

committee DEVELOPMENT & REGULATION

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REVISION OF DEVELOPMENT AND REGULATION COMMITTEE PROTOCOL

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1. PURPOSE OF REPORT

The purpose of this report is to seek the Committee's endorsement of a revised Committee Protocol. The Protocol has been updated in light of new Government guidance, especially in respect of issues surrounding the issues of 'pre-disposition, 'pre-determination' of planning applications.

2. BACKGROUND

The Development and Regulation Committee Protocol was last formally revised in December 2010 (Minute 186).

The revised Protocol, as now attached at the Appendix and dated May 2013, reflects the latest changes planning guidance following the introduction of the Localism Act in 2011 and recent case-law. It also reflects the effect of more recent guidance on members' interests.

The new amendments and additions are highlighted for ease of reference on pages 2-7 of the revised Protocol (ie the last paragraph of section 2 on 'Basic Principles', and the whole of section 4 on 'Declaration of Disclosable Pecuniary Interests and Predetermination/ Bias') .

The Committee's approved public speaking arrangements are set out in a separate document.

RECOMMENDED

That the Committee endorse the revised Development and Regulation Committee Protocol (dated May 2013) as attached at the Appendix to this report.

BACKGROUND PAPERS

'Probity in Planning' - LGA 2009
The D&R Committee Protocol 2010

DEVELOPMENT & REGULATION COMMITTEE PROTOCOL



Essex County Council

Development and Regulation Committee
Revised DRAFT May 2013

Protocol

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This Protocol has been prepared in order to set out clearly the way in which the Development and Regulation Committee will conduct its business in relation to its consideration of planning applications.

1. Summary

- No Member shall be appointed to the Development and Regulation Committee without having agreed to undertake a period of training in planning procedures as specified by the Authority.
- Members and officers shall avoid indicating the likely decision on an application or otherwise committing the Authority during contact with applicants and objectors.
- Members will make oral declarations at a Development and Regulation Committee of significant contact with applicants and objectors, in addition to the usual disclosure of personal and prejudicial interests.
- All applications considered by the Development and Regulation Committee shall be the subject of full, written reports from officers incorporating firm recommendations.
- The reasons given by the Development and Regulation Committee for refusing or granting an application shall be set out in the minutes, especially where these are contrary to officer advice or the development plan.

2. Basic Principles

“Planning decisions are not based on an exact science. Rather, they rely on informed judgement within a firm policy context. Decisions can be highly controversial as they affect the daily lives of everyone. This is heightened by the openness of the system (it actually invites public opinion before taking decisions) and the legal nature of the development plan and decision notices. It is important, therefore, that the process is characterised by open and transparent decision-making.

One of the key purposes of the planning system is to manage development in the public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. It is important, therefore, that planning authorities should make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons. The process should leave no grounds for suggesting that a decision has been partial, biased or not well-founded in any way....” (*Probity in Planning: The Role of Councillors and Officers’ May 2009 (Revised guidance note on good planning practice for councillors and officer dealing with planning matters).LGA*).

The basis of the planning system is the consideration of private proposals against wider public interests.

The successful operation of the planning system relies on ensuring that officers and Members act in a way that is not only fair but is clearly seen to be so.

Members have a special duty to their constituents, but their over-riding duty is to the whole community of Essex. They should vote in the interests of the whole county in relation to planning matters. However, there is no reason why a local Member should not participate in the decision making process for a particular planning application, provided that he/she has abided by the Protocol.

Planning applications submitted by the County Council for its own development will be treated in the same way as those for private developers, both in terms of procedures and the assessment of material planning considerations.

The Public Sector Equality Duty applies to all planning decisions. A local authority must, when making a decision, have due regard to the need to eliminate unlawful discrimination, harassment, victimisation; advance equality of opportunity between people who share a protected characteristic and people who do not share it; and foster good relations between people who share a protected characteristic and people who do not share it. The duty should be explicitly taken into account in determining planning applications and deciding on enforcement action.

3. Member Training

It is fundamental that Members involved in planning should receive appropriate training.

No Member should be appointed to the Development and Regulation Committee without having agreed to undertake training in planning procedures relating to County Matters as specified by the Authority. Such training will also be required for preferred substitutes.

4. Declaration of Disclosable Pecuniary Interests and Predetermination/Bias

When considering a planning matter it is important to have in mind whether a Councillor has an interest in it and the consequences of that interest for how that Councillor then acts in relation to the matter. There were significant changes in this area as a result of the Localism Act 2011.

Disclosable Pecuniary Interests

All Councillors are required to complete a disclosure of interests form. If a Councillor has a disclosable pecuniary interest (DPI) the Councillor should disclose the interest at the meeting and, if it is not already registered, advise the monitoring officer about it within 28 days.

If a Councillor has a DPI and that interest relates to a matter being considered at a meeting of the committee the Councillor should not participate, or participate further, in any discussion of the matter at the meeting, or participate in any vote, or further vote, taken on the matter at the meeting, or take any steps, or any further steps, in relation to the matter.

It is a criminal offence if a Councillor fails without reasonable excuse, to register or declare DPIs, or takes part in council business at meetings.

DPIs are defined as an interest of the Councillor, or their spouse or civil partner or someone they are living with as a spouse or civil partner and is within the following categories:

Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M [i.e. the member] in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge)— (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where— (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either— (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

DPIs and membership of other authorities

Where Councillors are also members of other local authorities, that interest is a DPI and should be registered and declared at the meeting. However, it does not necessarily preclude the Councillor from participation in the Development and Regulation Committee, as this will only be the case where membership of another authority 'relates to a matter being considered' at that Committee.

Whether or not this will apply will be a matter of judgment in each case. The most significant factor to take into account is the effect of the decision. If the decision affects a small number of individuals, or is relevant to the county as a whole, membership of another authority is unlikely to stop the Councillor taking part in the discussion and voting at the Development and Regulation Committee.

However, where the decision is specific to the function of the other body represented by the Councillor or is has a specific impact on a geographical area (such as a ward or parish) represented by that Councillor, or the people who live there, then the interest is likely to require specific disclosure and the Councillor should not speak or vote on the proposal. They do not also have to withdraw, but may prefer to do so for the sake of appearance. If a Member decides to stay, they should explain that they do not intend to speak and vote because they have (or could reasonably be perceived as having) judged the matter elsewhere, so that this may be recorded in the minutes.

Councillors should be able to take part in any discussion on a proposal when acting as part of a consultee body (ie where they are also a Councillor of a District/Borough/City Council as well as being a County Council, Town or Parish Council Councillor), provided that the proposal does not substantially affect the well-being or financial standing of the consultee body and it is made clear during the discussion at the consultee body that they:

- express their view on the limited information before them only
- reserve judgment and the independence to make up their own mind on each separate proposal when it comes before the Development and Regulation Committee, based on their overriding duty to the whole community, not just to the people in their ward, and when they hear all of the relevant information
- do not in any way commit as to how they or others may vote when the proposal comes before the Development and Regulation Committee

Interests other than DPs

As well as these statutory obligations, Councillors should be aware of their duty to comply with the Code of Conduct for all Councillors adopted by Essex County Council under the Localism Act whenever they conduct the business of the authority or act as a representative of the Authority. This Code can be found in the Council's Constitution and includes the following advice on Other Pecuniary Interests and Personal Interests.

Other Pecuniary Interests

(i) Any contract for goods, services or works between you or a Relevant Person (or a body in which the relevant person has a beneficial interest) and the Authority which has been fully discharged within the last 2 years.

(ii) Any tender bid quotation or expression of interest submitted by you or a Relevant Person (or a body in which the relevant person has a beneficial interest) to the Authority within the last 2 years.

Personal Interests

This is where a matter is considered and;

(i) it relates to or is likely to affect any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Council; or;

(ii) It relates to or is likely to affect any body exercising functions of a public nature; directed to charitable purposes; or one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union); of which you are a member or in a position of general control or management, or;

(iii) a decision in relation to that matter might reasonably be regarded as affecting your wellbeing or the wellbeing or financial position of a friend, relative or close associate to a greater extent than the majority of other council tax payers or inhabitants of the electoral division, affected by the decision.

These interests should also be registered and kept up to date. They should also be disclosed at the meeting of the Development and Regulation Committee where they are relevant to a matter being considered.

Bias

Separate from the requirements of the Localism Act, planning decisions are at risk if they are successfully challenged on the basis that the decision was motivated by actual bias or where there is an appearance of bias. The test is “whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the decision maker was biased. Examples of where decisions have been ruled to be biased include:

- A family relationship or close friendship between the decision-maker and the beneficiary of the decision
- A connection between the member of the committee and an external consultant
- Planning committee members who had season tickets for a football club and did not disclose this when deciding an application by the club

Predetermination

There is a great deal of overlap between bias and predetermination but it can be a ground for challenging planning decisions separate from those already mentioned. The effect of unlawful pre-determination by a Councillor is that the decision of the Committee will be open to legal challenge and to allegations of maladministration.

It exists if it appears that a Councillor has already **finally** made up their mind about a planning matter prior to the Committee meeting; in other words they have a closed mind and are no longer willing genuinely to be influenced by the information and opinions given at Committee.

Pre-determination can be inferred from an unequivocal written or oral statement made by a member of a Committee which is to take the decision on a matter. It can also be inferred in other ways e.g. a Councillor has campaigned on the matter e.g. a Councillor has been placed under an obligation as to how they should vote on the matter.

However, a Councillor can legitimately already have expressed an initial view on the matter providing this is not expressed to be a final one. For example, a Councillor may have been lobbied by the public and he/she feels that it is appropriate and necessary to express their present thinking on a planning application (see section on Lobbying of Councillors). The Councillor in this situation will not have appeared to predetermine the application providing it is

clear that the view expressed is not a final one. The Courts recognise that Councillors are representatives of the community and in that role it is sometimes necessary to give a provisional view or to be “predisposed” to a particular view. In such situations a Councillor should think carefully how they express their view so as not to give the impression that they have already finally “made up their mind” on the matter.

Predetermination and the Localism Act

The position in relation to pre-determination has recently been clarified and confirmed by the Localism Act which provides that “A decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because;

(a) the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take”.

The explanatory notes to the Act go on to say “*if a Councillor has given a view on an issue, this does not show that the Councillor has a closed mind on that issue, so that if a Councillor has campaigned on an issue or made public statements about their approach to an item of Council business, he or she will be able to participate in discussion of an issue in the Council and to vote on it if it arises in an item of Council business requiring a decision.*”

Where a Councillor is also a District/Borough/City Councillor or Town/Parish Councillor he/she can vote on the application at the consultative stage with the District or Town/Parish Council without having been seen as predetermining the matter, providing the impression is given that this is not his/her final view. In many cases the Councillor is simply expressing a view on the limited information available at the consultation stage and is only predisposed to the view expressed. This also applies to the situation when a Councillor is on a body that is consulted on a planning application.

If a Councillor believes that they have predetermined a matter, or could be seen by the public to have done so, then they should declare that they have a predetermined view so that this can be minuted. They should take no part in the determination process (ie debate or vote on the issue). Failure to do follow these requirements could result in a claim of maladministration or even the initiation of High Court Proceedings against the Council to quash the decision.

If any Councillor is concerned about whether they may have predetermined an issue they should contact the Monitoring Officer for further advice.

5. Lobbying of Councillors

Lobbying is a normal and perfectly proper part of the political process: those who may be affected by a decision of the Committee may seek to influence it through an approach to their elected representative or to a Committee Member. However, such lobbying can, unless care and common sense are exercised by

all the parties concerned, lead to the impartiality and integrity of a Committee Member being called into question.

Committee Members ideally not express their view on any planning application prior to its consideration at Committee. This helps to show the public that there is little doubt that the decision made by the Committee has been determined fairly on the information provided to the Committee. There may however be circumstances when a Committee Member considers that it is appropriate to express an initial view (predisposition) prior to the Committee meeting; in such circumstances it is essential that the Member makes it clear that he/she is only expressing an initial view and that a final decision will be made at the Committee when all information will be available. For further information on predetermination Councillors should consider the section on Predetermination or Bias.

A Councillor who represents the electoral division that is affected by a decision of the Committee may be in a difficult position if it is a controversial matter. Often such a Councillor finds that he/she is subject to intense and passionate lobbying. Where a Committee Member feels that it is appropriate to express an initial view it is more likely that the lobbyists could misunderstand the view expressed and are more likely to consider making a complaint or even commencing legal proceedings. For this reason a Committee Member should make it very clear that his/her view is only provisional and that his/her mind is not closed to new information that is provided at Committee.

If a Committee Member feels obliged to express a final view or join in a campaign for or against the proposal then they should declare that they have predetermined the issue and not debate or vote on the issue. However, he/she may attend and speak at a Committee meeting as a local Member before the case is debated.

All Councillors are reminded that if they do not wish to represent the views of a lobbyist they can always remind the individual that the public may speak to the Committee as described in the section on public speaking or submit their representations in writing.

Committee Members must not organise support or opposition for a proposal or lobby other Councillors (other than when addressing the Committee). Such actions can easily be misunderstood by parties to the application and the general public. More importantly the Committee Member might be accused of having predetermined the matter.

6. Pre-Application/Post Submission Discussions, and Attendance at Public Meetings

Constructive pre-application discussions between potential applicants and planning officers have long been recognised as good practice, helping to ensure all relevant considerations are addressed when an application is submitted. As there is a strong need to allow and encourage Councillors to be champions of their local communities, there has followed a realisation that Councillor

engagement in pre-application discussions on major development is increasingly necessary to allow Councillors to fulfil this role.

A Councillor's engagement in pre-application discussions is not intended to bring forward his/her views on the proposal – whether or not in a position to give a preliminary view on a proposal. However, Committee Members should not express a view which may pre-determine their position at the Committee meeting. If a Committee Member decides to express anything but a preliminary view, or at this stage decides to give support to a view on behalf of their community or division in support of their 'community champion' role, then this pre-determined position will require the Committee Member to stand aside from the determination process of any subsequent planning application. If a Committee Member wishes to make it clear that any views expressed at those of his/her constituents are not necessarily their own, then this is acceptable provided that it cannot be claimed that the Member has pre-determined the matter.

As good practice, it will often be possible for local Councillors, who do not sit on the Committee, to express their initial views on behalf of their communities, whilst Development and Regulation Committee Members restrict themselves to questions or clarification, unless such Members wish to become pre-disposed and subsequently decide to remove themselves from the Committee and decision making process.

To minimise the risks of challenges based on suspicion that Councillors may have prejudiced their positions by being involved in pre-application discussions, transparent processes have merit. Whether or not discussions are held in private, a note of those present, the issues discussed and any actions will be placed on a public file by the case officer. This helps protect the Councillor and the Authority by detailing what issues were discussed and that no pre-determination arose. Often open public meetings, with the developer present, will assist in making the pre-application process transparent. The following protocols for pre-application discussions should apply:

- Councillors may be invited to any pre-application forum or public/developer presentations to the Council on major applications (to ensure transparency of process and minimise private briefings).
- The Chairman or Case Officer explains the role of Councillors present at any pre-application discussion and this will be recorded in a note of the meeting.
- A Committee Member's role in pre-application discussions is to learn about the emerging proposal, identify issues to be dealt with in any further submissions, but not to express a view on the proposal as to pre-determine their view on any formal application.
- Officers will note those present, the issues identified at the pre-application discussion meeting or forum, and take appropriate follow up action

recording the outcome of the meeting to the developer and place on the case file.

- Any Development and Regulation Committee Member who elects to support a view for or against the development being discussed in pursuit of their community champion role will have pre-determined their position to the extent they should not take part in the determination process (debate or vote). Such a Member will be free to present their views, on behalf of his/her constituents to the Committee, but should not debate or vote on the application.

7. Officer Reports to Committee

All applications considered by the Development and Regulation Committee shall be the subject of full, written reports from officers incorporating firm recommendations. The reports will consider national and development plan policies and guidance, representations made by statutory consultees, local residents and other interested parties, as well as any other material considerations. The report will contain all the relevant material known at the time the report is despatched to Members and updating information will be provided to Committee Members only if there have been any significant developments or changes to the report.

Once the Committee papers for a meeting have been published, any subsequent information that is received containing material planning considerations will be presented in an addendum and/or reported orally by officers to the Development and Regulation Committee at its meeting.

Proposals for the County Council's own development, which fall to be determined by the Development and Regulation Committee, will be treated in the same way as any application submitted by a private developer. The requirements of the Town and Country Planning and other Acts, regulations and Government guidance will be followed in the usual way. Decisions will be made strictly on planning merits without regard to any financial or other gain or loss that might accrue to the Council if the development is permitted. The County Council recognises that its own planning applications must not only be treated no differently from any other but should be seen not to be treated differently.

Similarly the Committee will not take into account any implications for the County Council financial or other gain or loss that might arise from any applications for minerals and waste development.

Committee papers will normally be available at least seven working days prior to the meeting. The papers will also be published on the County Council's website www.essexcc.gov.uk.

8. Substitute Members, and Attendance of Non-Members at Meetings

The Council's rules on these issues are set out in the Council Procedure Rules.

The rules governing Substitute Members provide that a Committee Member shall, if he/she wishes another Member of the political group to which he/she belongs to attend a meeting of that Committee in his/her place, give the Committee Administrator written notice not later than 9.30 a.m. on the day on which the meeting is to be held that he/she is unable to attend and that the substitute Member named in the notice will attend in his/her place. A substitution notice may be given on behalf of a Committee Member by the leader of a political group or by the group spokesman of the Committee.

The effect of a substitution notice shall be that the Member named in the notice shall cease to be a Member of the Committee for the duration of that meeting and that the substitute Member shall be a full Member of the Committee for the same period.

A substitution notice may be revoked at any time preceding the deadline for the giving of such notice.

In the case of the Development and Regulation Committee there is a system of preferred substitutes, whereby each political group has nominated several Members who are to be used as substitutes in the first instance.

The scheme of preferred substitutes has been developed in response to the need for Member Training in the issues that the Committee consider.

Any County Councillor shall be able to attend any Committee meeting of which he or she is not a member and, if invited to do so by the Chairman of the meeting, may speak at the Committee meeting, but not take part in a discussion nor any vote. It must be stressed that a Member of the Council who is not a Member of the Committee may not speak unless that Member has obtained the agreement of the Chairman. Any County Councillor who is not a Member of the Development and Regulation Committee and wishes to address the Committee on an application at one of its meetings is limited to speaking for no more than three minutes subject to the discretion of the Chairman.

9. Public Speaking at Committee

Arrangements have been developed to enable applicants or their agent, objectors and other interested parties to address the Committee, and are detailed in a separate document entitled 'Public Speaking at the Development and Regulation Committee'.

Generally only one prospective speaker will be allowed to speak from each of the following categories:-

District/Borough Council (to speak on behalf of the relevant Parish Council unless that Parish Council's view is different, in which case the Parish Council may also speak).

Objector

Applicant

Supporter

Anyone wishing to speak at a meeting shall give two working days notice to the Committee Administrator and, subject to confirmation that they may address the Committee, shall then submit a supporting paper outlining the main points of the presentation also at least two working days prior to the meeting. This is to enable the points they wish to raise to be fully considered at the meeting. Presentations will be limited to 3 minutes each.

The time limits and number of speakers may be extended particularly for major strategic applications at the discretion of the Chairman of the Committee.

Under normal circumstances public speaking will only be permitted when a planning application is considered for the first time by the Committee. Therefore if the application is deferred a further presentation to the Committee will not be permitted unless new and significant factors have arisen. A County Councillor who has declared a prejudicial interest in an application will be afforded the same speaking rights as a member of the public.

10. Determination of Applications

Section 38(6) of the Planning & Compulsory Purchase Act 2004, 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”*.

The County Council recognises that planning decisions are often matters of fine judgement where the balancing of considerations is difficult. The officer's report will normally rely heavily on planning policy and Members of the Committee 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.

A Member of the Committee may only vote upon a recommendation if he or she has been present for the full debate on the application.

Where the Development and Regulation 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 will usually 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 (including recommending suitable planning conditions) or refusal of the application.

There will be full and accurate minuting of resolutions with a careful record being kept of the debate when a resolution is proposed which is contrary to an officer recommendation. In such cases the Chairman will summarise, or cause to be

summarised, the salient points of the debate, and ensure the text of the proposition is clearly understood before putting the matter to the vote.

11. Chairman

From time to time it may be appropriate for the Chairman to use his or her discretion in the consideration of an application to enable the Committee to conduct its business in a proper manner for instance to permit or not permit further speakers on an item and in seeking the Committee's agreement to an adjournment of a meeting or deferral of the item until, for example, a site visit has taken place.

12. Committee Site Visits

Formal site visits will only be held where there is a clearly identified benefit to be gained from holding one i.e. where a proposal is contentious or particularly complex, and the impact is difficult to visualise or assess from the submitted information and plans contained in the information before the Committee. Site visits can cause delay and additional costs and should only be used where the expected benefit is substantial.

The Committee must be mindful that site visits should be organised carefully to ensure that the purpose, format and conduct are clearly established at the outset and subsequently adhered to.

All Members of the Committee will be invited to attend the site visit, together with the local Member(s). No other parties will normally be invited to take part in the site visit.

All Members attending site visits should be accompanied by an officer. If access to private land is necessary, officers will secure the prior agreement of the land owner/operator/applicant who will be advised that lobbying Members of the Committee is unacceptable.

The purpose of the site visit is to view the site. Therefore any issues that are not consistent with Members familiarising themselves with the site should be prevented. The site visit shall consist simply of an inspection by the Committee with officer assistance. Members may raise questions but answers will be reported to the formal meeting of the Committee, and be discussed in public.

The role of the local Councillor shall be limited only to pointing out parts of the site he/she thinks are relevant to the Committee Members becoming familiar with the site and its setting. The local Councillor shall not make representations on the application at the site meeting.

The Committee Officer will arrange for transport for the site visit for all Members and officers from County Hall. Any Member wishing to meet the Committee locally must liaise with the Committee Officer to make appropriate arrangements to be picked up at a suitable location. However a Member should not meet the

Committee at the application site unaccompanied by an officer. Members of the Committee should be especially careful when arriving at the site alone, as this may present an opportunity for lobbyists to attempt to influence the Member informally.

The Committee cannot determine the application on a site visit. The visit should at all time be run similar to the strict lines of a Planning Inspector's site inspection – i.e. not allowing arguments and views to be expressed on site.

13. Officers

Councillors and officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate, whilst officers are responsible to the Council as a whole. Officers advise Councillors and the Council and carry out the Council's work. They are employed by the Council, not by individual Councillors, and it follows that instructions may only be given to officers through a decision of the Council or its Executive or a Committee. A successful relationship between Councillors and officers can only be based upon mutual trust and understanding of each others' positions. This relationship and the trust which underpins it must never be abused or compromised.

Officers involved in the processing and determination of planning matters must act impartially and in accordance with the Council's appropriate Codes of Conduct and any professional code of conduct (primarily the Royal Town Planning Institute's Code of Professional Conduct). As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

Councillors should not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority. Officers are part of a management structure and Councillors should only discuss a proposal, outside of any arranged meeting, with a Head of Service or those officers who are authorised by their Head of Service to deal with the proposal at a Member level.

Councillors should not put pressure on officers to put forward a particular recommendation on a planning application. However this does not prevent the Councillor from asking questions or submitting views to the Planning Officer, which may be incorporated into any committee report.

14. Reviewing Decisions

As a commitment to ongoing best practice Members of the Committee will from time-to-time be asked to revisit a sample of implemented planning permissions to assess the quality of the decisions. These reviews will play a valuable part in Member training as well as help the Committee improve the quality and consistency of decision making, strengthen the public confidence in the planning system and help with reviews of planning policy.

15. Possible Consequences of a Breach of the Protocol

As this Protocol has been approved by the Development and Regulation Committee it is binding on all Councillors. Moreover, it is a statement by the Council about the proper way Councillors should conduct themselves as Members of the Committee. Therefore any contravention of it could be seen as a basis for a complaint to the Local Government Ombudsman on the grounds that maladministration has occurred that has caused injustice; the maladministration being a failure to make a determination in accordance with the Committee's own Protocol.

This document has been produced jointly by the Minerals and Waste Planning Team, and Governance Team, Legal Services, Essex County Council.