

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4.3 Even if a Councillor does not serve as a member of an Area Plans Sub-Committee or the District Development Control Committee, this training need should be regarded as a high priority, as it may sometimes be necessary for a planning decision to be taken by the full Council. Likewise, Councillors who are not serving on one of the Planning Committees may wish to attend on occasions as non-members to speak on a particular case.

4.4 All relevant planning officers should be trained in the provisions of this protocol as part of their professional training.

5. "Dual Hatted" Councillors

5.1 The Code of Conduct does not automatically prevent a Councillor from considering the same matter at more than one tier of local government, including speaking and voting in both tiers. The reference in paragraph 8 of the Code to members of "any body exercising functions of a public nature" includes other local authorities. The Code says that such dual memberships create a personal interest for any Councillor, which is to be declared only if the member decides to speak.

5.2 If an issue is for discussion at both the parish and district level, and Councillors sit on both authorities, they should:

(a) at the parish level make it clear that they will reconsider the matter at the district level, taking into account all relevant evidence and representations at the district tier; and

(b) at the district level, declare personal (but not prejudicial) interests arising from your membership of the Parish Council, which has already expressed a view on the matter and make it clear that the Parish Council's view does not bind them and that they are considering the matter afresh.

5.3 These guidelines apply even if a proposal has a direct impact on a particular location. For example, there is no objection, in principle, to a Councillor speaking and voting on issues in the District Council's development plan that particularly affects your parish. However Councillors must still consider if they have a prejudicial interest arising from the impact of the proposals on their personal well-being or financial position.

5.4 In some situations, it is unrealistic to expect a member of the public to believe that a Councillor would disregard the interests of another public body on which you serve. For example, a Councillor should not sit on decision-making bodies dealing with planning when they decide applications from an authority on which you also serve. This is reinforced by the Code of Conduct, which requires declarations of prejudicial interests to be made on financial issues and on matters relating to the granting of consents by the Council (including planning matters).

5.5 Where the procedures of the District Council dictate that a planning application is referred on for further consideration at the District Development Control Committee or the District Council itself, members of Council should not regard themselves as a "dual hatted" Councillor for the purposes of this section of the Protocol.

6. Fettering a Councillor's Discretion

- 6.1 District Councillors (including those who are also members of Town or Parish Councils) should take care to ensure that they are seen to maintain an open mind until they have heard all the evidence and arguments which will be presented at the appropriate Area Plans Sub-Committee, the District Development Control Committee or, if necessary, the Full Council. This is particularly the case where Councillors serve on Parish councils and have spoken and voted on a planning matter and have not reserved their final position. (See section 5 above).
- 6.2 However, if councillors in advance of the decision-making meeting commit themselves to a firm view on a planning matter and state this publicly, whether in meetings of another body, in the media, in election material, or otherwise, they would be unable to demonstrate that all the relevant facts and arguments had been taken into account. They would have "fettered" their discretion. Were they to participate in a decision in those circumstances, they would have a prejudicial interest and might place the decision made by the Council at risk of judicial review. If, therefore, Councillors comment publicly they must be careful to reserve their final position. An open mind on the issues must be genuine. A mere statement to that effect in the face of actions and comments to the contrary will not suffice.
- 6.3 Any Councillor who has fettered his or her discretion, whether before or after election to the Council, must declare a prejudicial interest under the Code of Conduct and leave the meeting. Even if the member does not have any other interest, they must leave the meeting.
- 6.4 Any Councillor who is uncertain as to whether his or her actions would be regarded as having fettered his or her discretion should ask the Standards Committee or the Monitoring Officer for advice.
- 6.5 For the purposes of this section of the Protocol, a Chairman or member of an Area Plans Sub Committee should not regard themselves as under a duty to support the views of that Sub Committee if the planning application or other matter is referred on to the District Development Control Committee or the District Council.

7. Cabinet Members – Conflicts of Interest on Planning Matters

- 7.1 Under the Council's executive constitution there is a clear distinction in law between the role of the Cabinet, which deals with planning policy and the determination of planning applications, etc which are not the responsibility of the Cabinet. The principle is that the Cabinet is responsible for formulating and recommending planning policy to the Council, whilst decision-making on individual planning matters must be separate and dealt with by separate bodies.
- 7.2 Any member of the Cabinet who is responsible for bringing forward planning applications as part of their portfolio responsibilities or other proposals on behalf of the Council which are subsequently considered by an Area Plans Sub-Committee, or the District Development Control Committee needs to be aware of the conflict of interest which exists. They should declare a prejudicial interest and not speak or vote on the planning matters.

- 7.3 The role of Councillors who are Portfolio Holders in this regard is quite distinct from how they should deal with their own planning applications. With the latter, they should follow the advice set out in Section 22 below.
- 7.4 The Housing and Finance, Performance Management and Corporate Support Services Portfolio Holders will often be closely involved in planning proposals. The Planning and Economic Development Portfolio Holder has a less close involvement in planning applications and the conflict of interest is thus less onerous. Furthermore, constituency work could easily blur the policy and decision-making roles. A Cabinet member would therefore need to be careful about approaches from constituents. They should for instance, consider arranging for these:
- (a) to be dealt with by other elected ward councillors; or
 - (b) to be dealt with by another member of this political group if they serve in a single member Ward; or
 - (c) to be referred to planning officers.

8. Property Interests

- 8.1 Councillors who have substantial property interests or involvement with the property market or similar interests need to be very careful about their involvement in planning matters and should make their interests known at every meeting which they attend when planning issues are discussed. In cases of doubt, they should seek the advice of the Council's Monitoring Officer before the meeting.
- 8.2 Similarly the property interests of other public authorities can impinge on the planning process and conflicts of interests for "dual-hatted" Councillors may arise requiring prejudicial interests to be declared.

9. Gifts and Hospitality

- 9.1 Councillors should also be very cautious about accepting gifts and hospitality and bear in mind the requirement to include acceptance of gifts in their registration of interests under the Code of Conduct. Such acceptances create an automatic personal interest for 3 years thereafter and may lead them to conclude that any planning matter affecting the person giving the gift involves a prejudicial interest.
- 9.2 Similarly, officers may be offered hospitality from people with an interest in a planning proposal. Such offers should be declined politely. If receipt of hospitality is unavoidable, the recipient should ensure it is of the minimum level and declare this as soon as possible in the register kept by the relevant Head of Service.
- 9.3 When Councillors and officers involved in planning matters receive approaches from any quarter, it is useful to clarify at the outset whether the person concerned has had, or will have, any dealings with the Council.
- 9.4 On occasions, third parties may offer gifts or hospitality to the Council or to the Chairman of the Council, sometimes in the context of a charitable appeal. The potential donor should always be asked whether they know of any current or intended dealings with the Council on a planning or property issue. If such matters are under consideration, such offers should be declined.

9.5 Separate advice on this area is available from the Standards Committee in the Council's Constitution.

10. Pre-Application and Post Submission Discussions - Role of Officers and Councillors

10.1 Ward Councillors (particularly if they are members of a planning body) should preserve their impartiality as decision-makers at pre-application or post-submission discussions with developers or other interested parties (including objectors) regarding development proposals.

10.2 Their involvement should be limited to listening to the discussion, asking questions and indicating points of concern. Ward Councillors should not debate the merits of the case or indicate views. Councillors should avoid the possibility that comments made at such meetings might prejudice their ability to bring an open mind to the formal decision on the proposal.

10.3 Post-submission meetings should be arranged so that, wherever possible, representatives of both the applicants and objectors can present their views. This could be either at a single meeting or at separate meetings. Councillors should be accompanied by an officer and a note taken of the meeting for the purpose of reporting to the full Committee. It is recognised that Councillors will be subject to lobbying on specific applications. In such cases, it is essential that care is taken to maintain the Council's and its members' integrity so as to protect the credibility of the planning process.

10.4 Members of the Council should always bear in mind the provisions of Section 5 of this protocol at such meetings.

10.5 Professional planning officers are approached from time to time by applicants, objectors and Ward Councillors to discuss a particular case. Often, those officers will be asked to indicate a view on the case. Where this occurs, planning officers must balance the following considerations:

(a) the duty to advise on legitimate concerns regarding proposals and to be helpful to those who come forward explaining the likely recommendations, which will go forward;

(b) the need to avoid anticipating the outcome of Planning Committee decisions.

10.6 All advice given and comments made must be designed to provide information to interested parties, which is helpful. This must, however, stop short of committing the Council to a decision.

11. Presentations Regarding Development Proposals

11.1 The District Council is approached from time to time about development proposals for sites within the District. Such requests involve:

(a) presentations on schemes, which may eventually result in planning applications;

(b) supply of development brief and other written material on the proposals;

- (c) indications of a wish to hear views and answer questions on the scheme.
- 11.2 Such requests need to be treated with caution. Invariably the sponsors of such schemes will be anxious to receive any indications, whether positive or negative, about their proposals and whether planning approval will be forthcoming. Councillors should carefully consider whether it is advisable to agree such requests or whether it is preferable to rely on normal planning processes.
- 11.3 If such a presentation is to be entertained, they should be regarded as the exception rather than the rule. The reasons for and against need to be carefully weighed, both from the point of view of members making themselves better informed and from the public perception particularly among those who may oppose the scheme. Councillors also need to avoid fettering their discretion in relation to any subsequent planning application. They should -
- (a) restrict themselves to listening to the presentation and reading the material provided;
 - (b) restrict themselves to clarifying facts and asking questions and not express opinions without reserving their opinion until all the facts are to hand;
 - (c) avoid 'one-to-one' discussions with the developers either at a presentation or separately.
- 11.4 It is important that a planning officer accompanies Councillors at such presentations.

12. Attendance of the Public at Planning Meetings

- 12.1 All planning decisions are taken in public session at meetings except if they are delegated to officers. Planning issues usually attract high levels of public interest and attendances reflect this.
- 12.2 With high levels of public interest and sometimes contentious decisions to be made, confidence in the planning system is under the spotlight. Issues such as conflicts of interest, lobbying, officer advice, the conduct of meetings and focus on planning considerations will colour the public perception positively or negatively. All participants need to keep this in mind.
- 12.3 The Council has a policy of allowing public speaking by applicants, objectors and Parish/Town Councils. The rules are set out in the Council's Constitution (Operational Standing Order 5(2)) and summarised in the public leaflet "Your Voice, Your Choice". This procedure must be respected at all times and the exercise of legitimate discretion by Chairmen accepted in the light of the circumstances which prevail.
- 12.4 Members of Planning Committees are strongly advised to attach equal weight to all representations made on planning grounds.

13. Substitute Councillors and Attendance of Non-Members at Meetings

- 13.1 The Council's policy on these issues is set out in the Council's Constitution (Operational Standing Orders – Non-Executive Bodies).
- 13.2 The rules governing substitute Councillors apply to the District Development Control Committee providing that Committee members shall, if they wish another Councillor of

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the political group to which they belong to attend a meeting of that Committee in their place, liaise with the Leader or Deputy Leader of their political group who shall give notice not later than 10.00 a.m. on the day of the meeting that the Councillor is unable to attend and that the substitute Councillor named will attend in his/her place. Substitutes should only undertake this role if they have received the obligatory training.

- 13.3 The effect of a substitution is that the substitute Councillor shall be a full member of the Committee for the same period.
- 13.4 A substitution may be revoked at any time before the meeting starts. If both Members are at the meeting, the Councillor appointed to the Committee or Sub-Committee will take precedence.

14. Officer Reports to Committees

- 14.1 All applications considered by the Council's Planning Committees and Sub-Committees shall be the subject of full written reports from officers incorporating clear recommendations. These reports will consider national and development plan policies and guidance and representations made by statutory consultees, local residents and other interested parties. Reports will contain all the relevant material known at the time the report is despatched to Councillors and updating information will be provided to Councillors only if there have been any significant developments or changes to the report.
- 14.2 Once the Committee papers for a meeting have been published, any subsequent information received on material planning considerations will be reported orally at the meeting by the Director of Planning and Economic Development or his or her representative. With the consent of the Chairman of the District Development Control Committee or Area Plans Sub-Committee concerned this may on occasion involve tabled written material.
- 14.3 The Council's Code of Conduct requires Councillors not to prejudice the impartiality of officers. In their relations with officers therefore, Councillors should avoid placing inappropriate pressure on planning staff to achieve a desired outcome, including attempting to change decisions made under delegated authority by the Director of Planning and Economic Development.

15. Determination of Planning Applications

- 15.1 Whilst Councillors should bring to planning decisions a sense of the community's needs and interests, they must balance this with their obligation to remain within the constraints of planning law. They must only take account of relevant matters, (e.g. sound land use planning considerations) and must have regard to the Development and Local Plans and Government policy. Local feelings may run high but these must be weighed carefully against all material considerations. The officer's report must deal specifically with these matters so that Councillors can reach an informed decision.
- 15.2 Section 54A of the Town and Country Planning Act 1990 requires that where, in making any determination under the Planning Acts, regard is to be had to the Development Plan, the determination shall be made in accordance with the Plan unless material considerations indicate otherwise. In cases where an Area Plans Sub-Committee wishes to depart from planning policy following consideration of an application, planning officers will advise that such a decision must be referred to the District Development Control

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Committee. In some cases the Leader of the Council may determine that a final decision by the full Council is desirable.

- 15.3 The Council recognises that planning decisions are often matters of fine judgement where the balancing of considerations is difficult. Reports of the Director of Planning and Economic Development will be based on planning policy but members may wish to exercise their discretion to permit an application as an exception to policy or may not agree with the recommendation. In such cases the procedural requirement is that they should formally move a motion to take the place of the officer's recommendation giving reasons.
- 15.4 Voting on decisions shall be by a show of hands.
- 15.5 When dealing with planning applications Councillors should be careful to avoid even the appearance that they may have been influenced improperly or by considerations which should not be taken into account under the planning legislation and regulations. Similar circumstances must give rise to similar decisions.
- 15.6 Improper decision taking can have financial penalties not only for the Council. The circumstances set out below can lead to expenditure:
 - (a) an Ombudsman finding maladministration and injustice giving rise to recommendations for remedial action and financial recompense;
 - (b) costs of litigation and award of costs following application for judicial review in the High Court;
 - (c) costs of local Public Inquiries, including possible award of an applicant's costs following use of Secretary of State's call-in powers;
 - (d) costs of local Public Inquiries, together with landowners' costs and possibly substantial compensation payments following actions by the Secretary of State for revocation, modification or discontinuance.

16. Decisions Contrary to Officer Recommendations

- 16.1 Where a Planning Committee is minded to determine an application contrary to the officer's recommendation (whether for approval or refusal), the onus is upon the Committee to identify its reasons for the decision, which should be based on material planning considerations. The final decision on the application can therefore either:
 - (a) be dealt with at the meeting with a formal proposal summarised by officers and voted on at that time;
 - (b) in the event of exceptional circumstances, be deferred until the next meeting of the Committee (provided it does not prevent a final decision within a reasonable timescale) to ensure that officers can provide appropriate advice as to the clarity and reasonableness of the reasons put forward for approval or refusal of the application.
- 16.2 There will be a careful record kept of the debate when a resolution is proposed which is contrary to an officer recommendation. In such cases the Chairman will summarise the main reasons for the proposed decision so that these are clearly understood before it is put to the vote.

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- 16.3 Under no circumstances is it acceptable for grounds for refusal or granting of consent to be left to planning officers to draft after the meeting. All such grounds shall be discussed at the meeting at which the application is dealt with and adopted following professional advice from planning staff. Chairmen of Planning Committees can assist this process by seeking from movers of proposals the reasons for their proposal based on District Plan requirements.

17. Voting at Planning Committees

- 17.1 In dealing with planning applications, a Committee or Sub-Committee is acting quasi-judicially (i.e. similar to a Court). In doing so, the Committee is balancing the requirements of planning law and planning policy against the needs of the community or individuals.
- 17.2 Votes must be cast according to an honest appraisal of the merits of an application, the planning grounds, which apply, and the need to act promptly on planning applications. Although there are circumstances where further debate in another forum might be helpful, such deferrals should be avoided except in the most exceptional cases.

18. Voting by Chairmen

- 18.1 Chairmen must state whether they intend to vote on any item for consideration before votes are cast.

19. Second or Casting Vote of Chairman

- 19.1 The Council's Constitution provides for the Chairman of the District Development Control Committee and the three Area Plans Sub-Committees to exercise a second or casting vote in the event of an equality of votes. The use of the second or casting vote should only be based on an honest appraisal of the planning matter concerned.

20. Site Visits

- 20.1 Formal site visits may be requested by any Planning Committee. However, these consume resources and could delay determination of an application. It is good practice to:
- (a) consider site visits only where there is a substantial benefit to the decision-making process, e.g. when the impact of the proposed development is difficult to visualise from prior inspection from a public place, or from the plans and the supporting material; or it is particularly contentious;
 - (b) encourage members of the Committee, plus the Chairman or Vice-Chairman, to attend the site visit, together with a senior planning officer, if they have not already done so;
 - (c) ensure that the visit is managed by the Chairman, Vice-Chairman or senior officer and that it is made clear to other parties at the outset that the purpose is to gather factual information first hand – **not** to hear arguments for and against, or to enter into a debate about the merits of the case;
 - (d) ensure that the application will not be determined at that site visit;

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- (e) in the interests of fairness to all parties, consider the desirability of viewing an application site from more than one property when the site visit is arranged.
- 20.2 Any response to questions or statements by interested parties at site visits should follow the good practice summarised above. Councillors should refrain from making comments on the merits or otherwise of the application to any interested party.
- 20.3 All formal site visits should be conducted in a single group.

21. Lobbying

- 21.1 It is vital to distinguish the "quasi-judicial" role as a Councillor on a decision-taking Committee from that of a Ward Councillor approached by a constituent with a particular viewpoint about a planning matter.
- 21.2 The Council's duty when determining planning applications or planning enforcement matters is to attach weight to development plans, proper planning considerations and the advice of professional officers presented at Committee. Reasonable and fair decisions are expected.

Lobbying of Councillors

- 21.3 Lobbying of Councillors is a normal and proper part of the political process. However, unless care and common sense are exercised, the impartiality and integrity of members can be called into question. So far as lobbying is concerned, it is good practice to:
 - (a) explain to the lobbyist the quasi-judicial nature of the planning process;
 - (b) listen and ask relevant questions but avoid expressing any opinion which may indicate that the issue is prejudged before debate in Committee; in particular Councillors should never indicate in advance how they intend to vote;
 - (c) give procedural information or advice as appropriate, including how to speak or write to the relevant officer;
 - (d) stress that any comments made are personal and provisional, pending the rehearsal of all the relevant evidence and arguments at Committee;
 - (e) avoid acceptance of any hospitality at a site visit, (apart from routine courtesies), which could be misinterpreted by third parties;
 - (f) when a relevant item is considered declare cases where contacts with third parties through correspondence, telephone calls or meetings with applicants or objectors are significantly greater than normal Ward Councillor contacts; and
 - (g) consider whether the nature of the contacts referred to in (f) are so significant as to render them in the Councillor's view a personal or prejudicial interest and declare accordingly.
- 21.4 Councillors should carefully consider whether it is wise to accept an invitation from an applicant or objector to make an informal site visit prior to the relevant Committee

meeting. In controversial cases only one side of an argument will be heard. It is, of course, perfectly proper for a Councillor to view a site from a public place.

Lobbying by Councillors

- 21.5 Councillors should avoid organising support for, or opposition to, planning applications and should not lobby other Councillors as such actions can easily be misunderstood. Members may have concerns about a planning matter before it comes to Committee. They are entitled to raise these concerns and to ask that they be addressed in any report that may go to Committee but Councillors should not put pressure on officers for a particular recommendation. The Code of Conduct requires Councillors to respect this impartiality.
- 21.6 Councillors should not lobby their colleagues on the Council if they have a prejudicial interest as this is precluded by the Council's Code of Conduct. Political Groups should also not seek to instruct their Councillors to vote in a particular way on a planning application.
- 21.7 For the purposes of this protocol, approaches from a Member of Parliament should be treated as lobbying if this is the nature of the approach.

Lobbying and Campaign Groups

- 21.8 The Code of Conduct requires Councillors to declare a personal interest in any matter that relates to an interest they must include in their register of interests – so they are required to declare a personal interest if they are a member of a group that lobbies or campaigns about an issue that comes up for discussion or decision at their authority.
- 21.9 Members may not have a personal interest in the related discussion or decision of their authority if they merely campaigned on an issue as an individual, perhaps during their election campaign, and they are not a member of a relevant lobby group. As a result, they could not have a prejudicial interest in the matter. Members should still consider the general test for personal and prejudicial interests and whether there is any other reason outside of the Code why they should not participate in the decision, including bias.
- 21.10 Of particular relevance to members of lobby or campaign groups, is the revised Code which provides an exception to having a prejudicial interest in the following circumstances:
- (a) where the decision does not affect the financial position of a member or their interests; or
 - (b) does not relate to a licensing or regulatory matter brought by them or a person or body in which they have a personal interest.
- 21.11 For example, a member will not have a prejudicial interest in a developer's planning proposal against which they and their lobby group campaigned if they or any other person or body in which they have a personal interest are not affected financially by the matter.

22. Development Proposals Submitted by Councillors and Officers or Where They Are Objectors

(a) Introduction

- 22.1 Applications to their own Authority by serving Councillors and officers can easily give rise to suspicions of impropriety.

(b) Registration of Applications/Interests

- 22.2 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way, which gives no grounds for accusations of favouritism. Serving Councillors, and staff of Planning Services should play no part in the decision-making process in respect of those proposals. This should include applications by their partners or spouses. The Council's Monitoring Officer and the Director of Planning and Economic Development should be told by the Councillor or member of staff that an application has been made as soon as it is submitted. In the event that the Monitoring Officer or the Director of Planning and Economic Development is the applicant they should notify the Deputy Monitoring Officer and an Assistant Head of Service respectively. Both postholders shall also advise the Chief Executive. Councillors and officers therefore should be scrupulous in completing the appropriate sections of the application form prescribed by the Government. Any such applications, whether by Members or officers, cannot be dealt with by the Director of Planning and Economic Development under delegated powers.

(c) Applications by Councillors

- 22.3 A Councillor submitting an application will invariably have a personal and prejudicial interest in the application. He or she must declare this interest at the meeting where the application is under discussion and withdraw whilst it is considered unless they decide to exercise their right to make representations (see Section 23 below).
- 22.4 A Councillor who is an applicant or who otherwise has a prejudicial interest under the Code of Conduct in an application should also not 'improperly seek to influence a decision about the matter' (Paragraph 12(1)(c) of the Code of Conduct). 'Improperly' should not imply that a Councillor should have any less rights than a member of the public in seeking to explain and justify their proposal to an officer in advance of consideration by a Committee.
- 22.5 Applications submitted by Councillors will always be determined by the District Development Control Committee and not by the Director of Planning and Economic Development under delegated powers.

(d) Applications by Officers

- 22.6 An officer (i.e. staff of Planning Services) submitting an application has a clear interest in that application. Applications submitted by officers will always be determined by an Area Plans Sub-Committee or the District Development Control Committee and not by the Planning and Economic Development Service Director under delegated powers.
- 22.7 In all such cases, the aim must be to ensure that applications are dealt with in the same way as those by any other person. This will avoid any suggestion of preferential treatment.

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(e) Objectors

- 22.8 Councillors and officers will have a clear interest in a planning matter if they are an objector in respect of a proposal being made by another party. In those circumstances, the same procedures shall be followed as outlined above.

(f) Membership of Political Groups and Political Parties

- 22.9 On occasions, planning applications etc from fellow Councillors and political parties can give rise to concerns about conflicts of interest for those within the political grouping. This often creates a situation where all members of a Committee who have that relationship feel that they must declare a prejudicial interest. The consequence of this can be that applications have to be referred on to another body or delayed. Clearly where members of the public attend to make their views known, they will form a negative impression of the planning process unless the position is clearly thought through beforehand.
- 22.10 Such applications will be referred direct to the District Development Control Committee.

23. Prejudicial Interests and a Councillor's Representative Role

- 23.1 The preceding section deals with the prejudicial interests, which exist where Councillors etc are applicants or objectors on planning matters.
- 23.2 The revised Code of Conduct provides that a personal interest will also be a prejudicial interest if the matters affects Councillors' financial interests or relates to a licensing or regulatory matter and a member of the public, who knows the relevant facts, would reasonably think that the personal interest is so significant that it is likely to prejudice their judgement of the public interest. Regulatory matters include planning decisions. Equally prejudicial interest can arise as a result of "fettered discretions" as a consequence of advice in this protocol.
- 23.3 All such interests must be declared and the nature of that interest described. Councillors must then leave the room. Area Plans Sub Committees, the District Development Control Committee and (where necessary) the Council make provision for applicants and objectors to make representations for a maximum of three minutes.
- 23.4 The Code of Conduct allows Councillors who have a prejudicial interest in a planning matter to exercise the same rights as a member of the public. Thus they can attend a planning meeting for the purpose of:
- (a) making representations on their own behalf, for constituents, as a Parish Councillor either as objector or applicant, or
 - (b) giving evidence; or
 - (c) answering questions while they are present.

In these circumstances the Councillor will be subject to the Council's policy for public speaking at planning meetings. The Councillor should not sit with other members when he or she makes these representations. The Councillor should present them in the same way as would be expected of a member of the public in accordance with the

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Council's policy. Once the Councillor has spoken he or she must leave the meeting room and take no part in the decision.

- 23.5 Once the Councillor has spoken, the Code of Conduct requires that he or she leaves the meeting room and takes no part in the decision. Councillors might wish to exercise this right –
- (a) to submit representations on behalf of constituents;
 - (b) to make representations as applicant or objector or as Parish Council representative.
- 23.6 They should also make their representations at the meeting before any other person registered to do so. This is to ensure that a Councillor with a prejudicial interest remains in the meeting for a minimal period and to ensure that any influence in relation to discussion is restricted.
- 23.7 It is very important that the procedure for Councillors who have a prejudicial interest is perceived as quite distinct from their normal role particularly if they are a Councillor of that Committee. Councillors must be scrupulous in making this distinction clear.

24. Application for Planning Consent by the District Council

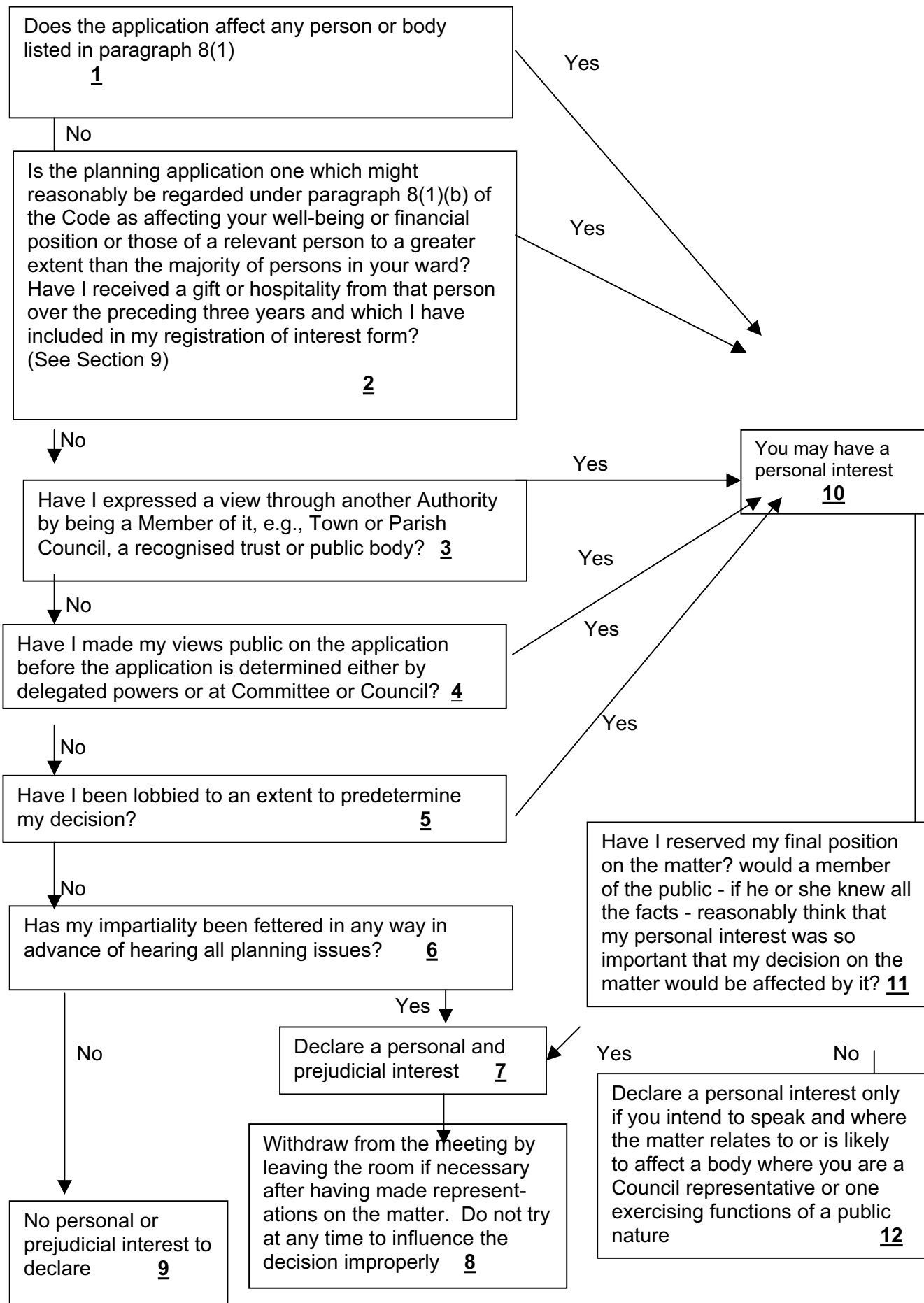
- 24.1 Planning applications for the Council's own development proposals will be treated in the same way as applications by any other person or body. Such applications will always be referred to an Area Plans Sub-Committee and will not be dealt with under delegated authority. This requirement extends to applications from other parties in respect of Council-owned land or property, where a land sale is being negotiated.
- 24.2 The Council's role as landowner is completely separate from its role as Planning Authority. The landowner role is a matter reserved to the Cabinet as an executive function. Considerations relating to the landowner role are not relevant planning considerations in respect of the determination of planning applications. Members of Area Plans Sub-Committees should at all times keep this in mind.
- 24.3 Section 7 above deals with conflicts of interest, which can arise if Cabinet members are involved in determining applications for which they are responsible.

25. Review of Decisions

- 25.1 Planning and enforcement decisions and Local Plans are subject to review in a number of ways:
- (a) as a result of investigations by the Local Government Ombudsman;
 - (b) at Planning Inquiries;
 - (c) through the Courts;
 - (d) as part of Comprehensive Performance Assessments and Best Value service reviews;

- (e) through the Council's Compliments and Complaints Procedure; and
 - (f) by means of a six-monthly review of appeal decisions.
- 25.2 By these reviews, the quality of planning decisions will be constantly monitored to ensure that the public can continue to have faith in the appropriateness and probity of the system.
- 26. Complaints**
- 26.1 The Council's compliments and complaints procedure allows any member of the public to complain about any aspect of how the planning system operates.
- 26.2 Opportunities exist to take complaints forward to the Local Government Commissioner for Administration (the Ombudsman) usually if a complainant is not satisfied after the Council's complaints procedure has been completed.
- 26.3 The Standards Board for England will consider complaints by any member of the public (including officers and other Councillors) about the conduct of any Councillor if it is considered that he or she has breached the requirements of the Council's Code of Conduct.
- 26.4 The Standards Committee has a role in reviewing and monitoring this protocol and if necessary offering advice on its operation.
- 27. Human Rights Act 1998**
- 27.1 The provisions of this protocol acknowledge throughout the rights of citizens in the planning process and the duty of the Council to reflect those rights in its procedures.
- 28. Planning Inquiries, Court Proceedings and Public Hearings**
- 28.1 Often planning decisions of the Council lead to further proceedings by way of appeals heard at Public Inquiries or hearings or in Court. The question often arises about involvement by Councillors in such circumstances.
- 28.2 Councillors who wish to be involved in such hearings should, as a matter of courtesy, advise the Council in advance that they intend to participate. At the hearing, they should make it clear that the views they express are personal and should not seek to criticise Council officers or Councillors on a personal basis.

FLOW CHART PLANNING PROTOCOL – MEMBERS/OFFICERS' INTEREST GUIDANCE



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